PO-CH/NL/0261
PART B

Chex
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PART B

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PO -CH /NL/0261
PART B

CHANCELLOR'S PAPERS ON COMPETITION POLICY

DD: 25 years

29/9/95

Begins: 13/10/87

Ends: 22/1/88 (CONTINUED)

PO -CH /NL/0261
PART B

NOTE OF A MEETING HELD AT 5.00PM ON TUESDAY 13 OCTOBER IN CHANCELLOR'S ROOM HMT

Present:	Chancellor	Mr Burgner
	Paymaster General	Mr Spackman
	Economic Secretary	Mr Gray
	Sir P Middleton	Miss Sinclair
	Sir T Burns	Mr Wynn Owen
	Mr Wilson	Mr Cropper
	Mr Monck	Mr Tyrie
	Mr Byatt	Mr Call
	Mr Anson	
	Mr Cassell	

SUPPLY SIDE MEASURES

The Chancellor said that most of the areas for action identified by Mr Monck and Mr Byatt were already underway. Maximum impact would be achieved by concentrating on a small number of issues and this was why he had asked Mr Monck and Mr Byatt to identify their "top 10".

2. Referring to the issues identified in paragraph 2 of Mr Monck's note of 12 October, the following points were made:-

(a) Increase Labour Mobility

There were two elements to improving the operation of the housing market - reviving the private rented sector and increasing the supply of land for housing. Action on the first of these was now under way. The most promising way of tackling the problem of the supply of land in the South was by looking at derelict land rather than attacking the Green Belt: it was important for any action on housing to be environmentally sensitive. Mr Ridley was in the lead on this issue, but the Chancellor would be happy to "give a push".

(b) Increase pay flexibility

Action was already well underway on this front and the important thing was to maintain pressure. The most effective way of dealing with the Review Bodies would be for their reports to be publicly discredited by people outside Government. Sir P Middleton said he would like to give more thought to this whole area - not least in the context of the levels studies due next year.

(c) Trade policy

Voluntary restraint agreements were on the agenda for E(CP) and the particular problem of cars was due to be discussed at the end of the year. However, the position of Rover Group presented difficulties. The best way to tackle the question of consumer consciousness of the cost of protection was for the Chancellor to have a word with Sally Oppenheim (the new Chairman of the MMC). Mr Monck would provide an Aide Memoire. Public purchasing could be raised at the next Nationalised Industry Chairman's Dinner.

(d) Tax policy

This would be discussed in the usual way.

(e) Reduce subsidies to, and raise the rate of return in, nationalised industries

Little more could be done in this area.

(f) Get a competitive solution to electricity (and coal) privatisation

This was very complicated but was already under way. The Energy Secretary was aware of the problem of coal imports. Any solution was likely to involve an expenditure cost which the Chief Secretary would want to keep an eye on.

(g) Get agreement on the longer term frame work for the reform of the CAP

Work on this was on hand.

(h) Liberalise health and education

Much progress has been made in the education field, but very little in health. On education, the Scottish situation was not satisfactory but needed to be considered in the context of education generally. One area where further progress was possible was higher education, but this was a question for the next few years rather than the next few months. On health, what was needed was an informed debate outside Government. It was very difficult for the Government to move in the present climate. Drug dispensing was an area where it might be possible to introduce more competition and the Chancellor would write to Mr Moore on a personal basis. The Chancellor would raise with Mr Moore in person the question of the internal market.

(i) Improve information in accounts

Most of the issues identified in Mr Wilson's paper were already falling into place.

3. The Chancellor identified a number of further issues for discussion from the detailed schedules submitted by Mr Monck on 23 July:-

The legal profession. This was an area where there has been little progress. The problem was trying to tackle lawyers on their own ground. Demarcation was probably not worth tackling at the moment, but the real issue was the actual conduct of business. The Paymaster General would try to obtain advice on how to take this forward from Henry Brooke.

Training. There had been some difficulty in establishing the new JTS scheme which was important from a supply side point of view. Agreement had been reached in the survey on abolishing JRS. It was important for the CBI to be on side on training.

Wider Share Ownership. One of the problems was the complete failure of the securities industry to exploit new markets opened up by the privatisation issues. It was most important that they were encouraged to do so.

Retirement age. It had been impossible to tackle this issue when unemployment was rising, but it might now be possible to draw up some options which achieved savings over the longer term.

Labour market restrictive practices. There has been recent correspondence on this and Mr Fowler was committed to come back to E(CP) with proposals.

Taxation of savings (level playing fields). This was a very important subject. It was most important to look at the arrangements for pension contributions.

4. The Economic Secretary said that the following areas were those he attached most importance to in his Private Secretary minute of 28 July:

Housing. It was noted that bed and breakfast expenditure for the homeless was out of control. There was general lack of awareness among the general public of steps that had been taken to protect their rights as landlords. More publicity in this area might be a possibility.

Communications. The Prime Minister had said that the "Royal Mail" was not a candidate for privatisation. However, counter services were being separated from the rest of the Post Office and allowed to compete with the private sector and these could be considered for privatisation. Giro bank was another possibility for privatisation.

Sub-post offices. It was noted that by law sub-post offices were not able to open for longer hours than the main post offices they reported to. This was certainly something that should be tackled in E(CP).

5. Referring to his Private Secretary minute of 5 August, the Paymaster General said that VAT on the sale of gold coins had originally been introduced to avoid fraud. He was attracted to abolition, but there were EC complications. The Chancellor said that this would result in calls for the abolition of VAT on a whole range of items.

CR

CATHY RYDING

15 October 1987

Circulation

Those present
Chief Secretary
Financial Secretary
Mr F E R Butler

DEPARTMENT OF TRADE AND INDUSTRY
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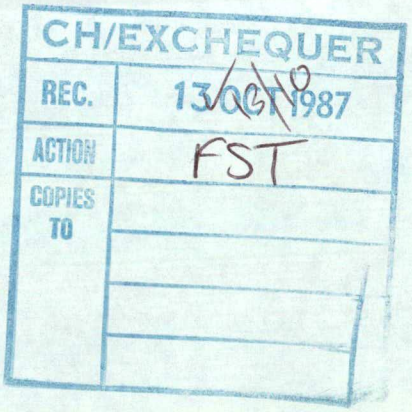
Secretary of State for Trade and Industry

13 October 1987

The Rt Hon Norman Fowler MP
Secretary of State for
Employment
Caxton House
Tothill Street
London
SW1H 9NF



COMPETITION AND EMPLOYMENT LAW

Thank you for your letter of 28 July asking for suggestions for restrictive labour practices which might be referred to the Monopolies and Mergers Commission under Section 79 of the Fair Trading Act 1973.

It is clear that restrictive labour practices are very much less prevalent than was the case a few years ago. This is borne out by a lack of obvious candidates within my Department's responsibilities. The general impression is one of increasing co-operation and flexibility on the part of the work force, with the odd remaining pockets of resistance being tackled by management. Even in the printing industry, the remaining restrictions are being swept away. Where management is successfully tackling restrictions, there is obviously the risk that an MMC enquiry would be not only useless, but counter-productive. The same is true of the further enquiries which would be needed to identify practices which might be suitable for referral, for which the evidence at present remains largely anecdotal. It may be that your Department and the MSC - and ACAS, if they felt able to help - have more information about the terms of individual agreements that would provide a basis for a reference.

One area where, however, there is already considerable evidence of restrictive practices is that of broadcasting. The need to tackle restrictive practices in this area was one of the points highlighted at the Prime Minister's seminar. To this can be added the activities of Equity and the Musicians' Union in other areas.

DW5BZV

Both of these were raised during the E(A) discussion of restrictive trade practices, and I was asked, in consultation with you, to consider how to reduce the restrictive practices of Equity and the Musicians' Union in broadcasting and elsewhere. Since contracts of employment are specifically excluded from the scope of restrictive trade practices legislation, this is something which might more appropriately be done within the context of the present exercise.

Douglas Hurd, in his letter of 28 August, concludes that broadcasting is not suitable for a reference under Section 79, partly for reasons of timing and partly because of the statutory framework. On the timing, I recognise that work is already well advanced on the Broadcasting Bill and other measures, some of which will themselves help to break down restrictive agreements within broadcasting. But this will take time, and none of the measures will directly tackle the question of restrictive labour practices. Referring these practices to the MMC need not, therefore, in my view, make the handling of the Bill significantly more difficult. On the other hand, making the reference would itself increase pressure on the broadcasters when renegotiating their agreements, quite apart from any adverse conclusions the MMC eventually reached.

The length of time the Commission might take is relevant. Although the Act contains no provision for setting a time limit for Section 79 references, the MMC have indicated that they would prefer a self-imposed time limit; and that they would see this as being between 6 months and a year, depending on the scope of the reference. Since there have never been any such references, there must be an element of uncertainty to this, and it will need to be discussed with the Commission; but this would in theory make possible a reference reporting by, say, next summer, well before any legislation is introduced, and even allowing additional provisions to be made in the light of the MMC's conclusions.

As to the legal position, my Department's preliminary view is that the statutory basis of broadcasting would not in itself preclude a reference under Section 79, or make it impossible for the MMC to apply the public interest test, which is very wide-ranging. More relevant is whether the broadcasters are covered by the term "commercial activities". It seems to us that the ITV companies (where arguably the problem is most serious) are almost certainly covered by this, and this seems also to be true of the BBC, although the position here is less certain. If Douglas Hurd continues to have reservations on these grounds, it might be helpful if our officials could meet to resolve this.

DW5BZV

Subject to this, I propose we ask officials from all interested Departments to look at the agreements and practices not only in broadcasting but in other areas where the same performing and technical unions are active, with a view to a wider reference. This would carry forward the remit from E(A) and should cover live theatre and music and perhaps also recording and film-making. My Department is responsible for the last of these, and the labour agreements here seem to be less restrictive than in broadcasting; but they might be covered for the sake of completeness.

One other problem which some firms have raised with us is restrictions on the operation of YTS, for example on the industries that will accept trainees. This however may be more a matter for administrative action by your Department; my officials will be letting yours have more details. They will also be giving them the benefit of the work that has been dona here on the scope of the Section 79 powers.

Copies of this letter go to the other members of E(CP), Douglas Hurd, Richard Luce and Sir Robert Armstrong.

Yours

LORD YOUNG OF GRAFFHAM

DW5BZV

DEPARTMENT OF TRADE AND INDUSTRY
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Secretary of State for Trade and Industry

13 October 1987

The Rt Hon John Moore MP
Secretary of State for Social Services
Department of Health and Social
Security
Alexander Fleming House
Elephant and Castle
LONDON SE1

PHARMACEUTICAL INDUSTRY: COMPETITION

You copied to me your letter of 29 September to Nigel Lawson reporting the conclusions of the interdepartmental Group studying the procurement of medicines.

As you say, it had been agreed that the Group should not reopen the recently-settled Pharmaceutical Price Regulations Scheme or the pharmacists' contract introduced in April. These twin constraints, at opposite ends of the market, appear to leave the three areas which the Group identified as the main ones offering further scope for competition: more cost-conscious prescribing by doctors; increased procurement of generic drugs; and parallel imports.

On the first of these, doctors' prescribing, the need appears to be not only to make doctors more aware of the availability of generic equivalents, and to overcome any unfounded prejudices in favour of branded drugs, but to make generic prescribing easier, so that it eventually becomes the natural thing to do. Computerisation of practices should help here, although it will be important to ensure that this does not itself introduce bias into doctors choice, particularly where systems are provided by the private sector.

On the second area, generic procurement, we clearly do not know enough about the market at this stage, and the proposed study by external consultants seems the best way forward. This should also

DW5BZX

yield useful information about the suppliers of generic medicines.

I hope that it will be possible to adapt the discount recovery system to take account of parallel imports. Although this may be criticised by the industry as encouraging parallel imports to the detriment of UK manufacturers, it is really no more than recognising the existence of the Common Market, and can be defended as such.

Although outside the scope of this Group's work, it has I think already been accepted that the operation of the new pharmacy contract should be reviewed after an initial period of operation, and this has been reflected in the Competition Initiative Action Programme. The precise timing of this review, given that the new contract only came into operation in April this year, needs further consideration. But this review should I believe look not only at the way in which NHS contracts are awarded but the system of reimbursement and renumeration of pharmacists described very briefly in Annex 1 to your letter. Although the present system appears to introduce considerable competitive pressure at the level of wholesale prices, it is less clear how much pressure there is on pharmacists to contain their own costs, and this will need to be examined carefully.

I hope that you will keep E(CP) informed of progress in this area, on the study of the generic market itself, the resolution of the parallel pricing issue, and the progress being made on doctors' prescribing.

I am copying this letter to the other members of E(CP), Sir Robert Armstrong and Mr Willacy at CUP.

LORD YOUNG OF GRAFFHAM

DW5BZX

MINISTRY OF DEFENCE
WHITEHALL LONDON SW1A 2HB

Telephone 01-218 6621 (Direct Dialling)
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Minister of State
for Defence Procurement

D/MIN(DP)/DGT/4/5/1

15 October 1987

Dear Nigel,

You may remember that at the E(CP) meeting in July I mentioned that the Ministry of Defence's achievements and efforts in the field of extending competition did not appear to be reflected in the papers before the Committee. I undertook to write to you on the matter.

The Ministry of Defence has already taken and completed many major competition initiatives and is engaged to a large extent in sustaining the effort needed to make them effective. We have, for example, achieved the privatisation of the Royal Ordnance Factories and the installation of commercial management into the Royal Dockyards. We have also contractorised many support services, saving, since 1979, some 9,000 posts and £31 million annually. Areas contractorised include cleaning and catering, equipment maintenance and repair, facilities management, warehousing and some training. Further efforts are being made on this front.

In the straightforward procurement area we have increased the proportion of work placed following competition, have set

/ up ...

The Rt Hon Nigel Lawson MP

up procedures for encouraging more competition at sub-contract level and taken steps to open up our requirements both by the Small Firms Initiative and by publication of the MOD Contracts Bulletin. These are measures which we shall be building upon in the coming months. I attach a note, in the appropriate format, of three items, which I feel should be included in the Action Programme for the Ministry of Defence.

I am copying this letter to members of E(CP) and to Sir Robert Armstrong.

Yours,

David.

Lord Trefgarne

Action	Timing	Lead Dept
Extend competitive tendering and contracting out in defence support services	Continuing	MOD
Increase range of defence contracting firms by Small Firms Initiative and open tendering procedures	Continuing	MOD
Increase proportion of contracts placed by competitive procedures	Continuing	MOD

I very much agree that we should be pressing for review of the pharmacists contract and the PPRS. (The latter in particular is weighted in favour of the drugs companies.) I've suggested some small amendments to draft letter. MEP 21.10

FROM: M G STURGES

DATE: 21 October 1987

1. MISS PEIRSON ✓

2. FINANCIAL SECRETARY ✓ FST is content 22/10/87 g.n.

3. CHANCELLOR

cc P/S Chief Secretary
P/S Paymaster General
P/S Economic Secretary
Sir P Middleton
Mr F E R Butler
Mr Anson
Mr Monck
Miss Peirson
Mr Gray
Ms Boys
Mr Cropper
Mr Tyrie

C/ Your letter to issue? Content for FST to write as drafted

CR 22/10

Ok as amended.

OK, this is my wish to shorten.

PHARMACEUTICAL INDUSTRY: COMPETITION

Background

1. Mr Moore's letter of 29 September to the Chancellor (Flag C) sets out the conclusions of the interdepartmental group of officials who have been examining competition in the pharmaceutical industry. Lord Young sent a helpful reply on 13 October (Flag D). The group was set up at the Chancellor's initiative - attached at Flag E is his letter of 19 November 1986 to Mr Fowler. We recommend that the Financial Secretary should reply to Mr Moore (draft at Flag A). In addition we suggest that the Chancellor should write a slightly more personal letter to Mr Moore to reinforce the points in the Financial Secretary's letter - in particular to press the supply side point about increasing competition in drug dispensing (draft at Flag B).

As agreed at supply side meeting

2. The interdepartmental group operated under two constraints imposed after soundings were made of the Policy Unit in November 1986. These were that there was to be no reconsideration of either the revised Pharmaceutical Price Regulations Scheme which had taken effect in October 1986 or the new pharmacists contract which had recently been negotiated (because of the need for legislation this did not take effect until 1 April 1987).

Report of interdepartmental group

3. The outcome reported in Mr Moore's letter of the work by officials is fairly modest:-

- greater efforts to improve cost consciousness in doctors prescribing;

- a study to be undertaken on the procurement of generic drugs;

- a £3m saving from including parallel imports in the arrangements for recovering discount from pharmacists.

Recommendation

4. We suggest that the Financial Secretary's reply should propose a rolling programme of work on pharmaceuticals under the auspices of E(CP). This work would build on efforts so far and include reconsideration at appropriate points of both the pharmacists contract and the Pharmaceutical Price Regulations Scheme. Before the Chancellor wrote in November 1986 he asked us to clear our lines with the Policy Unit - who suggested that the interdepartmental group should not look at the pharmacists contract and the PPRS as these had both been fairly recently negotiated. Both arrangements have now been operating for some time (PPRS since October 1986 and pharmacists contract 1 April 1987) and we have not consulted the Policy Unit this time. Suggested draft letters for the Chancellor (Flag B) and the Financial Secretary (Flag A) are attached.

OK?

Martin Sturges

M G STURGES

DRAFT LETTER FROM FINANCIAL SECRETARY TO SECRETARY OF STATE FOR SOCIAL SERVICES

PHARMACEUTICAL INDUSTRY: COMPETITION

I am replying to your letter of 29 September to the Chancellor about the conclusions of the inter-departmental group which has been examining the procurement of medicines. I have seen David Young's letter to you of 13 October.

2. I consider that the report is a useful beginning to the comprehensive programme of work which I believe to be necessary in this area. There are a number of important areas that I believe we should address over the next year or so - including those that you mention in your letter.

3. Firstly I strongly endorse your efforts to increase cost-consciousness among doctors in their prescribing. It is clearly important to take the steps you propose to improve the information available to doctors on their prescribing and to give them every encouragement to seek the cheapest solutions which are consistent with good patient care. I understand that some of the benefits you foresee from your initiatives will not be fully reaped until ~~1989-90 and~~ 1990-91. Nevertheless it will be helpful to be kept in touch with progress in the meantime.

4. I am sure it is right to commission a further study on the procurement of generics.There are significant gaps in our knowledge about the present position and we must follow up the

— in this connection, I note your comments about the uncertainty on wholesale discounts, and I trust that the issue will be fully covered by the further study

work by the Central Unit on Purchasing which suggested sizeable differences between the prices paid for drugs in the hospital and family practitioner services. We must be certain that decisions we might take on generics are based on a proper analysis and understanding of the market. I note that you consider that the duration of the study should be determined in the light of the proposals received. I suggest we should tell the firms tendering that a report will be required in a maximum of six months - a timescale which would allow consultants to make the thorough assessment we require. I and my Treasury colleagues will want to keep an eye on this study and I would like one of my officials (Mr Sturges) to be a member of the Steering Group you are establishing.

5. The proposed inclusion of parallel imports in discount recovery arrangements is both sensible and welcome.

6. The revised Pharmaceutical Price Regulations Scheme has now been in operation for a year and the new pharmacists contract for over six months. We should make plans to review the effectiveness of these two measures.

7. As David notes in his letter it has been agreed that the pharmacists contract should be reviewed in the context of the Competition Initiative Action Programme. ~~Only the timing has to be decided.~~ A number of issues could be examined in that review and I agree with David that it would be very valuable to look at the arrangements for reimbursing and remunerating pharmacists. You have taken some initial steps to improve the provision of pharmacy services - for example the controls by Family

Practitioner Committees on access to the list for NHS dispensing and the compensation scheme to encourage small, inefficient pharmacists to withdraw from NHS work. There are other initiatives we could take and I would like to see a thorough examination of the scope for introducing competitive tendering for contracts to act as NHS dispensing pharmacies. NHS dispensing is not only lucrative in itself for pharmacists but offers significant indirect benefits, ~~with~~ as a result of customers buying ordinary household items from the chemist who dispenses their prescription. Competitive tendering seems well worth pursuing, and I suggest that consideration ~~might~~ should begin fairly soon, to start to prepare the ground for negotiations later in 1988.

8. Finally, the Pharmaceutical Price Regulations Scheme (PPRs). The revised scheme is now a year old and we should review it well in advance of the next breakpoint, to allow time for renegotiation. We must be sure that the NHS, as purchaser of most of the industry's UK sales, and therefore the taxpayer are getting good value from the arrangements and that the balance is not tipped too far in favour of the pharmaceutical industry - although I recognise the need for a strong UK industry. I suggest that a study group, on which of course I should wish Treasury officials to be represented, should be set up no later than early next year to consider all options.

~~9. These four items represent a sizeable agenda improving~~ doctors' prescribing, studying and perhaps modifying the arrangements for procuring generics, and reassessing both the pharmacists contract and the Pharmaceutical Price Regulation Scheme. I suggest that a programme should now be drawn up for taking work forward in those four areas. I recognise that there may be particular factors affecting timing of some parts of the ~~programme and would therefore find it very helpful if for the~~

9. I hope you can accept these two important additions to your agenda — the reassessment of both the pharmacists' contract and the PPRS. The size of the NHS drugs bill,

~~next meeting of E(CP) you could prepare a paper proposing a programme of work on pharmaceutical matters.~~ I am sure you would agree, fully justifies a review of the value for money we are getting in this area.

10. I am copying this letter to the other members of E(CP), Sir Robert Armstrong and Mr Willacy at CUP.

DRAFT LETTER FOR THE CHANCELLOR TO SEND TO MR MOORE

FAMILY PRACTITIONER SERVICES: CONTRACTUAL ARRANGEMENTS WITH PHARMACISTS

I was interested to see

Your letter of 29 September, reporting progress made by the Interdepartmental group on Competition in the Pharmaceutical industry, ~~made interesting reading~~. Norman Lamont will be sending you a full reply on my behalf.

However, I would like to raise with you personally the way in which contracts are awarded for the provision of pharmacy services under the Family Practitioner Services. I am concerned - and I know you share my concern -

~~There is one matter, however, which I thought I would raise with you~~ [personally] ~~myself, because of my own concern - which I know that you share -~~ that every opportunity should be taken to widen competition in the provision of health services. ~~I refer to the way in which contracts are awarded for the provision of pharmacy services under the Family Practitioner Services.~~ Your predecessor took powers to control access to such contracts, for the sound reason that open-ended access was costing the taxpayer significant sums of money without representing good value for patients. Understandably, this move was controversial. ~~Initially therefore,~~ and for that reason however, the existing contracts with pharmacies were all maintained. But then we faced criticism from those companies who were expanding retail outlets and who had hoped to combine NHS dispensing services with the sale of pharmaceutical and cosmetic products.

~~think~~ believe I consider that the time has now come to put arrangements on a more open basis, so that we can reap some advantages from the working of competitive market forces. It is evident that some companies, ~~for example Underwoods,~~ regard the provision of dispensing services to the NHS as a valuable commercial prize - presumably because the ever increasing number of patients needing prescriptions dispensed are likely to purchase other items whilst on the

premises. In some urban areas, you should find that you could ensure a satisfactory service for patients at lower cost than the present contractual arrangements by asking Family Practitioner Committees to invite bids for the award of contracts to provide dispensing services. The details will need to be carefully worked out, and it would be sensible to hold pilot trials in a few selected areas before attempting to introduce new arrangements more widely. I do hope, however, that you can agree to take matters forward on this basis. Your draft White Paper on Primary Health Care provides an opportunity to signal your intentions here.

CONFIDENTIAL

cc PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Sir P Middleton
Mr F E R Butler
Mr Anson

Mr Monck
Miss Peirson
Mr Gray
Ms Boys
Mr Sturges
Mr Cropper
Mr Tyrie

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 3000

23 October 1987

The Rt Hon John Moore MP
Secretary of State for Social Services
Department of Health and Social
Security
Alexander Fleming House
Elephant and Castle
LONDON
SE1 6BY

FAMILY PRACTITIONER SERVICES:
CONTRACTUAL ARRANGEMENTS WITH PHARMACISTS

I was interested to see your letter of 29 September, reporting progress made by the Interdepartmental Group on Competition in the Pharmaceutical industry. Norman Lamont will be sending you a full reply on my behalf.

However, I would like to raise with you personally the way in which contracts are awarded for the provision of pharmacy services under the Family Practitioner Services. I am concerned - and I know you share my concern - that every opportunity should be taken to widen competition in the provision of health services. Your predecessor took powers to control access to such contracts, for the sound reason that open-ended access was costing the taxpayer significant sums of money, without representing good value for patients. Understandably, this move was controversial and for that reason the existing contracts with pharmacies were all maintained. However, we then faced criticism from those companies who were expanding retail outlets and who had hoped to combine NHS dispensing services with the sale of pharmaceutical and cosmetic products.

I believe that the time has now come to put arrangements on a more open basis, so that we can reap some advantages from the working of competitive market forces. It is evident that some companies regard the provision of dispensing services to the NHS as a valuable commercial prize - presumably because the ever increasing number of patients needing prescriptions dispensed are likely to purchase other items while on the premises. In some urban areas, it should be possible to ensure a satisfactory service for patients

at lower cost than with the present contractual arrangements by asking Family Practitioner Committees to invite bids for the award of contracts to provide dispensing services. The details will need to be carefully worked out, and I think it would be sensible to hold pilot trials in a few selected areas before attempting to introduce new arrangements more widely. I do hope, however, that you can agree to take matters forward on this basis. Your draft White Paper on Primary Health Care provides a good opportunity to signal your intentions in this area.

Yours ever
Nigel

NIGEL LAWSON

4308/004

Paper PSE

FROM: S J FLANAGAN
DATE: 23 October 1987

1. MR WYNN OWEN
2. FINANCIAL SECRETARY

cc Chancellor 2
Chief Secretary
Paymaster General
Economic Secretary
Sir P Middleton
Mr F E R Butler
Mr Monck
Mr Gilmore Mr Burgner
Mr Scholar
Mr Burr
Mr Gray
Mr Easton
Mr Guy
Mr Kaufmann
Mr Basi

COMPETITION AND EMPLOYMENT LAW

The Secretary of State for Employment sent you a copy of his letter of 28 July to Lord Young, in which he asked for suggestions from colleagues by mid-October on potential cases of restrictive labour practice which could be referred to the Monopolies and Mergers Commission.

2. The only area of employment for which Treasury is directly responsible is that of the civil service. It would obviously be extremely embarrassing for the Secretary of State for Trade and Industry to refer the Crown itself to the Monopolies and Mergers Commission. In any case, working practices have been changing considerably in the industrial civil service, largely as a result of productivity agreements. Mr Fowler mentioned the printing industry specifically. HMSO used to be subject to various restrictive labour practices, but the introduction of new technology at new sites has seen many of these being broken down. There are now more robust productivity schemes, the apprenticeship and training systems have been overhauled, and there is much greater flexibility of labour generally.

3. Outside the area of direct Treasury responsibility, the most obvious areas for action are, generally speaking, being addressed in one way or another. Broadcasting was recently described by the Prime Minister as the last bastion of restrictive practices. Given that it is facing changes such as the indexing of the licence fee to the RPI, and the introduction of competitive tendering for ITV contracts which should force the broadcasters themselves to address the restrictive labour practices in their industry, the Home Secretary doubted whether an MMC reference might be useful. But Lord Young, in his letter of 13 October

to Mr Fowler suggested that the industry reforms might take some time to work through to labour practices and even then the effect would only be indirect. An MMC reference would have a speedier and more specific impact. This seems a good point. Another candidate might be BR manning arrangements. On 30 September the MMC published their report on Network South East, which called for a more flexible and effective use of manpower. There may be room for a follow up on labour practices specifically.

S J FLANAGAN

4308/004c2

DRAFT LETTER FROM THE FINANCIAL SECRETARY TO THE SECRETARY OF STATE FOR EMPLOYMENT

COMPETITION AND EMPLOYMENT LAW

Thank you for sending me a copy of your letter of 28 July to David Young.

2. In view of your reference to the printing industry, I have considered whether it might be appropriate for the MMC to look at HMSO. But improved working relationships, the introduction of new technology, and adherence to binding agreements freely reached by both parties, has led to the elimination of the once endemic practices which at times placed restrictions on HMSO management. The agreements include better productivity schemes, and more flexible manning levels as work holidays pay and conditions. Clearly much more can be done, and continued vigilance is needed to ensure that new restrictive practices do not creep in to replace the old. However, given the now improved position of public sector printing, I would not think it appropriate to put it to a Section 79 examination.

3. Two other possibilities seem promising. I agree with David Young that an MMC reference would help speed up change in the broadcasting industry, which the Prime Minister recently referred to as the last bastion of restrictive practices. Secondly, the MMC report on Network South East was, inter alia, critical of labour practices. It might be worth following this up with a more targeted reference.

4. I am copying this letter to Douglas Hurd, Paul Channon and David Young, to the other members of E(CP) and to Sir Robert Armstrong.

[N L]

3369/30

CONFIDENTIAL

cc: PPS, CST, PMG, EST
Sir P. Middleton
Mr. F.E.R. Butler
Mr. Anson
Mr. Monck
Miss Peirson
Mr. Gray
Ms. Boys
Mr. Clapper
Mr. Tyrie

FINANCIAL SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon John Moore MP
Secretary of State for Social Services
Department of Health and Social Security
Alexander Fleming House
Elephant and Castle
LONDON
SE1 6BY

23 October 1987

Dear John

PHARMACEUTICAL INDUSTRY: COMPETITION

I am replying to your letter of 29 September to the Chancellor about the conclusions of the inter-departmental group which has been examining the procurement of medicines. I have seen David Young's letter to you of 13 October.

I consider that the report is a useful beginning to the comprehensive programme of work which I believe to be necessary in this area. There are a number of important areas that I believe we should address over the next year or so - including those that you mention in your letter.

Firstly, I strongly endorse your efforts to increase cost-consciousness among doctors in their prescribing. It is clearly important to take the steps you propose to improve the information available to doctors on their prescribing and to give them every encouragement to seek the cheapest solutions which are consistent with good patient care. I understand that some of the benefits you foresee from your initiatives will not be fully reaped until 1990-91. Nevertheless, it will be helpful to be kept in touch with progress in the meantime.

I am sure it is right to commission a further study on the procurement of generics. There are significant gaps in our knowledge about the present position and we must follow up the work by the Central Unit of Purchasing which suggested sizeable differences between the prices paid for drugs in the hospital and family practitioner services. We must be certain that decisions we might take on generics are based on a proper analysis and understanding of the market. I note that you consider that the duration of the study should be determined in the light of the proposals received. I suggest we should tell the firms

tendering that a report will be required in a maximum of six months - a timescale which would allow consultants to make the thorough assessment we require. I and my Treasury colleagues will want to keep an eye on this study and I would like one of my officials (Mr Sturges) to be a member of the Steering Group you are establishing.

The proposed inclusion of parallel imports in discount recovery arrangements is both sensible and welcome.

The revised Pharmaceutical Price Regulations Scheme has been in operation for a year and the new pharmacists contract for over six months. We should make plans to review the effectiveness of these two measures.

As David notes in his letter it has been agreed that the pharmacists contract should be reviewed in the context of the Competition Initiative Action Programme. A number of issues could be examined in that review and I agree with David that it would be very valuable to look at the arrangements for reimbursing and remunerating pharmacists. You have taken some initial steps to improve the provision of pharmacy services - for example the controls by Family Practitioner Committees on access to the list for NHS dispensing and the compensation scheme to encourage small, inefficient pharmacists to withdraw from NHS work. There are other initiatives we could take and I would like to see a thorough examination of the scope for introducing competitive tendering for contracts to act as NHS dispensing pharmacies. NHS dispensing is not only lucrative in itself for pharmacists but offers significant indirect benefits, as a result of customers buying ordinary household items from the chemist who dispenses their prescription. Competitive tendering seems well worth pursuing, and I suggest that consideration should begin fairly soon, to start to prepare the ground for negotiations later in 1988.

Finally, the Pharmaceutical Price Regulations Scheme (PPRs). The revised scheme is now a year old and we should review it well in advance of the next breakpoint, to allow for the renegotiation. We must be sure that the NHS, as purchaser of most of the industry's UK sales, and therefore the taxpayer are getting good value from the arrangements and that the balance is not tipped too far in favour of the pharmaceutical industry - although I recognise the need for a strong UK industry. I suggest that a study group, on which of course I should wish Treasury officials to be represented, should be set up no later than early next year to consider all options. In this connection, I note your comments about the uncertainty on wholesale discounts, and I trust that the issue will be fully covered by the further study.

I hope you can accept these two important additions to your agenda - the reassessment of both the pharmacists' contract and the PPRs. The size of the NHS drugs bill, I am sure you would agree, fully justifies a review of the value for money we are getting in this area.

I am copying this letter to the other members of E(CP), Sir Robert Armstrong and Mr Willacy at CUP.

Yours ever

Norman

NORMAN LAMONT

cc Chancellor
Chief Secretary
Paymaster General
Economic Secretary
Sir P. Middleton
Mr FER Butler
Mr Monck
Mr Gilmore
Mr Burgner
Mr Scholar
Mr Burr
Mr Wynn Owen
Mr Flanagan
Mr Gray
Mr Easton
Mr Guy
Mr Basi
Mr Kaufmann

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Norman Fowler MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
LONDON
SW1H 9NF

26 October 1987

Dear Norman

COMPETITION AND EMPLOYMENT LAW

Thank you for sending me a copy of your letter of 28 July to David Young.

In view of your reference to the printing industry, I have considered whether it might be appropriate for the MMC to look at HMSO. But improved working relationships, the introduction of new technology, and adherence to binding agreements freely reached by both parties, has led to the elimination of the once endemic practices which at times placed restrictions on HMSO management. The agreements include better productivity schemes, and more flexibility in manning levels, hours of work, holidays, pay and conditions. Clearly much more can be done, and continued vigilance is needed to ensure that new restrictive practices do not creep in to replace the old. However, given the now improved position of public sector printing, I would not think it appropriate to put it to a Section 79 examination.

Two other possibilities seem promising. I agree with David Young that an MMC reference would help speed up change in the broadcasting industry, which the Prime Minister recently referred to as the last bastion of restrictive practices. Secondly, the MMC report on Network South East was, inter alia, critical of labour practices. It might be worth following this up with a more targeted reference.

I am copying this letter to Douglas Hurd, Paul Channon and David Young, to the other members of E(CP) and to Sir Robert Armstrong.

Yours ever
Norman

NORMAN LAMONT

4306/011c2

CONFIDENTIAL

FROM: P WYNN OWEN
DATE: 6 November 1987

1. MR GRAY
2. FINANCIAL SECRETARY

cc PS/Chancellor
PS/Chief Secretary
PS/Paymaster General
PS/Economic Secretary
PS/Sir P Middleton
Mr Monck
Mr Burgner
Mr Gilmore
Mr Bonney
Miss P A Boys
Mr Burr
Mr Colman
Mr Fox
Mr Instone
Mr Revolta
Mr A M White
Mr de Berker
Mr Finnegan
Mr MacAuslan
Mr J Stevens
Mr Flanagan

COMPETITION INITATIVE

Lord Young launched a trawl for suggestions to update the E(CP) Action Programme in his letter of 31 July. You replied on 8 September saying we were looking at a number of areas for possible inclusion and that you hoped to write again in the near future. With the Chancellor having held his 13 October meeting on supply side measures, and following Mr Colman's minute of 30 October on sub-post offices opening hours and Mr Barnes reply of 3 November, this submission suggests you now write to Lord Young with a substantive reply, before the next E(CP) meeting on 19 November.

BACKGROUND

2. At the E(CP) meeting in July, Lord Trefgarne (MOD) suggested that the Action Programme put forward should be updated to cover many new areas of policy where competition was being introduced. Lord Young accordingly wrote round on 31 July seeking new items and updates and saying he hoped to present a revised action programme to E(CP) by the end of the year.

3. Most other Ministers have now written. Mr MacGregor wrote on 17 August, Mr Channon on 4 September, Mr Ridley on 7 and 21 September, Mr Rifkind on 8 September, Mr Baker on 24 September, Mr Fowler on 30 September, Mr Hurd on 6 October and Lord Trefgarne on 15 October (copies attached - top copy only). The main departments which have not yet replied are Energy and the DHSS.

4. There are a number of interesting new items in the replies on which you could record an interest in passing. For instance, Mr Hurd's letter, besides dealing in some detail with competition in broadcasting, also mentioned scope for private sector involvement in prisons, looking again at shop opening hours and the possibility of not only privatising the Tote, but also removing its statutory monopoly. Mr Fowler's letter promises a report to Ministers in January 1988 on the review of coverage of Wages Councils, which you might say you look forward to seeing.

5. The main reason for your initial holding reply, though you did not mention it to Lord Young, was the supply side review going on within the Treasury. But this has had the beneficial effect that you can now not only make suggestions for the list flowing from our supply side exercise, but can also comment briefly on key areas identified by Ministers in other departments.

6. As Mr Monck's minute of 12 October to the Chancellor for the supply side meeting said, however, most of the obvious candidates for inclusion were already in the Action Programme. Nonetheless, the Chancellor's meeting on 13 October (see Mrs Ryding's minutes attached - top copy only) identified a number of areas where further progress could be made on the supply side, one or two of which might be appropriate for inclusion in the E(CP) Action Programme. In particular, DTI could be asked to record in the Action Programme what measures they are taking to encourage competition in the whole field of **telecommunications,** including any plans they have concerning the telephone duopoly post 1990. It would also be worth prompting DoE to explain their policies on **the planning system and building regulations** and to consider how changes in these might improve both the **supply of building land and the supply of housing,** both for rent and for owner occupation, especially in southern England. DoE are putting particular emphasis, as you know, on reviving the private rented sector; relaxation of both planning and building regulations could be a useful step to improving the position without having significant adverse public expenditure or tax consequences.

7. The Chancellor's supply side meeting also resulted in the exchange of minutes between Mr Colman of 30 October and Mr Barnes of 3 November on **sub-post office's opening hours.** It may well be appropriate to take this to E(CP) at a later stage, but for now you might simply ask DTI if they wish to include anything on competition in the provision of postal services, without being too specific. The only other area which it would be worth suggesting be drawn into the E(CP) net, is competition in the **provision of health care services,** given that DHSS have still to reply to Lord Young's trawl.

RECOMMENDATION

8. You might now write to Lord Young, looking forward to the meeting on 19 November and identifying E(CP)'s important role as a catalyst throughout Government in the competition field. To that end, you might flag up areas where separate discussions are now underway, partly at least as a result of the competition initiative. The attached draft goes on to identify a few significant new points raised in your colleagues' returns, while also calling for entries on telecommunications, postal services, health services, the supply of building land in the south.

Philip Wynn Owen.

P WYNN OWEN

CONFIDENTIAL

DRAFT LETTER FROM FINANCIAL SECRETARY TO:

Lord Young of Graffham
Secretary of State for Trade and Industry
Department of Trade and Industry
1-19 Victoria Street
LONDON
SW1H OET

COMPETITION INITIATIVE

I wrote to you on 8 September, in response to your letter of 31 July, saying that we were looking at a number of areas for possible inclusion in the Competition Action Plan and that I hoped to write to you again in the near future.

2. I look forward to our first E(CP) meeting since the summer on 19 November, which I understand is due to take a number of important topics including competition in the professions, and, in particular, in the legal profession. An Action Plan summary of this sort is valuable in showing that the effectiveness of the competition initiative lies not solely in the direct discussions of E(CP), but also in its role as a catalyst to encourage the application of competition throughout the economy. For, as your letter of 31 July so rightly identified, decisions are taken in many other fora. I think it helpful that, wherever possible, the Action Plan should acknowledge this, so that we have a total picture of initiatives in this field. Since I last wrote, for example, there has been independent correspondence on a number of key items - for instance, the possibility of MMC references on labour market restrictive practices, on which Norman Fowler is due to report back to E(CP); Norman Lamont wrote to John Mocre on 23 October concerning competition in the pharmaceutical industry; the inclusion of measures to encourage competition in Nick Ridley's Local Government Bill; and separate discussions underway concerning ways in which competition might be encouraged in the context of future privatisations.

3. In their replies to your letter of 31 July, colleagues made a number of significant suggestions for updating the list. In particular, I note

Douglas Hurd's intention to make progress in introducing competition in the broadcasting field. I also support his intention to review shop opening hours and to introduce competition into the prison sector. I also found the expanded reference to deregulation of rents from Nick Ridley to be of major importance, and look forward to seeing Norman Fowler's promised paper on Wages Councils in January.

4. But it occurred to me that there are a number of other possible areas where the Action Plan should, at the very least, record departmental intentions and which could well bear fruit by way of E(CP) papers in due course. Those are:

(i) Telecommunications - it would be helpful if you could include an entry describing measures you are taking towards greater competition in the whole telecommunications field, but with particular reference to what might be done with the duopoly after 1990.

(ii) Postal Services - again, perhaps you could explain any measures being considered to give the market more freedom to operate and to encourage greater competition in this field.

(iii) Health Services - I have not yet seen a response from DHSS to your letter. Presumably there should be an entry in the Action Plan describing John Moore's initiative to introduce much greater competition into health care services.

(iv) Supply of building land - Nicholas Ridley's letters of 7 and 21 September raised a number of important points, but I think there should also be entries on the planning system and building regulations and how changes to these, and any other Government measures, might improve the supply of building land and the supply of housing, both for rent and owner-occupation, especially in southern England.

5. I gather Francis Maude will be writing to colleagues shortly to pursue various points bilaterally. Perhaps he could include these additional suggestions in his discussions, which I trust will result in a comprehensive and up to date version of the Action Plan being ready in time for E(CP) to consider before the end of this year.

6. I am copying this letter to the Prime Minister, to Members of the Cabinet and to Sir Robert Armstrong.

[N L]

4373/31

CONFIDENTIAL

cc PS/Chancellor
PS/CST
PS/PMG
PS/EST
PS/Sir P. Middleton
Mr Monck
Mr Burgner
Mr Gilmore
Mr Tovey
Miss Boys
Mr Burr
Mr Colman
Mr Wynn Owen
Mr Gray
Mr Fox
Mr Instone
Mr Revolta
Mr A.M. White
Mr J. Stevens
Mr de Zoete
Mr Flanagan
Mr Finnegan
Mr MacAuslan

Treasury Chambers, Parliament Street, SW1P 3AG

Lord Young of Graffham
Secretary of State for Trade and Industry
Department of Trade and Industry
1-19 Victoria Street
LONDON
SW1H OET

9 November 1987

Dear David

COMPETITION INITIATIVE

I wrote to you on 8 September, in response to your letter of 31 July, saying that we were looking at a number of areas for possible inclusion in the Competition Action Plan and that I hoped to write to you again in the near future.

I look forward to our first E(CP) meeting since the summer on 19 November, which I understand is due to take a number of important topics including competition in the professions, and, in particular, in the legal profession. An Action Plan summary of this sort is valuable in showing that the effectiveness of the competition initiative lies not solely in the direct discussions of E(CP), but also in its role as a catalyst to encourage the application of competition throughout the economy. For, as your letter of 31 July so rightly identified, decisions are taken in many other fora. I think it helpful that, wherever possible, the Action Plan should acknowledge this, so that we have a total picture of initiatives in this field. Since I last wrote, for example, there has been independent correspondence on a number of key items - for instance, the possibility of MMC references on labour market restrictive practices, on which Norman Fowler is due to report back to E(CP); I wrote to John Moore on 23 October concerning competition in the pharmaceutical industry; the inclusion of measures to encourage competition in Nick Ridley's Local Government Bill; and separate discussions underway concerning ways in which competition might be encouraged in the context of future privatisations.

In their replies to your letter of 31 July, colleagues made a number of significant suggestions for updating the list. In particular, I note Douglas Hurd's intention to make progress in introducing competition in the broadcasting field. I also support his intention to review shop opening hours and to introduce competition into the prison sector. I also found the expanded reference to deregulation of rents from Nick Ridley to be of major importance, and look forward to seeing Norman Fowler's promised paper on Wages Councils in January.

But it occurred to me that there are a number of other possible areas where the Action Plan should, at the very least, record departmental intentions and which could well bear fruit by way of E(CP) papers in due course. Those are:

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I gather Francis Maude will be writing to colleagues shortly to pursue various points bilaterally. Perhaps he could include these additional suggestions in his discussions, which I trust will result in a comprehensive and up to date version of the Action Plan being ready in time for E(CP) to consider before the end of this year.

I am copying this letter to the Prime Minister, to Members of the Cabinet and to Sir Robert Armstrong.

Yours ever

Norman

NORMAN LAMONT

b/f 17/11 to (M)
Papers pse.

DEPARTMENT OF HEALTH AND SOCIAL SECURITY

Alexander Fleming House, Elephant & Castle, London SE1 6BY

Telephone 01-407 5522

From the Secretary of State for Social Services

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
LONDON
SW1P 3AG

November 1987

Miss. Peirson
PPS, CST, PMG, EST
Mr. McIntyre
Mr. Bellwich.

COMPETITION IN THE SUPPLY OF MEDICINES

You wrote to me on 23 October about our proposals for inducing greater competition in the supply of medicines, and Norman Lamont wrote to me on the same subject, also on 23 October.

I am glad that you are able to agree to the steps we propose to take in this field. I personally believe these will be helpful in containing drug prices.

The action we propose is part of a wider programme of work in the family practitioner service field. The publication of the Primary Care White Paper will pave the way for major negotiations with each of the professions concerned, and in deciding how we should deploy our limited resources - both Ministerial and official - we need to ensure that we set the right priorities. It was only in October of last year that the new Pharmaceutical Price Regulation Scheme came into being, and it is due to last for six years, with the possibility of review from the middle of that period. We shall obviously need to consider the matter nearer October 1989, but I think it is much too early to begin this now. This is partly because we need more experience of the operation of the new PPRS before starting any major review; partly because we have only limited resources for administering the scheme and I want these to concentrate on making the new arrangements work effectively; and partly because to start a review now would be damaging to the industry's confidence, which is only just being restored following events in the drugs field over the last two or three years.

E.R.

The new contract for pharmacists came into operation even later, last April. Again, I agree that it should be reviewed but it is much too early to do so. I think we need at least another year's experience of the new arrangements before we can assess how they are working out and what changes should be made.

The Treasury were of course fully involved in the policy reviews which led up to both the new PPRS and the new pharmacist's contract, and your officials will no doubt recall that in the case of the latter we took independent advice from a firm of management accountants, who when specifically asked to assess the consequences of competitive tendering in this field, formed the view that it would probably be more expensive than the arrangements we subsequently introduced after legislation.

In answer to Norman Lamont's point about the length of the study of the generic market which we propose to initiate, I certainly agree that we should tell the firms who tender that we expect this to be completed in under six months.

I am copying this to the other members of E(CP), Sir Robert Armstrong and Mr Willacy at CUP.

JOHN MOORE

bf 17/11

DEPARTMENT OF HEALTH AND SOCIAL SECURITY
Alexander Fleming House, Elephant & Castle, London SE1 6BY
Telephone 01-407 5522
From the Secretary of State for Social Services

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
LONDON
SW1P 3AG

10 November 1987

Dear Nigel.

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I am copying this to the other members of E(CP), Sir Robert Armstrong and Mr Willacy at CUP.

JOHN MOORE

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215) 4417
GTN 215)
(Switchboard) 01-215 7877

From the Parliamentary Under Secretary of State
for Corporate and Consumer Affairs

The Hon Francis Maude MP

The Rt Hon John MacGregor OBE MP
Minister of Agriculture, Fisheries
and Food
Whitehall Place
LONDON
SW1A 2HH

17 November 1987

Dear John

COMPETITION INITIATIVE

Thank you for your letter of 17 August with your proposals for the Competition Initiative Action Programme. Now that we have responses from most Departments, David Young has asked me to follow up a number of points in discussion with colleagues, as anticipated in his letter of 31 July.

There is just one point in your letter on which I should be grateful for further clarification, the proposed transfer of tuberculin production from the Central Veterinary Laboratory to the pharmaceutical industry. Will this simply transfer the function to the private sector, or will it also introduce competition into supply?

There are also a couple of additional points which I should like to discuss, with a view to possible future papers for E(CP). The first is the work of the Forestry Commission, which as I understand it both has planning and regulatory functions in the forestry area and is involved in commercial forestry activities. The other is the funding and work of the various agricultural Development Councils.

A further point which it may be worth looking at again is the system of tendering for food aid. This was originally raised in 1984, but it is not clear whether this was pursued further or, if not, why it was dropped.

RH2CJF

It would be helpful if you or one of your Ministerial colleagues were able to meet me for a discussion of these points. If you agree, perhaps someone could contact my office to arrange a suitable time.

I am copying this letter to Nigel Lawson.

FRANCIS MAUDE

RH2CJF

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215) 4417
GTN 215)
(Switchboard) 01-215 7877

From the Parliamentary Under Secretary of State
for Corporate and Consumer Affairs
The Hon Francis Maude MP

The Rt Hon Paul Channon MP
Secretary of State for Transport
2 Marsham Street
LONDON
SW1P 3EB

17 November 1987

Dear Paul

COMPETITION INITIATIVE

Thank you for your letter of 4 September with your proposals for the Competition Initiative Action Programme. This was a most helpful list.

There is just one point on which I should welcome further clarification, and that is the timing of the review of taxi and hire car legislation, and possible implementation. Given that this is still shown as 1987, I wonder how this is progressing; I hope it will be possible to involve officials in my Department before any proposals are firmed up.

I am copying this letter to Nigel Lawson.

Yours

FRANCIS MAUDE

RH2CJJ

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215)
GTN 215) 4417
(Switchboard) 01-215 7877

From the Parliamentary Under Secretary of State
for Corporate and Consumer Affairs

The Hon Francis Maude MP

CH/EXCHEQUER
REC. 19 NOV 1987
ACTION FST
COPIES TO

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the
Home Department
Queen Anne's Gate
LONDON
SW1H 9AT

17 November 1987

Dear Douglas

COMPETITION INITIATIVE

Thank you for your letter of 6 October with your proposals for the Competition Initiative Action Programme. Now that we have responses from most Departments, David Young has asked me to follow up a number of points in discussion with colleagues as anticipated in his letter of 31 July.

It would be most helpful if Malcolm Caithness were able to meet me to explain in more detail your present thinking on the introduction of the private sector into prison management and ancillary services. I am also interested in the possibility, which you mention, of ending the Tote monopoly, and the ending of the horse-racing betting levy scheme, which I believe Kenneth Clarke raised recently in another connection.

If you and he agree, perhaps Malcolm's office could contact mine to arrange a suitable time.

I am copying this letter to Nigel Lawson.

Yours

FRANCIS MAUDE

RH2CJH

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215)
GTN 215) 4417
(Switchboard) 01-215 7877

From the Parliamentary Under Secretary of State for Corporate and Consumer Affairs

The Hon Francis Maude MP

To see also other letters behind.

25 19/11

CH/EXCHEQUER
REC. 19 NOV 1987
ACTION FST
COPIES TO

The Rt Hon John Moore MP
Secretary of State for Social Services
Alexander Fleming House
Elephant and Castle
LONDON
SE1 6BY

17 November 1987

Dear John

COMPETITION INITIATIVE

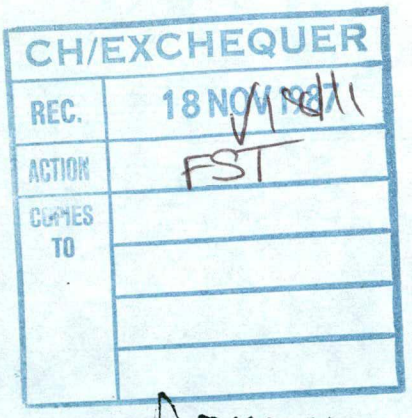
Now that we have responses from most Departments to David Young's letter of 31 July, he has asked me to follow up a number of points in discussion with colleagues. I know that there is a great deal going on in your area, which has no doubt delayed your reply; but for the same reason, I would appreciate the opportunity of a discussion with you or one of your Ministerial colleagues. If this is acceptable, perhaps the relevant office could contact mine to arrange a suitable time.

I am copying this letter to Nigel Lawson.

Yours

FRANCIS MAUDE

RH2CJD



QUEEN ANNE'S GATE LONDON SW1H 9AT

18 November 1987

Dear Norman,

COMPETITION AND EMPLOYMENT LAW

I was grateful to David Young for copying to me his letter of 13 October, in which he suggested that officials should look at the labour agreements and practices in broadcasting with a view to drawing up a reference to the Monopolies and Mergers Commission under section 79 of the Fair Trading Act 1973. I have also seen Norman Lamont's letter of 26 October on the same subject.

I remain unconvinced that referring broadcasting labour practices to the MMC would be helpful at this stage. The purpose of section 79 is to get a finding by the MMC which can form a basis for corrective action. But, as you know, we have got beyond that stage. We are well advanced with a programme of action which will make the broadcasting industry more competitive and more efficient. We are working to produce conditions which will ensure that the broadcasters have powerful incentives to remedy any present inefficiency and lack of cost consciousness. The BBC's revenue has been indexed and its new regime is moving vigorously to improve management control of resources. Our 25% initiative is also relevant both to BBC and ITV. Our work in the Ministerial Group on Broadcasting has identified a number of further measures.

Against that background I am doubtful whether work done by the MMC can help us in this task. The section 79 procedure has never been used and we cannot be sure what will emerge at the end of it.

We would need to set out for the MMC clear evidence of restrictive practices which for this purpose needs, as I understand it, to be specific and more than anecdotal. The worst result would be a reference which produced an inconclusive answer. As a result of the initiatives we have already taken the labour scene is moving fast within both the BBC and ITV. There is a moving target for the MMC to chase. In these circumstances we would need to rely on the co-operation of the employers to prepare an MMC reference; they may, however, share my own suspicion that use of this untested machinery might be more likely to hinder than to help their efforts.

Any reference would need to cover not only the activities of the BBC and the ITV companies but also those of the independent producers doing work for them and Channel 4. Anxiety has already

/been expressed

The Rt Hon Norman Fowler, MP

been expressed about attempts by the unions (especially ACTT and Equity) to renegotiate present agreements. Clearly once a reference extends to the independent production sector the problems of assembling the necessary supporting evidence, and of ensuring that it is up-to-date, become even greater.

It is useful to be reminded of the section 79 procedure. I would rather concentrate our energy on completing the policy work in hand. My own view is that the various shocks which Goverment policy and new technology are beginning to administer will do the trick. But if I am wrong and all that work were for any reason to fail to galvanise the industry, then section 79 would still be available.

I am copying this letter to members of E(CP) and Sir Robert Armstrong.

Yours ever,

Douglas.

2832/47

FROM: S J FLANAGAN
DATE: 18 November 1987

1. MR GRAY
2. CHANCELLOR

cc Chief Secretary
Financial Secretary
Paymaster General
Economic Secretary
Sir Peter Middleton
Mr Monck
Mr Burgner
Mr Gilmore
Miss Peirson
Ms Boys
Mr Burr
Mr Revolta
Mr Kaufmann
Mr Russell
Mr Sturges
Mr Wynn Owen
Mr Kerley
Mr Call
Mr Cropper
Mr Tyric

You may also like to bear in mind the remit for the last meeting for further candidates for the Competition Initiative Action Plan to be sent to Lord Young. The FST's letter of 9 March - Annex E - gave the Treasury response. In order to maintain the E(CP) momentum you may like to call for a further check-taking of the Action Plan at the next meeting.

RRC 18/11

E(CP), 19 NOVEMBER

E(CP) is meeting at 4.30pm on 19 November. There are four agenda items:

1. E(CP)(87)10 - **The Broadcasting of Commercial Records: Needletime and Fees.** The Home Secretary has been invited specifically for this item. A brief by HE2 division is attached at annex A;

2. E(CP)(87)8 - **Restrictions on Practice and Efficiency in the Legal Profession.** This paper was circulated while Lord Havers was Lord Chancellor. It will be worth impressing on Lord Mackay at this early stage that the Treasury is interested in this area. The Attorney General will also be attending. A brief by HE1 division is attached at annex B;

3. E(CP)(87)9 - **Competition in the Professions.** A brief is attached at annex C;

4. **Competition in the Pharmaceutical Industry.** The papers are the letters from Mr Moore to the Chancellor (29 September), Lord Young to Mr Moore (13 October), Chancellor and Financial Secretary to Mr Moore (23 October), Mr Moore to Chancellor (10 November). A brief by ST2 is attached at annex D.

Stewart Flanagan

S J FLANAGAN

ANNEX E

E(CP)(87)6: ACTION PROGRAMME AND FUTURE WORK OF THE SUB-COMMITTEE - MEMORANDUM BY THE SECRETARY OF STATE FOR TRADE AND INDUSTRY

Introduction

Lord Young's paper argues that it is important that the Sub-Committee continues to examine issues from a competition perspective and so influence the wider policy making process, particularly at the start of a new Parliament when radical ideas can be considered. Attached to the paper is a revised version of the Competition Initiative Action Programme which provides an overview of those proposals which carry benefits for competition. Departments are asked to offer suggestions for new items.

Lord Young proposes that the Committee meet again in the early Autumn and the following agenda be taken:

(i) Progress report on the professions - DTI

(ii) Restrictions in the legal professions - LCD

(iii) Licensing of open-cast mining - DEn

(iv) Pharmaceutical Procurement - DHSS

(v) Competition in health care services - DHSS

(vi) Radio Frequency Spectrum Management - DTI.

Items (i) to (iv) are existing remits. Amongst the areas which Item (v) is intended to cover are the delivery of health care at local level, advertising by doctors and dentists and the scope for patients to have the right to seek treatment from a health authority other than their own. The paper may give some impetus to initiatives which at present are proving difficult to get off the ground. (ST2 are content.) Item (vi) is a subject which the Secretary of State has promised in the past to bring to E(CP) when proposals are taking shape. Needletime, which was taken off the agenda for this meeting, is possible addition to this list. On this basis there may well be enough material for two meetings.

Treasury objectives

(i) To secure agreement that E(CP) should have a prominent role in the policy making and meet on a more regular basis than in the past.

(ii) To obtain agreement that E(CP) should meet next in the early Autumn with an agenda drawn from in Lord Young's proposals, possibly followed by a second autumn/early winter meeting.

(iii) To endorse the revised Action Programme as it presently stands but reserve the right to add to it in the Autumn.

Line to take

(i) Agree that E(CP) should play an important part in the formulation of policy. Hope that it will meet on a more frequent basis in the future thus ensuring discussion of the competition dimension in proposals being taken forward.

(ii) Agree that Sub-Committee should meet next in early Autumn, with Agenda drawn from items suggested by David Young - with needletime a possible addition. May have enough material for a second meeting.

(iii) Action Programme is acceptable as it stands but consider in the Autumn whether there are any further items; post-election it is appropriate to take a radical look at the possibilities.

CONFIDENTIAL

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

The Rt Hon The Lord Young of Graffham
Secretary of State
Department of Trade and Industry
1 Victoria Street
LONDON
SW1H QET

19 November 1987

Dear David

COMPETITION INITIATIVE

I have seen a copy of Norman Lamont's letter to you of 9 November.

Norman's letter acknowledges the important measures I am taking to increase competition in local authority services and to deregulate the private rented sector. He then suggests that one of the further areas for the Competition Initiative Action Programme, and for a possible E(CP) paper, would be how to increase the supply of building land by changes to the planning system and building regulations or, indeed, any other relevant Government measures. He particularly has in mind land supply in southern England. It is on this suggestion that I am now writing to you.

It seems to me that the more appropriate forum for considering improvements to the planning system and building regulations would be your Deregulation Group (MISC 133) and, as you know, we are already committed to producing a paper for that Group on the impact of buildings and planning regulations on business.

Apart from avoiding unnecessary duplication of the remit from the Deregulation Group, I do not think that it is sensible to try to pursue the question of the supply of building land in the context of our competition initiative. The problem is certainly not one of lack of competition among builders: far from it; the fact that residual site values account for up to 40% of the price of houses in certain areas of the south-east reflects the intense competition among builders to obtain land to build in a highly profitable market in which prices are set chiefly by the relationship between high disposable income and the supply of second-hand properties which account for some seven-eights of the market. It would be necessary to release a very large quantity of land indeed in order to have any noticeable effect on this question, and I do not have to remind you of the political difficulties which that would present.

We should not forget that private housebuilders are building more at present than at any time since 1973, largely at the top end of the market where profit margins are large; and that a greater proportion of this total is being provided in the south than in former years. In the White Paper on housing we made clear that we regard it as a key requirement that the planning system should ensure an adequate and continuing supply of land for housing. Our

policy and financial instruments are designed to encourage the re-use of urban land. But we recognised that proper provision must be made for green field sites in development plans and my aim is to ensure that these plans do indeed meet the needs of the growth in the number of households. In this process, there are going to be some very bruising battles with local planning authorities and our supporters. The White Paper already includes important proposals to increase the supply of rented housing, of course.

Compared with these planning and housing measures the impact of any changes to buildings regulations on the supply of housing is likely to be marginal.

I hope you will agree, therefore, that it would be inappropriate for us to pursue this suggestion further in the context of E(CP).

I am copying this letter to the Prime Minister, other Members of E(CP) Committee and to Sir Robert Armstrong.

Yours ever

Nicholas

NICHOLAS RIDLEY

Reference No E 0445

CHANCELLOR OF THE EXCHEQUER

E(CP) 19 November 1987

I attach the detailed briefs.

Needletime

2. We have put this item first so that the Home Secretary can get away after it.

3. E(CP)(87)10 is an odd paper. It contains a list of questions without any answers. This is no doubt because Lord Young and Mr Hurd were unable to agree on the answers. You may want to start the discussion by asking for their recommendations.

4. We understand that Lord Young would broadly like to leave the law unchanged. Mr Hurd would like to amend it in the interests mainly of the independent radio companies by for example removing the right of record producers to limit the amount of needletime and by imposing a ceiling on payments to them.

5. At first sight the present arrangements are anti-competitive and some movement in the direction favoured by Mr Hurd would be justified. A possible compromise might be to remove the record companies' rights to limit the amount of needletime, while leaving present arrangements for fixing the price unchanged. We understand in confidence from DTI officials that Lord Young might accept this. (I would also have suggested referring to MMC the right of copyright owners to negotiate collectively, but DTI are strongly opposed to this on the ground that the Performing Rights Tribunal is already there to see fair play).

Restrictions in the legal profession

6. This item is placed second so that the Lord Chancellor can leave after it. The Attorney-General may also come for it.

7. The paper is impenetrable and the general tone is complacent, the underlying assumption being that competition should not decide the provision of services in the legal profession, as it does elsewhere. But on closer examination it does contain some admissions that change on particular points could be desirable. I suggest that the way through would be to make as much as possible of these, partly by requiring a return to E(CP) when current consideration of some of them has been completed. This does of course mean not challenging the paper head-on, for example on the major question of the fusion of the two branches of the legal profession.

8. The questions that would be pursued on this tactic are:

a More rights of audience for solicitors, and more direct access by clients to barristers. The Marre Committee set up by the profession is considering these and may suggest detailed changes (para 10 of paper). The Law Society wants the first, and the Bar wants the second so the disagreement between the two branches helps.

b. Extending the role of helpers in proceedings where the parties are unrepresented - being considered by LCD (para 12).

c. Counsel to appear in more cases without a solicitor's representative. Proposed by Bar, and apparently supported in principle by LCD (para 13).

d. QCs to appear more often without junior Counsel. Need for change recognised by LCD (para 14).

e. More advertising by barristers, being considered by the Bar (para 15).

f. Solicitors to be able to incorporate - now being considered by LCD (para 16).

g. Solicitors to be able to form mixed partnerships - now being considered by Law Society and Marre Committee (para 20)

h. Barristers to be able to form partnerships - being considered by Marre (para 21).

i. Corporations to be permitted to apply for non-contentious probate without instructing solicitors - being considered by LCD (para 23).

j. Employed solicitors to be able to provide legal services for their employers' customers - need apparently recognised by LCD, but being considered by Marre (para 26).

9. The general tactic would be to ask the Lord Chancellor to report back on all these questions, - in most cases, when Marre has reported, but perhaps more quickly for those where LCD are not waiting for Marre - and to get if possible an endorsement by E(CP) that in principle there is a strong case for change.

10. One other tactic would be to mention a possible reference to the MMC, not with a view to pressing it now, but to hold it 'in terrorem' over the Lord Chancellor if he does not produce results.

Competition in the professionS

11. This paper needs very little discussion. The only point to note here is that E(CP) might keep up the pressure by asking for further reports on the still open issues of the chiropodists and physiotherapists, and the patent agents.

Competition in the pharmaceutical industry

12. Mr Newton is expected to represent the Social Services Secretary for this item. The main point here is that DHSS oppose any early consideration of the two most important arrangements in this area: the Pharmaceutical Price Regulation Scheme (PPRS) and the pharmacists' contract with the NHS. You will probably want E(CP) to press for a hard look at both. The problem is that, although DHSS are no doubt motivated by a desire to leave things as they are, they have a plausible case for arguing that an early review is unnecessary. The pharmacists' contract does not come up for renewal until April 1989 and the PPRS not until November 1989. Since, however, extensive negotiations with those affected would be necessary before these dates, you could suggest aiming to complete the internal reviews in time for a report to E(CP) by summer 1988. It may also be necessary to consider, if DHSS resist both, which is the more important - probably the PPRS.

13. E(CP) could also ask for a review of the case for competitive tendering by individual pharmacists, as you have suggested. This could be early next year unless DHSS can argue successfully that it cannot be separated from the question of the contract between the NHS and the pharmacists collectively.

Future work of E(CP)

14. There have been some signs that other Ministers do not give E(CP) work the priority it deserves. You know of the protracted struggle to get the papers on restrictions in the legal profession, and on needletime. We also encountered a good deal of resistance from DHSS to sending a Minister to this meeting. One way of raising the level of awareness of E(CP) would be to have more frequent meetings - perhaps quarterly rather than half-yearly. You might consider saying this at the meeting as a signal that E(CP) should have a higher priority. A meeting at about the turn of the year is in any case likely to be necessary.

I had to lean on them very hard. 18/11

G W MONGER

Cabinet Office
18 November 1987

ANNEX A

E(CP)(87)10: THE BROADCASTING OF COMMERCIAL RECORDS: NEEDLETIME AND FEES

Introduction

This paper sets out a range of options, not necessarily mutually exclusive, for future policy towards needletime (the contractually limited amount of broadcasting time allowed to be devoted to the playing of records). Essentially the five options put forward are:

(a) to leave the law unchanged

(b) to remove the right of record producers to impose needletime limits

(c) to place a statutory ceiling on the level of needletime fees

(d) to break up the copyright owners' cartel

(e) to allow free broadcasting of records produced by countries which themselves allow free broadcasting (eg USA).

Objectives

To press for decisions to be taken that will lead towards a free market operating with prices and the amount of time for which records could be broadcast determined by competition between record companies and demand from radio companies.

Line to take

Option (a) is totally unsatisfactory. The current arrangements are an unnecessary and unwelcome distortion of the market mechanism and must be changed.

Option (b). It may be argued that there is no real problem because recording companies would be unwilling to negotiate an increase in needletime hours for a higher fee. But even if that is so, it remains true that recording companies are exploiting their stronger barganing position and would be likely to insist on excessive fees for any significant increase in needletime. Record companies have an obvious motive for maintaining a needletime limit in order to restrict the broadcasting of their records so that more are sold.

Option (c); not directed at central issue. Whilst imposing a ceiling on needletime fees may reduce the market distortion resulting from the monopoly position of the record company cartel Phonographic Performance Ltd (PPL) and the musucians' cartel Performing Right Society Ltd (PRS), it would be much better to attack cartel directly rather than impose further controls.

Option (d), the break-up of the cartel, attacks the problem directly. Recording companies should be encouraged to compete with each other and set fees based on, for example, a per hour, per record or per package of recordings. The paper's argument against that is that it would be inconsistent with copyright policy of encouraging blanket licensing via collecting agencies to protect the rights of small companies and individual composers. But in practice record companies are large and there is no need for agencies here.

Thus argue for option (d). This gives greatest chance for copyright fees to be set in a competitive market. There is, however, a danger that the market may not operate as competitively as desired given the concentrated nature of the record industry. It would therefore be important to review the situation after a time to see if further safeguards such as (b) or (c) are needed.

If (d) is unacceptable then (c) is essential, as an offset to cartel's monopoly position. The limit on fees might best be set in the form of a percentage of net advertising revenue per hour. (The illustrative figure of 5 per cent in the paper looks high in the light of overseas practice, but the precise figure can be settled later). However it may still be necessary to have option (b) as well since even with a ceiling on cost per hour record companies may impose needletime limits in order to restrict broadcasting of their records to encourage sales.

Argue in favour of option (e). No reason to accept non-reciprocated cash flow to other countries. If measure would damage UK record industry how come US record industry survives without needletime fees? Public demand would ensure UK records still played.

Department's position

You will notice that the paper is strangely dialectic, presenting arguments for and against the options, without reaching any conclusions. This is because DTI and Home Office are in dispute, although with their usual roles reversed. On broadcasting matters it is usually DTI who are in favour of more competition with the Home Office favouring greater regulations. In this instance, however, DTI appear anxious to maintain what they see as an element of copyright policy, with the Home Office favouring the more competitive structure. Treasury interest, therefore, lies more with the Home Office view. In discussion you might point out that the DTI line is not consistent with their usual policy on competition.

Background

Needletime is the contractually limited amount of broadcast time allowed to be devoted to the playing of records on BBC and Independent Local Radio (ILR). The record companies, who hold copyright on their recordings, have formed a cartel represented by their copyright fee collecting agency Phonographic Performance Ltd (PPL). The needletime arrangements are recorded intended to safeguard their own interests in selling records by restricting the supply of music broadcast on the radio and to charge high fees expressed as a flat fee for the BBC or as a percentage of net advertising revenue of ILR companies for the use of their recordings. They are supported by the Performing Rights Society, who see needletime as a means of encouraging radio to broadcast live music. The time limit and fees are set in negotiations with the BBC and the Association of Independent Radio Contractors, where PPL has the upper hand because of its monopoly on copyrighted recordings. For ILR the current time limit and fees are 9 hours a day, for 4 per cent of net advertising revenue up to £650,000 and 7 per cent thereafter. For BBC radios 1-4 the limit is 176.5 hours per week for an annual fee in 1986-87 of £4.31 million. These figures work out at approximately £23 per track for an ILR station such as Capital Radio (this figure would be less for other ILR stations) and around £470 per hour for BBC radio.

This restrictive practice further distorts the market by drawing no distinction between records of different commercial values and paying no attention to local demand.

Thus it is desirable to break up the record producers' negotiating cartel. The conditions would then be set for a competitive environment with prices determined in competitive process between record companies and demand from radio companies. Collecting agencies would continue to enforce the copyright of smaller record companies and producers. It may also be desirable to allow some small firms and individuals to group together (with an upper ceiling on the size of this grouping) in order to negotiate collectively. If agreement cannot be reached on the abolition of the copyright owners cartel, then a fallback position is to impose a ceiling on needletime fees, although at a much lower limit than the 5 per cent of NAR suggested, and also on a basis of percentage of NAR per hour.

THE BROADCASTING OF COMMERCIAL RECORDS: NEEDLETIME AND FEES

E(CP)(87)10

DECISIONS

You will want the Sub-Committee to decide whether:-

a. to leave the law on needletime unchanged, beyond the improvements already contained in the Copyright, Designs and Patents Bill (the option in paragraph 2(a) of E(CP)(87)10);

b. to remove the right of record producers to impose needletime limits, at least when they exercise the right collectively, and to substitute instead a right to equitable remuneration (option 2(b));

c. to place a statutory ceiling on the level of equitable remuneration (say 5% of Independent Local Radio's (ILR) net advertising revenue (NAR) for both record companies and composers (option 2(c));

d. to remove the right of copyright owners to negotiate broadcasting royalties collectively (option 2(d)); and

e. to allow the free broadcasting of records produced by companies in the US and other countries which themselves allow free broadcasting (option 2(e)).

3. We understand from soundings in confidence from officials in the Departments concerned that the Home Secretary favours both options 2(b) and 2(c) as described in E(CP)(87)10 (options b. and c. above); but that the Trade and Industry Secretary would prefer to leave the law unchanged (beyond the improvements contained in the Copyright, Designs and Patents Bill), but that he would be prepared to consider option 2(b) (of E(CP)(87)10 (option b.

above)). The Financial Secretary favours options b. and d. with option c. acceptable if option d. is unattainable.

BACKGROUND

4. You may recall that Lord Young tabled a paper on Needletime (E(CP)(87)2) for E(CP)'s last meeting on 20 July. The Home Secretary disagreed with the line taken in that paper and was unable to attend the E(CP) meeting. You agreed that E(CP) should return to this issue at a future meeting when it could consider the issues on the basis of an agreed paper from the Home and Trade and Industry Secretaries.

5. E(CP)(87)10 is the agreed paper. It is an odd document in that it simply sets out the arguments for and against several options and intentionally says nothing about the policy recommendations of the respective Ministers. This reflects the difficulties the 2 Departments encountered in reaching agreement on an agreed text. But both Mr Hurd and Lord Young will be able to say, at this meeting, what it is they propose!

DISCUSSION

5. The issues are whether to leave the law unchanged, or to pursue the options described in paragraphs 2(b) - 2(d) of the paper.

Leaving the Law Unchanged

6. Lord Young is likely to put the following arguments in favour of this, his preferred option:-

a. the Copyright, Designs and Patents Bill includes several provisions which will meet some of ILR's concerns (eg a measure of free needletime for purposes of review or

criticism, and an enlarged Performing Rights Tribunal (PRT) which will work to new guidelines and procedures);

b. more needletime (in exchange for appropriate payment) is in the interest of the PPL (Phonographic Performance Ltd) (which negotiates and collects royalties on behalf of the record industry); and the PPL is willing to increase the present limit (in principle up to 24 hours a day) in return for further payment(1).

c. the Association of Independent Radio Contractors Ltd (AIRC) - the body which negotiates airplay terms on behalf of independent radio - has been unable to prove to the satisfaction of the PRT that UK rates are above international standards; and

d. present arrangements give composers, record companies and performers a reasonable return for their contribution; to alter these arrangements risks damaging an important indutry.

7. Mr Hurd is likely to argue to put the following arguments in favour of change:-

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(1) Under current arrangements with PPL, ILR companies are allowed needletime amounting to around 9 hours a day per channel. In return, the established companies pay 4 per cent of the first £650,000 per annum of their NAR and 7 per cent of any NAR above that. New ILR companies need only pay 2 per cent of NAR for the first year of their operation and 3 per cent for the second. The other main group of copyright owners is the Performing Right Society (PRS) which represents composers. PRS imposes no needletime restrictions. Their charges are on the basis that if all of an ILR's station's broadcasting comprised PRS repertoire, it would pay 12 per cent of NAR. This is adjusted downwards pro rata with the actual percentage of broadcasting hours consisting of PRS repertoire. ILRs are more willing to accept the rate payable to the PRS, though they consider that excessive.

a. the Government's Green Paper on Radio, published in February this year, said there was a healthy demand for new radio services but underlined the financial pressures facing ILR. (Relevant extracts from that Green Paper lie at the Annex to this brief). In its response to that Green Paper, the broadcasting industry has been unanimous in its view that some change in present arrangements on needletime is essential if the envisaged expansion of radio is to take place.(2)

b. ILR companies believe present arrangements work to the advantage of the BBC, which in 1985 paid the PPL £5.7m against the £3.1m paid by ILRs.

Needletime Limits (Option 2(b))

8. Mr Hurd will recommend that the Government change the law and remove the right of record producers to impose needletime limits, at least when they exercise the right collectively, and substitute instead a right to equitable remuneration. He will argue that the PPL's ability to apply needletime limits is a restraint on commercial activity; and that, although the PPL have said they are prepared to increase the present needletime limit for up to 24 hours a day in principle, legislation to abolish needletime is necessary to establish a fairer basis for negotiations.

9. DTI officials are firmly opposed to this option. They say present arrangements are satisfactory, and that the adoption of this option would be a major upset for the UK record industry. But it is not clear how significant, by itself, the needletime

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(2) The Green Paper noted that only 26 of the 48 ILR companies were in profit; and that 6 of those in profit accounted for £2.6m of the total profit of £3.7m.

restriction is. ILR stations have not asked the PPL for an increase in needletime for over 20 years, save once where Capital Radio sought and obtained an increase for use of its services. The PRT has not, therefore, had to consider needletime since 1965 DTI officials tell us, in confidence, that Lord Young may be prepared to consider removing the rights of record producers to impose needletime limits. You will probably want to press him to do so, though the effect of this change seems likely to be modest.

Statutory ceiling on the level of equitable remuneration (Option 2(c)).

10. Mr Hurd is likely to recommend a statutory ceiling of, say, 5 per cent of the ILR's NAR for record companies and composers. He is likely to argue that action on needletime limits will not in itself reduce the present excessive level of remuneration ILRs pay to the industry, and that the Government should therefore set a statutory ceiling, given that the PPL and PRS are monopoly suppliers.

11. Lord Young will not want to accept this. He will put the following arguments:

a. the present fee structure adjusts itself to the financial health of the individual ILR (footnote 1 above);

b. the PPL is willing to discuss other ways of structuring payments;

c. it would be wrong for the Government to intervene as Mr Hurd proposes; it should be left to the parties and the tribunal to sort out a proper remuneration rate.

12. This is a more difficult option. You might wish to ask the Home Secretary to justify his view that the PRT has pitched the royalty payments at the wrong level, and explore with him and the Trade and Industry Secretary whether there are any courses, open to

Government, of putting this to rights, short of legislation (eg could the rules of procedure be redrafted to ensure prompt decisions; or could the composition, or terms of reference of the PRT be changed to produce a more equitable outcome if that was judged necessary). The Financial Secretary could accept this option if his preferred option, option d., is unattainable.

Removal of the right of copyright owners to negotiate broadcasting royalties collectively (Option 2(d))

13. Home Office officials tell us in confidence that Mr Hurd does not believe this option, irrespective of its merits, is practical politics. (They say, however, again in confidence, that his Minister of State, Mr Renton, favours it). Mr Lamont supports this option. The case for it is that it directly attacks the monopoly on the supply of recorded music which copyright bodies have and would leave copyright fees to be determined between radio stations and record companies in a free market.

14. If this option is put forward, Lord Young will argue blanket licensing of copyright material is the only practicable way for small record companies and individual composers to enforce their rights; and that any action to undermine blanket licensing would bear disadvantageously on all collective licensing arrangements throughout the copyright field. If this option arises in discussion, you may wish to note its attractions, but not wish to pursue it for the time being given the practical difficulties it would involve.

15. One possibility would be to invite the Monopolies and Mergers Commission to investigate the whole question of needletime. But DTI officials would resist this suggestion on the grounds that the PRT is the appropriate forum to resolve the issues, and that appeals against its rulings can be taken to the Courts.

Allow the free broadcasting of records produced by companies in the US and other countries which allow free broadcasting (Option 2(e))

16. Home Office officials do not think Mr Hurd is likely to recommend this. But, if US radio broadcasts UK records free of charge, there seems, prima facie, no reason why the free broadcasting of US records in the UK should not be allowed. It would strengthen the hand of the ILR in negotiating with the PPL. On the other hand, such a step would encourage use of intellectual property without payment and severely damage the UK record industry. The Financial Secretary may put this option forward; if he does, Lord Young will oppose it.

HANDLING

17. You will wish to invite the Home Secretary and the Trade and Industry Secretary to state their positions. Other Ministers may wish to contribute to the discussion.

ANNEX

GOVERNMENT GREEN PAPER - RADIO: CHOICES AND OPPORTUNITIES

"2.10 A further source of financial pressure on ILR is copyright. There are two issues here; permission and payment for the public performance of records; and 'needletime', ie limitations on the time devoted to commercial records. The issues are however interrelated, since a given level of copyright fees represents the commercial value of the needletime to which it relates. As to fees, all Western European states are parties to the Berne Copyright Convention. They must, therefore, ensure that authors (including composers) have the right to control the broadcasting of their works. The UK and a growing number of other states also accept a separate obligation to provide protection for performers and makers of sound recordings in accordance with the Rome Convention for the Protection of Performers, Producers and Phonograms and Broadcasting Organisations. These obligations are reflected in the UK in the Copyright Act 1956 and the Performers Protection Act 1958-72. The public performance of a recording in any form requires permission from the owners of copyright in the recording. For the most part, this permission has been vested by composers in the Performing Right Society and by record companies in Phonographic Performance Limited (PPL). PPL licences the BBC and ILR to use records in the PPL repertoire up to a certain number of hours at a specified scale of payment.

2.11 ILR believes that these fees are too high. Some stations have to pay a royalty of over £30 to PPL for each record played. Lengthy proceedings have been brought by ILR before the Performing Right Tribunal with a view to reducing the level of fees.

2.12 If fees are at a certain level then the broadcasting of records covered by these arrangements may be beyond the reach of small radio stations. It is however possible that new sources of recorded music might emerge to meet the demand. The Government recognises that a collecting society with a monopoly of the most popular repertoire may be able to exploit its position to the disadvantage of potential users. That is the reason why the Performing Right Tribunal was set up, with powers to determine charges, terms and conditions in the event of a dispute. In the White Paper on Intellectual Property and Innovation published in April 1986 (Cmnd 9712), the Government put forward proposals to enable the Tribunal to function more effectively.

2.13 Needletime is also within the jurisdiction of the Tribunal. The current agreement on needletime limits ILR stations to a maximum of nine hours PPL material in any one day, or 50 per cent of the broadcast day, whichever is the less. (The BBC has the advantage of being able to divide its needletime between its different streamed services.) There will thus need to be flexibility on the part of PPL and the Musician's Union if there is to be a prospect in the UK of radio stations broadcasting more recorded music, or of continuous music stations such as exist in other countries and for which there would seem to be a demand in the UK. Equally, there would be little purpose in introducing new

national networks on a commercial basis, if they were unable to secure sufficient needletime to enable them to compete effectively with the existing BBC national services. As outlined later in this Green Paper, the Government believes that the development of new and different kinds of radio services should be possible, and hopes that a satisfactory agreement on needletime can be reached between the various parties.

As the Whitford Committee on Copyright and Design Law noted in 1977, the UK has no international obligations as regards needle-time. The only obligation is to ensure proper remuneration to composers, record makers and performers. As outlined above, arrangements already exist for the payment of royalties. More needletime need not result in less live music broadcasts, particularly if new radio services are allowed to develop; given these new services, there would be more opportunity for the exercise of consumer choice between live broadcasts and recorded music."

"CONCLUSIONS

- Increasing competitive and other pressures on the stations now within the independent local radio system (ILR). There is a genuine concern about the existing financial basis of the industry. Unless changes are made in the regulatory framework for ILR, the quality and local character of the service may be increasingly at risk (paragraph 8.1 indent 2)".

ANNEX B

E(CP)(87)8: RESTRICTIVE PRACTICES IN THE LEGAL PROFESSION

Proposals

The paper is in general an argument for **doing nothing.** It suggests such changes as are admitted to be possible are to be left in the first instance to the Marre Committee which is dominated by the legal profession itself. Not all the recommendations of the paper are contained in the list in its paragraph 31. A full list would be:

(i) **Fusion of solicitors and barristers** should remain;

(ii) **Solicitors' rights of audience in the Crown Court** should not be extended;

(iii) Discussion of **direct access to barristers** should await the outcome of profession's own discussions;

(iv) The rules on the conduct of **litigation by lawyers** should not be relaxed;

(v) The question of **counsel appearing without a solicitor's representative** should be left to the Efficiency Commission;

(vi) **The two Counsel rule** (whereby a "silk" or senior barrister is always accompanied by a junior) should also be left to the Efficiency Commission;

(vii) The Bar should decide whether or not to further relax **advertising rules;**

(viii) **Incorporation** by solicitors should be allowed once a decision on limited liability is reached;

(ix) **Mixed Partnerships** (eg solicitors and estate agents) might be allowed - by the Marre Committee's report should be awaited;

(x) There might be further deregulation of **conveyancing;**

(xi) There should be consultations with Departments as to whether corporations should be allowed to apply for **grant of probate** in non-contentious fields directly rather than through a solicitor

(xii) **Solicitors employed** by a firm should be able to provide legal services to that firm's clients unless there is a real conflict of interest.

General line to take

2. The Treasury objective is to maintain pressure on legal spending from public funds and also on the efficiency of all aspects of legal operations, including the courts as well as the profession itself.

3. It has to be **made clear to the Marre Committee** and the Law Society that the Government expects real change. The assumption should be that **restrictions should be removed** unless there are concrete reasons for not doing so. Even the Lord Chancellor accepts that this has had dramatically successful results in field of conveyancing. The Lord Chancellor should **report back** to E(CP) on further progress - particularly the Marre Committee report - to a deadline.

Discussion

4. The paper is long and defensive of legal interests. Although we should maintain pressure on the restrictive practices which support the existing division of the legal profession, our immediate tactics should be to avoid an all-out attack on this issue (which might lead the Government towards legislation), and concentrate instead on the issue of the efficiency of the legal profession and legal spending, which is hardly mentioned in the LCD paper. Lawyers are beginning to address these problems themselves and our strategy should be to capitalise on this and keep the issues under review.

5. The paper defines restrictive practices as matters which impede the efficient administration of justice. This seems too narrow: it would be better to measure restrictive practices against a supply side criterion of price competition and efficiency in the market.

Fusion, rights of audience, direct access

6. The paper recommends no action on fusion, and waiting for the outcome of the Marre Committee on rights of audience and direct access. LCD hide behind the conclusions of the Benson Royal Commission on Legal Services in 1979, and ignore the fact that the non-legal world at least has moved on since then. It may be right that removal of barriers between solicitors and barristers would attract few solicitors into advocacy, but:

(i) if so, why oppose? would still offer a market of firms willing to do the work;

(ii) split of the profession is of symbolic importance as a restrictive practice;

(iii) unsatisfactory that the Government should have to rely on the legal profession's own committee (Marre Committee) to deal with issues such as rights of audience and direct access which have a direct impact on the cost to public funds of legal work.

Treasury line: LCD to make clear to the profession and through it to the Marre Committee that the Government is looking for early change.

Litigation by laymen

7. The paper argues that present restrictions should be maintained except at the margin. Treasury line: the paper is defensive: should financial limits on work by laymen be raised?

Counsel without solicitor's representative

8. The paper argues that this issue is currently with the Efficiency Commission: see paragraph on Efficiency Commission below.

Two Counsel rule

9. As above.

Incorporation and mixed partnerships

10. Paper argues that some changes should go ahead after consultation. Treasury line: broadly accept. But argument overdone on the role of solicitor as officer of the court: this flows from the role of the court as a neutral forum for debate between legal parties on either side, but this approach should not run against common sense and efficiency.

Efficiency commission

11. The achievements of the Commission (listed in the paper) have been pathetic. LCD argue that the Efficiency Commission has tackled all the areas that it was asked to tackle on the efficient operation of the Crown Court, but the Commission already has much wider terms of reference and should be given a tough remit to tackle other matters urgently. The question of the two Counsel rule and Counsel appearing without solicitors representatives touch directly on questions of efficiency and public spending, and the profession should be put under much more pressure. Presumably the Government can threaten not to pay for what it regards as excessive costs? Even if the number of such cases was very small, their symbolic importance would be great.

Marre Committee

12. This committee is owned by the profession. The indications are that the committee (which reports about Easter) may offer some movement on rights of audience and direct access, but not on the principle of the fusion of the profession. We should not give this committee any more importance than it deserves, since it can only reflect any emerging compromise from the majority of lawyers in membership. LCD should be asked whether they have lobbied the committee with the Government's general views.

Other

13. The Civil Justice Review, which is out for consultation until the end of the year, offers an opportunity for a shake-up in the efficiency with which civil business is conducted. LCD might be

asked whether they see opportunities for a similar shake-up on criminal business: in effect, an externally led committee with a high public profile to do the work of the Efficiency Commission.

14. There are restrictions on the jurisdiction of the lower civil courts, such as the £5,000 cut off point between county court and High court. This seems out of date, and it is already within LCD's competence to review it.

15. Business is fed from solicitors to barristers' chambers by word of mouth: it may be that the quality and experience of chambers are more important than the price which they offer, but where the business is publicly funded, the Government is entitled to see more consideration given to cost.

16. A more aggressive line (which would be at odds with the Chancellor's views expressed on 13 October) would be to insist that the MMC or Office of Fair Trading should take a look at the profession. LCD predictably are against this, on the grounds that they would like themselves to establish first the facts about the flows of remuneration within the two halves of the profession. But I do not see why the Government should not make it known to the profession that it is prepared to go down this road if it does not see some cooperation.

17. Finally, it is essential that the Lord Chancellor is remitted to make a further report to E(CP), perhaps in the Spring or following the Marre Committee report. It is a vital Treasury interest to keep questions of legal efficiency and the operation of the profession before colleagues collectively.

Views of the new Lord Chancellor

18. Lord Mackay recognises that he is a "new boy" and will therefore take a cautious line to the effect that there are many things he will want to look at, including the recommendations of Lady Marre's committee. He would argue strongly against any remission to OFT, but he needs to be able to prove that the requirements of justice should exclude the legal profession from <u>all</u> elements of competition. It is said that he does not intend to let the grass grow beneath his feet and that he intends to breathe life into the Efficiency Commission. His performance in such matters could influence whether a reference to OFT or MMC would be necessary in the last resort.

RESTRICTIONS ON PRACTICE AND EFFICIENCY IN THE LEGAL PROFESSION

E(CP)(87)8

DECISIONS

You will wish the Sub-Committee to decide:

a. On fusion, whether the legal profession should continue to be organised in two branches, each with its own functions. If the Sub-Committee favours fusion, you may wish to invite the Lord Chancellor to bring a further paper to the Sub-Committee on how this might be achieved. If the Sub-Committee believes the profession should continue to be organised in two branches, you may wish to decide whether there should be any changes in present arrangements, such as -

- should there be any extension of solicitors' rights of audience in the Crown Court (paragraphs 7 & 8 of E(CP)-(87)8));

- should the rule preventing barristers from accepting professional work only if instructed by a solicitor be relaxed or abolished, either generally or in specialised areas (paragraph 9);

b. whether the restrictions on the conduct of litigations by laymen should be maintained (paragraphs 11-12);

c. whether (and, if so, what) action should be taken on the requirement that a solicitor's representative must attend with Counsel (paragraph 13);

d. whether (and, if so, what) further action should be taken to prevent juniors from attending court cases when there is no real need (paragraph 14);

e. whether (and, if so, what) action should be taken to enable barristers to advertise their services (paragraph 15);

f. whether the provisions of the Administration of the Justice Act 1985 enabling solicitors to incorporate should be brought into force (as the Lord Chancellor proposes) when a decision is reached on whether or not to permit incorporation with limited liability (paragraph 16);

g. whether (and, if so what) action should be taken on the prohibition on solicitors (or barristers) forming mixed partnerships (paragraphs 17-21);

h. whether the Lord Chancellor should consult (as he proposes) interested Departments and the public on draft rules for the recognition of institutions and sole practitioners as being suitable to provide conveyancing services; and whether he should await the results of that consultation before concurring with the parallel rules to be made by the Council for Licensed Conveyancers (paragraph 22);

i. whether to invite the Lord Chancellor to report further to the Sub-Committee on the effect of restrictions on Solicitors employed by trust corporations in non-contentious probate (paragraphs 23-24);

j. whether the general prohibition in the Law Society's Practice Rules on solicitors providing legal services to the customers of their employers should be confined to situations where a conflict of interest is likely to arise (as the Lord Chancellor proposes) (paragraphs 25-26).

2. The Lord Chancellor recommends that decisions on direct access by clients to barristers (a. above) and on mixed partnerships and barristers' partnerships (g. above) should await the outcome of the

Marre Committee (likely to report by Easter next year)(1) and the Law Society's consultation exercise (the results of which are likely to become known on the same timescale (next Easter)).

BACKGROUND

3. In June 1986, in the context of discussion in E(A) on remuneration of barristers engaged in prosecution work for the Crown Prosecution Service, Mr Channon, then Trade and Industry Secretary, proposed that a report on competition and restrictive practices in legal services be made to E(A) or E(CP) in six months to a year's time (his letter of 23 June 1986 to the then Lord Chancellor, Lord Hailsham). The Prime Minister agreed this would be useful (letter of 30 June 1986 from her Private Secretary to the Lord Chancellor's Private Secretary).

4. The Memorandum E(CP)(87)8 seeks to fulfil this remit. It was submitted to E(CP) by the former Lord Chancellor, Lord Havers. His successor, Lord MacKay of Clashfern, is content to stand by it.

ISSUES

5. The issues are:-

a. The general question of fusion, relevant to solicitors' rights of audience in the Crown Court and to direct access to barristers.

b . Conduct of litigation by laymen.

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(1) The Marre Committee consists of 6 barristers, 6 solicitors and 6 laymen.

c. Counsel appearing without a solicitor's representative.

d. The two Counsel rule.

e. Advertising by the Bar.

f. Incorporation with limited liability.

g. Mixed partnerships.

h. Conveyancing.

i. Non-Contentious probate; and

j. The position of employed solicitors.

Fusion

6. The Government's view that the legal profession should be organised in 2 branches, with no fusion of barristers and solicitors, was reaffirmed by the Attorney-General in the House on 17 July this year. This view had earlier been stated in November 1983 in the Government White Paper on the Legal Profession. The 1979 Royal Commission report also concluded that the balance of argument lay against fusion.

7. The arguments against fusion are:

a. with fusion, the best firms of solicitors would attract the best counsel to join them; large firms would grow larger and there would be an unacceptable reduction in the number and distribution of smaller firms of solicitors;

b. the width of choice of barrister available to a solicitor on behalf of his client would be eroded since the specialist service offered by the Bar would be dispersed;

c. although some saving of costs might accrue in smaller cases, the Royal Commission judged that the expense of litigation might be greater in more substantial cases. The Lord Chancellor says (paragraph 8 of his paper) that greater use of solicitors might be more, rather than less, expensive.

8. The arguments in favour of fusion are:

a. prime facie, it is not clear how greater scope for using solicitors, or for direct access to barristers, could actually increase costs since, with fewer restrictions, business would be free to go to the most competitive services in line with Government policy on competition in general (a point argued by Mr Channon, then Trade and Industry Secretary, in his letter of 23 June to Lord Hailsham);

b. fusion might ensure that the client saw only one lawyer throughout the proceedings and thus guard against unnecessary duplication of work;

c. other countries have fusion (the USA, Germany, France, Italy).

9. The issue of fusion is relevant to rights of audience and to direct access. On rights of audience, the present position is that, in criminal proceedings, solicitors have limited rights of audience in the Crown Court, but unlimited rights of audience in magistrates' courts. Under the 1981 Supreme Court Act, the Lord Chancellor has powers to extend solicitors' rights of audience, having regard to any shortage of counsel in a particular area. (Solicitors have, thus, enjoyed wide rights of audience in the Crown Court in Bodmin, where counsel are in short supply!) The Law Society have pressed for increased rights of audience generally, but any enlargement would be opposed by the Bar.

10. The arguments on rights of audience set out in paragraph 8 of the Lord Chancellor's paper seem odd. It is wary of placing "additional burdens on the solicitors' branch", though solicitors seem willing to accept those that might flow from increased rights of audience. And great play is made of the different charging systems to which solicitors and barristers work, leading to the conclusion that few, if any, solicitors would actually bother with advocacy. But why not let the market operate and let competition decide? The paper suggests a standard advocacy fee for both barristers and solicitors. But why is a standard fee necessary? You might wish to ask the Lord Chancellor about the views of the Law Society on the question of rights of audience.

11. For their part, members of the Bar might welcome more direct access by clients, particularly in specialised areas such as tax. Under this arrangement, in-house barristers employed in legal departments of large companies would be given to direct access to practising barristers in chambers, thus cutting out solicitors who at the moment must be asked to "instruct" Counsels. The opposition of solicitors to more direct access seems a clear case of a restrictive practice by a profession.

12. The Lord Chancellor's paper, while opposing fusion, suggests (in paragraph 10) that movement is more likely on improvements in direct access in specialised areas rather than on rights of audience. You may want to note this hint of progress on direct access and to conclude, if possible, that the Sub-Committee sees a strong case in principle for improved rights of access and of audience. Against this background, you may wish to invite the Lord Chancellor to report further on these issues next Easter in the light of the Marre Committee's report. Another possibility would be to invite the Monopolies and Mergers Commission (MMC) to examine fusion as part of a general examination of restrictive practices in the legal profession. But to do so now, before the Marre Committee has reported, would be premature; and DTI suspect the MMC would not relish such an investigation, since this has recently been covered

by a Royal Commission report (though admittedly this dates from 1979).

Conduct of litigation by laymen

13. In 1983 the Government accepted the view of the Royal Commission that laymen should not conduct litigation. The Lord Chancellor sees no reason to alter this view. He believes, however, that there may be scope for more help for unrepresented litigants and hopes to consider this further in the light of the consultation exercise underway in the Civil Justice Review, initiated by Lord Hailsham. You may want to invite the Lord Chancellor to inform the Sub-Committee of what action he proposes to take on this issue in the light of responses to that consultation.

Counsel appearing without a solicitor's representative

14. The Lord Chancellor's Department are seeking to persuade the Law Society to change the Solicitors' Practice rules which require a solicitor to attend on Counsel in Crown Court proceedings. The Bar have accepted that such attendance may not be necessary in all cases in the Crown Court. But the Law Society are only prepared to make the change in their rules if solicitors are given extended rights of audience in the Crown Court. You might want to ask the Lord Chancellor what progress is being made with the Law Society and what he proposes to do if the Law Society resist change.

The Two Counsel rule

15. In 1979 the MMC concluded that the rule of etiquette which required a QC (silk) to appear with a junior was contrary to the public interest. Revised rules were issued in July 1977. But it still appears that 2 counsel may be appearing in cases where this is unnecessary. The Lord Chancellor proposes to monitor this. You might want to ask him to set out his findings - and any recommendations for action - when he reports on other issues to the

Sub-Committee next Easter in the light of Marre.

Advertising by the Bar

16. Barristers are prohibited from advertising their services, but the Bar are considering whether some form of advertising (directories and brochures) might be allowed. You might want to ask the Lord Chancellor what action he might take if the Bar resist change. The MMC conducted in 1976 that the advertising restrictions were not harmful in respect of information available to solicitors. But the restrictions could be harmful if direct access to barristers came about.

Incorporation with limited liability

17. The Lord Chancellor proposes to bring into force the provisions of the 1985 Administration of Justice Act 1985 once a decision is taken on whether or not incorporation with limited liability should be permitted. You will probably want to welcome this proposal. You may want to invite the Lord Chancellor to put an early paper to the Sub-Committee if there is doubt as to whether incorporation with limited liability should be permitted.

Mixed partnerships

18. In August last year the Director General of Fair Trading recommended there should be no bar on solicitors forming mixed partnerships so as to provide solicitors' and other professional services. The Law Society is consulting its members on this question and opinion is fairly equally divided. The Young Solicitors Group of the Law Society is, however, strongly in favour. The Bar is firmly against partnerships - either between Barristers or with other professionals - on the ground they would be contrary to the public interest. The Lord Chancellor says (in paragraph 18 of his paper) that in principle mixed partnerships for solicitors should be encouraged but proposes to await the outcome of the Marre report before considering further action. Subject to

discussion, you may want to place on record in summing up the strong view of E(CP) that mixed partnerships should be encouraged; and to invite the Lord Chancellor to bring forward proposals on mixed partnerships in the light of the Marre report, while noting his support in principle for mixed partnerships and his view (also in paragraph 18) that the practical problems involved ought not to be insuperable.

Conveyancing

19. The Lord Chancellor proposes to make rules early in 1988 under the 1986 Building Societies Act to enable corporations and other institutions and sole practitioners to provide conveyancing services. Before doing so, he proposes to consult on the parallel, but now limited, rules which the Council for Licensed Conveyancers intend to make. You will probably want to agree that he should proceed as he proposes.

Non-Contentious probate

20. The Government did not accept the recommendation of the Royal Commission that trust corporations should be permitted, in non-contentious cases, to apply for grants of probate without instructing a solicitor for the purpose. But the Lord Chancellor now proposes to give further consideration to this and to consult other Departments on the legal issues as a matter of priority. The urgency seems rather forced given that his Department's review of these restrictions stems from 1985. You might want to invite the Lord Chancellor [him] to put separate proposals on this to E(CP) by next Easter.

Employed Solicitors

21. The Law Society does not think employed solicitors should provide legal services to anyone except their employers. The Marre Committee may cover this area in its recommendations. The Lord Chancellor proposes that the general prohibition in the Law

Society's rules on solicitors providing legal services to the customers of their employers should be confined to situations where a conflict of interest is likely to arise. You will probably want to endorse this proposal.

HANDLING

22. You will wish to invite the Lord Chancellor to present his paper. The Secretary of State for Trade and Industry may wish to comment. The Financial Secretary, Treasury, may have views on the efficiency of the legal profession and on legal spending. Other Ministers may also wish to contribute to the discussion.

CONFIDENTIAL

ANNEX C

E(CP)(87)9: COMPETITION IN THE PROFESSIONS

Proposals

The paper covers recent developments on competition in the professions. The Secretary of State for Trade and Industry recommends that:

(a) the Director General of Fair Trading refers to the **Monopolies and Mergers Commission** the advertising rules of the consulting engineers, dentists, osteopaths, chiropodists and physiotherapists;

(b) that Ministers, before this reference is made, will make a final attempt to secure **voluntary changes** from the chiropodists and physiotherapists.

The Sub-Committee is also asked to note that work is continuing on changes to the **patent agents'** rules and the intention to legislate to end the patent agents' monopoly and to permit **incorporation by auditors.**

Line to take

2. You should **endorse** the Secretary of State's recommendation that the DGFT refer to the MMC the advertising rules of consulting engineers, dentists, osteopaths, chiropodists and physiotherapists. Any **voluntary change** to the advertising rules by the chiropodists and physiotherapists will have to be seen to be **enforceable.**

You should also note with agreement that work is continuing on changes to the patent agents' rules; and the intention to legislate to end the patent agents' monopoly and to permit incorporation by auditors.

Background

3. In 1986 the DGFT produced four reports on competition in the professions. Ministers asked the DGFT to discuss with the bodies concerned a number of changes to their rules that he had recommended. E(CP) agreed there was no need for further general studies of restrictions in the professions but that particular restrictions should be dealt with under normal competition powers.

4. The DGFT's progress report, circulated to E(CP) members in Francis Maude's letter of 28 July, concluded that professions serving the **construction industry** had largely met the DGFT's recommendations. The Association of Consulting

Engineers (ACE) changed its rules to make it clear that its fee scales were recommendations only. But it has refused to remove its restrictions on advertising. The DGFT therefore proposes to refer the advertising rules to the MMC.

5. **Other advertising rules** which had not been voluntarily abandoned, and which the DGFT proposes to refer to the MMC were those of the osteopaths, chiropodists, physiotherapists and dentists. E(CP) agreed with this course of action. However, the chiropodists and physiotherapists major barrier to progress were the restrictions operated by the statutory bodies governing state-registered practitioners. The DGFT proposed with the Secretary of State for Social Services' agreement, that a final Ministerial approach to the Boards to seek voluntary changes should be tried before a reference is made.

6. The Chartered Institute of **Patent Agents'** removal of their advertising restrictions will be of little value without changes to the corresponding restrictions of the European Patent Institute (EPI). DTI officials are discussing with the OFT ways of bringing pressure to bear on the EPI. A number of the DGFT's recommendations would require statutory change. The ending of the patent agents' monopoly and of the restrictions on mixed practices are to be included in the Intellectual Property Bill scheduled for this session. It is also intended to permit **incorporation by auditors,** subject to consultation with the profession. This may prove at least a partial solution to the problems of professional liability faced by auditors. Lord Young is currently setting up a series of studies on exposure to liability and the availability of professional indemnity insurance.

COMPETITION IN THE PROFESSIONS

E(CP)(87)9

CONCLUSIONS

You will wish the Sub-Committee to note that:

a. the Director General of Fair Trading (DGFT) proposes to refer to the Monopolies and Mergers Commission (MMC) the advertising rules of consulting engineers, dentists, osteopaths, chiropodists and physiotherapists;

b. the DHSS are making a last attempt to secure voluntary changes on advertising rules of chiropodists and physiotherapists before these groups are referred;

c. work is continuing on changes to the patent agents' monopoly; and

d. the DTI intend to legislate to end the patent agents' monopoly and to permit incorporation by auditors.

BACKGROUND

2. The actions described in this paper were agreed in correspondence between E(CP) Ministers in July. Mr Maude, the Parliamentary Under-Secretary of State for Corporate and Consumer Affairs, wrote to you (and to E(CP) colleagues) on 28 July to say that the DGFT had recommended him to refer to the MMC the advertising restrictions maintained by the professional bodies of consulting engineers, osteopaths and dentists. The DGFT had also recommended that the advertising rules of chiropodists and physiotherapists be referred to the MMC unless the statutory boards in these professions could be persuaded by Ministers to make changes. In his letter of 28 July, Mr Maude said he intended to proceed as the DGFT proposed, and to tell the DGFT that the Government intended to permit incorporation by auditors, subject to detailed discussion

with the profession. Mr Peter Brooke, Paymaster General, replied to Mr Maude on your behalf on 4 August agreeing to what he proposed.

LATEST DEVELOPMENTS

3. The terms of reference under which the advertising rules of consulting engineers, dentists and osteopaths will be referred to the MMC have been cleared in draft between the OFT and interested Departments.

4. The DHSS is making a "last" attempt to secure voluntary changes in the advertising rules of chiropodists and physiotherapists. We understand, however, that the DHSS letters to these professions were sent at official and not Ministerial level. You might want to ask the Minister of State for Health to report on progress and, if necessary, to ask whether intervention by a DHSS Minister might be helpful in achieving change. You may wish to invite him to circulate a written report to the Sub-Committee once the outcome of this pressure is known.

5. On patent agents, the DTI intend to put a paper to the meeting of the European Patent Council on 8 December recommending removal of advertising restrictions. Progress will not be easy as a two-thirds majority is required to make a change of this sort. If progress proves impossible, the DTI will consider whether action might be taken under the Treaty of Rome (DTI legal advice believes this might succeed, but it would require careful thought). You may wish to invite the Secretary of State for Trade and Industry to circulate a written report about progress on patent agents in, say, 6 months' time.

6. Legislation has already been introduced in this Session (in the shape of the Copyright Design and Patents' Bill) to end the patent agents' monopoly and restrictions on mixed practices.

HANDLING

7. You will wish to invite the Secretary of State for Trade and Industry to present his paper. Other Ministers may wish to comment. You may wish to ask the Minister of State for Health whether the DHSS have yet succeeded in their attempt to secure changes in the advertising rules of chiropodists and physiotherapists.

LP

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

My ref: C/PSO/12009/87

The Hon Francis Maude MP
Department of Trade and Industry
1-19 Victoria Street
LONDON
SW1H 0ET

- 1 DEC 1987

Dear Francis

Thank you for your letter of 17 November about the competition initiative.

The review of taxi and hire car legislation is now well advanced and I intend to circulate a paper to colleagues early in the New Year.

I would of course be very happy for my officials to discuss our proposals with yours at that stage. This is, as you will appreciate, a complicated area in which there is a need to seize the opportunities available for dismantling any unnecessary restrictions while at the same time ensuring adequate safety of operations.

I am copying this letter to Nigel Lawson.

Yours

PAUL CHANNON

CONFIDENTIAL

CHANCELLOR OF THE EXCHEQUER

SUB-COMMITTEE ON COMPETITION POLICY (E(CP))

You may wish to know about forthcoming E(CP) business.

2. The following papers are in preparation:

a. a paper from the Employment Secretary on possible labour market restrictive practices which might be referred to the Monopolies and Mergers Commission (likely to be ready by mid-late January);

b. a paper from the Employment and Environment Secretaries on possible action in respect of local authority national collective agreements (likely to be ready by mid-late January);

c. papers from the Trade and Industry Secretary on:

- Voluntary Restraint Arrangements (DTI's review of the inter-industry VRA with Japan on motor cars, assessment of the pottery and cutlery VRAs, and annual review of VRAs) (likely to be ready by mid-January);

- Competition Action Plan (likely to be ready by mid-January);

- Motor Vehicles Block Exemption Regulation (likely to be ready by the second half of January); and

- Radio Frequency Spectrum (likely to be ready by mid-February);

d. the revised paper from the Lord Chancellor on Competition in the Legal Progession (likely to be ready by the second week in January); and

e. a paper from the Social Services Secretary on competition in health care services (likely to be ready in early 1988 though DHSS officials have been unable to consult Mr Moore because of his illness).

3. We shall continue to press Departments to make sure all these papers are circulated on schedule. There appears to be enough prospective business here for at least one meeting of the Sub-Committee in the second half of January and probably a further one in February. I think it would be as well to make arrangements now for a meeting of the Sub-Committee in the second half of January to focus the minds of Departments; we could decide nearer the time, in the light of progress on the sheets, what the agenda for this meeting should be and whether and when to arrange a further meeting.

I should be grateful to know if you are content for me to proceed in this way.

G W MONGER

Cabinet Office
1 December 1987

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

My ref: C/PSO/12009/87

The Hon Francis Maude MP
Department of Trade and Industry
1-19 Victoria Street
LONDON
SW1H 0ET

Mr. Flanagan 4 DEC 1987
PPS, CST, PMG, EST
Sir P. Middleton.
Mr F.E.R. Butler.
Mr. Monck, Mr. Gilmore
Mr. Burgner Mr. Scholar
Mr. Buck

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I am copying this letter to Nigel Lawson.

cc: Mr. Gray
Mr. Easton
Mr Coppel
Mr. Tyrie
Mr. Guy.

PAUL CHANNON

RJ8.15

CONFIDENTIAL

FROM: J M G TAYLOR
DATE: 3 December 1987

MR MONGER - CABINET OFFICE

SUB-COMMITTEE ON COMPETITION POLICY (E(CP))

The Chancellor has seen your minute of 1 December.

2. He is content that you should arrange a meeting of E(CP) in the second half of January. But he would prefer that the subsequent meeting not be held until the second half of March.

J M G TAYLOR

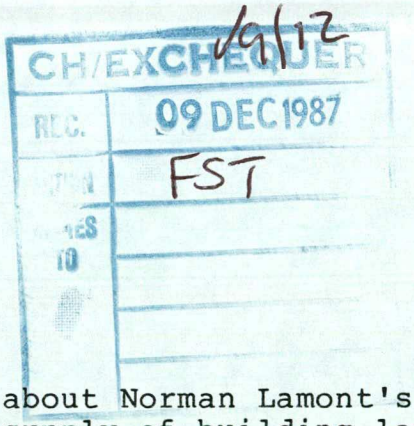
DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

CONFIDENTIAL

9 December 1987

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
2 Marsham Street
London SW1P 3EB



Dear Nicholas,

COMPETITION INITIATIVE

Thank you for your letter of 19 November about Norman Lamont's suggestion that E(CP) might consider the supply of building land.

As you know, I am fully aware of the constraints affecting the supply of building land in the South East. I am sure you are right that it is not just the quantity of land which is important, but the planning system, which affects how the land comes on to the market. The issue is therefore how to improve the supply of land - as Norman said - not just how to increase it. For this reason, I am sure it would be appropriate for your MISC 133 paper to cover this aspect.

For the same reason, however, planning regulations have a significant impact on the wider business environment, and not just on those directly subject to them. They can have an important effect on the development of competition in the housing and commercial property markets, and hence the labour and product markets. No doubt the MISC 133 discussion will explore these aspects; but their competition dimension means I think that we may want to pursue them further in E(CP). There need be no unnecessary duplication; it is just a matter of continuing our consideration in the most appropriate forum.

I am copying this letter to the Prime Minister, other members of E(CP) and Sir Robert Armstrong.

Yours ever,

LORD YOUNG OF GRAFFHAM

JG1BNX

PMP

SECRETARY OF STATE FOR SCOTLAND

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

PP3 PM

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Chancellor of the Exchequer
HM Treasury
Parliament Street
LONDON
SW1P 3AG

CH/EXCHEQUER
REC. 10 DEC 1987
ACTION FST
COPIES TO

10 December 1987

Dear Nigel,

COMPETITION INITIATIVE

I have been following with interest the exchanges in response to David Young's letter of 31 July in which he invited colleagues to suggest new items for possible inclusion in the Competition Action Plan.

I note that among the topics to be considered by E(CP) in the near future is the matter of competition in the profession, including the legal profession. It may interest the Committee to know that I have been considering ways of enabling Solicitors in Scotland to become more competitive and I have recently published my proposals in a discussion paper entitled "The Practice of the Solicitor Profession in Scotland", a copy of which is attached.

The paper invites comments on proposals to remove unnecessary statutory regulation of the profession. The proposals include the removal of the statutory ban on solicitors sharing fees with non-solicitors, in part to allow the Law Society of Scotland to permit solicitors to form mixed partnerships with other professions, such as accountants. The proposal stems from the report by the Director General of Fair Trading, published in August 1986, in which he recommended that restrictions on fee-sharing in the Solicitors (Scotland) Act 1980 should be abolished.

The fundamental aim of my proposals is the promotion of a strong and independent profession which commands public confidence by maintaining the highest standards of integrity in acting for its clients. They build on the changes which have already taken place to relieve constraints on solicitors and improve services to clients, such as the introduction of advertising, the abolition of scale fees and the quoting of fees.

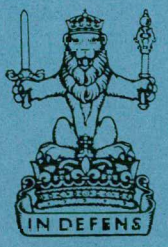
I do not plan to legislate this year on the major issues contained in the paper and have, therefore, invited comments by Easter 1988. The annex to the paper lists proposed minor amendments to simplify legislation on solicitors which might be made at an early opportunity.

I am copying this letter to other members of E(CP), the Lord Chancellor, the Lord Advocate and Sir Robert Armstrong.

Yours ever

MALCOLM RIFKIND

HMP34301



Scottish Home and Health Department

The Practice of the Solicitor Profession in Scotland

A discussion paper

November 1987

THE PRACTICE OF THE SOLICITOR PROFESSION IN SCOTLAND

CONTENTS

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1. INTRODUCTION

1.1 Recent years have seen a number of changes affecting the solicitor profession in Scotland. The Financial Services Act 1986 makes a number of demands on the profession, which follow close behind the introduction of advertising by solicitors, the abolition of scale fees set by the Law Society of Scotland, and a change of rules to permit the quotation of fees to prospective clients. Last year, the Director General of Fair Trading published a report on the kind of organisation through which members of professions may offer their services, which recommended that solicitors should be allowed to practise in partnership with other professions. At the same time, the Law Society have discussed with the Secretary of State proposals to strengthen their powers in connection with complaints against solicitors, and hope to promote a Bill to secure these powers in the near future. This Bill might provide the opportunity in the current Parliamentary sessionfor some other minor improvements to the legislation on solicitors: the points which the Secretary of State has in mind are set out in the Annex.

1.2 Looking further ahead, however, it seems to the Secretary of State that it would be useful to promote discussion on the Director General's recommendation, and that is the main purpose of this paper. It also discusses some other issues where the Secretary of State considers that there may be a case for change.

1.3 The paper is primarily concerned with the scope of statutory regulation. It does not purport to be a comprehensive review of issues affecting the solicitor profession but, together with the proposals for more immediate legislation, looks towards a profession at the end of the 20th Century which is strong and independent - because that is fundamental to our freedom under the law. A strong profession is one which thrives in a competitive market place, while an independent profession promulgates and adheres to the highest standards of integrity in acting for clients.

1.4 Comments are invited on the topics discussed in the main body of this paper. It would be convenient if they were to reach the Department by Easter 1988. Copies of responses will be made publicly available on request unless respondents specify otherwise - in which case confidentiality will be fully respected.

Address for responses

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Address for further copies of this memorandum (price £1 including p & p)

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2. SHARING FEES OR PROFITS WITH NON-SOLICITORS

2.1 It is an offence under section 27 of the Solicitors (Scotland) Act 1980 for a solicitor to share profits or fees from "any solicitor's business transacted by him" with an unqualified person. This provision is replicated in practice rules made by the Council of the Law Society, the only effective difference being that no statutory offence is created in the practice rules, rather grounds for alleging professional misconduct before the Discipline Tribunal. In addition, the prohibition in section 26 on a solicitor acting as agent for an unqualified person, coupled with the provision (in section 5 of the Partnership Act 1890) that every partner is an agent of the firm and of his other partners for the business of the partnership, constitutes a further bar to mixed partnerships of solicitors and other professions (though not to mixed incorporated practices).

2.2 The Secretary of State approaches this issue from the premise that, unless overwhelming considerations of public policy support the absolute prohibition of fee sharing with unqualified persons, then any such regulation ought to be left to the practice rules of the profession.

Mixed practices

2.3 One form of fee-sharing would be for solicitors to engage in mixed professional practices with, for example, accountants. In his report "Restrictions on the Kind of Organisation through which Members of Professions may offer their Services" (August 1986), the Director General of Fair Trading recommended the abolition of restrictions in the Solicitors (Scotland) Act 1980 on fee sharing between solicitors and non-solicitors, in order to allow mixed partnerships of solicitors and other professions, and in future mixed corporate practices (paragraphs 6.9-13, 7.4). He also stressed the need for suitable safeguards for the maintenance of professional standards and consumer protection. To introduce mixed practices it should be sufficient to repeal the restriction in section 27 of the Act on fee sharing with unqualified persons, and to amend section 26 insofar as it bites on the solicitor as agent for his partners and firm. This would leave it to the Council of the Law Society to allow solicitors to form mixed practices with non-solicitors in circumstances where the present arrangements for safeguarding the interests of clients would not be weakened, for example in relation to practice rules such as those providing for the protection of clients' funds or the avoidance of conflicts of interests. The Director General's report indicated that if the Government accepted his recommendation that the statutory prohibition on mixed practices be removed, then the Office of Fair Trading would seek discussions with the Law Society on the question of alterations to the relevant practice rules.

2.4 The arguments for allowing mixed practices are set out in the Director General of Fair Trading's report. Put briefly the prohibition on fee-sharing is peculiar to the legal profession, not simply in being statutory but in its very existence in the rules of the profession. It is the main barrier to the formation of mixed practices. The report concludes that the public interest is against such barriers provided that conflicts of interest are guarded against, particularly where there could be significant demand for

combined services or where there is scope for economies or improved efficiency.

2.5 The Royal Commission on Legal Services in Scotland recommended (in 1980) abolition of the statutory prohibition, though not in the expectation that many mixed practices would be formed. It seems to the Secretary of State more likely today that the removal of the prohibition would increase business opportunities for Scottish solicitors, both at home and in other markets. The Royal Commission noted that, while it can be argued that such partnerships would restrict client choice, (a) many clients know their requirements fairly precisely and (b) most citizens' problems do not require a specialist within a profession so that there would be no disadvantage in having them dealt with by the solicitor's partner. It therefore seems to the Secretary of State that the weight of argument is clearly in favour of permitting mixed practices of solicitors and other professionals.

Commission

2.6 The sharing of fees or profits can also arise in other ways, notably in the payment of commission. As regards a solicitor receiving commission, it seems to the Secretary of State that the basic principle is that the solicitor should offer his or her client wholly independent and impartial advice, free from any pressure to recommend the use of any particular set of advisers. Account must also be taken of the regulatory system established by the Financial Services Act. This will require solicitors who advise on or sell unit trusts or life assurance either to be fully independent (offering advice across the market) or to be company representatives selling only the products of a single company or group. They will also need to conform to practice rules which require the disclosure of commissions. In cases where a solicitor was acting as an appointed representative of a company, he would be approached as a representative, rather than as a solicitor giving independent advice to a client.

2.7 Such business will normally form only a small part of a solicitors business, and there does not seem to be a fundamental objection to a solicitor receiving a commission from a particular firm to whom he directs a client, provided he is convinced that the firm will meet his client's needs adequately, and provided that any such commission is fully disclosed before the client becomes committed. Equally it is not clear that there should be markedly different regimes for business relating to life assurance and unit trusts and other solicitors' business, where solicitors are already acting as independent intermediaries. The solution may be for the profession to state as a practice rule the general principle that a solicitor must always act out of sole regard to his client's best interests, irrespective of personal advantage; and that a solicitor is obliged to disclose to the prospective client in writing:

2.7.1 full details of any personal advantage he might derive (eg a payment of commission or any charge he levies for placing the business) in relation to a particular proposed transaction; and

2.7.2 what allowance, if any, would be made in that respect in determining the solicitors' fee to be charged to the client.

Such a practice rule could then make it a matter of professional misconduct for a solicitor to act out of regard to his own, rather than to his client's, best interests. This principle would appear to be generally applicable but modifications may be required for transactions where a solicitor is acting as company representative for a life assurance company or a unit trust.

2.8 Fee sharing would also arise where a solicitor paid commission to a third party in respect of clients directed his or her way. At present this practice is forbidden as unfair competition and as a safeguard against pressure on the client to use the solicitor in question. This in turn would compromise the fundamental principle that a client should have the right to choose his or her own solicitor. A risk of such practices emerging is perceived especially in relation to housebuilders (or their agents), whose customers by definition need a solicitor and who would therefore be in a position to channel substantial business to a solicitor (and negotiate a commission in return).

2.9 It seems to the Secretary of State that the same general principle should apply to this form of fee-sharing. If one solicitor, by striking a deal with a third party - say a housebuilder - can offer a particularly competitive service to clients it is not obviously right that he or she should be prevented from offering this service through the builder. What matters is that the builder's customers should not be obliged to use that solicitor; that the solicitor should inform potential clients channelled in this way that they are not so obliged; that the solicitor should inform the potential client in advance of the amount of commission which the solicitor will be liable to pay to the builder in respect of the transaction; and that the solicitor should not act for both parties. Given effective safeguards on these lines, the channelling of "bulk business" can offer the client the prospect of savings, since there will be common elements to, for example, the preparation of conveyancing documents for many houses on a single estate; and the cost of the common work can therefore be spread over all the relevant transactions.

2.10 Practice rules could therefore state the principle that no solicitor should be party to, or implement, any agreement which restricts the right of people, at their own expense, to instruct the solicitor of their choice, or to choose any other professional or firm whose services they require in addition to those of the solicitors. They could also require a solicitor, in relation to any business in respect of which he or she has agreed to share a fee, to disclose to the prospective client in writing:-

2.10.1 his or her right to choose another solicitor;

2.10.2 his or her right to choose the provider of any related service required;

2.10.3 full details of any commission or other payment which the solicitor will be liable to pay or receive in respect of the transaction;

2.10.4 any other benefits to the solicitor arising from a channelling arrangement in either direction, including the existence of such an arrangement.

Practice rules already govern conflicts of interest.

2.11 Section 27 of the Act is, as noted, already replicated in practice rules. Breach of the practice rules is a disciplinary offence which can result in the solicitor being struck off the roll. Practice rules are more easily refined and adapted to changing circumstances than are Acts of Parliament.

Conclusion

2.12 The Secretary of State's initial view, therefore, is that sections 26 and 27 of the Act should be amended so as to permit the Law Society to make practice rules allowing both mixed professional practices and payments of commission etc. He thinks that the practice rules could:

2.12.1 permit specified combinations of professions in multi-disciplinary practices, subject to appropriate safeguards for clients;

2.12.2 clarify the principle that the solicitor should act exclusively out of concern for the client's best interests, and its implications in relation to commissions or other advantages accruing to the solicitor in the course of such action; and

2.12.3 clarify the principle that clients have the right, at their own expense, to choose their own solicitor and any related professional or firm whose services they need; and the implications of this in relation to arrangements for channelling business to a solicitor, or from a solicitor to another professional or firm.

Before reaching a final view on whether to amend the Act, however, the Secretary of State would wish to have the benefit of any observations prompted by this paper.

3. CONFIRMATION OF EXECUTORS

3.1 Section 32(1)(c) of the Act contains a monopoly for solicitors in charging fees for preparing papers on which to found applications for grants of confirmation in favour of executors. The need for this is far from clear. Anyone may prepare a will for a fee and anyone may administer an estate for a fee; and a lay executor may apply to the sheriff court for confirmation without using the services of an agent. There is therefore no obvious public interest in the present blanket restriction in favour of solicitors in respect of this essentially administrative task.

3.2 If the restriction were removed, anyone could charge a fee for helping to complete the relevant papers. But the executor rather than the lay agent would have to submit the papers to the court (which can be simply done by post), and in the event of any dispute or difficulty only a solicitor would be able to represent the executor in court. Only the executor or a solicitor instructed on his behalf could handle any other associated court business such as petitions for appointment as an executor dative. It therefore seems to the Secretary of State that section 32 of the Act should be amended to enable a person other than a solicitor to charge a fee for assisting in the preparation of papers on which to found an application for a grant of confirmation in favour of executors. Before reaching a final view, however, the Secretary of State, would welcome observations.

4. PROCEDURES FOR ADMISSION ETC AS A SOLICITOR AND AS A NOTARY PUBLIC

Admission as a solicitor

4.1 Section 4 of the Act provides that before someone can practise as a solicitor he or she must:

4.1.1 be admitted as a solicitor; and

4.1.2 have his or her name on the roll of solicitors; and

4.1.3 have in force a practising certificate.

4.2 Section 6 sets out the procedures for admission as a solicitor. If someone is aged 21 years or over; has paid the admission fee; and if the Council are satisfied that he or she has completed the necessary training, and is a fit and proper person to be a solicitor, the normal practice is for the Council (rather than the individual himself or herself) to petition the Court of Session for that person's admission as a solicitor. Irrespective of whether the Council or the applicant makes the petition, the court is then bound to make an Order admitting someone meeting these requirements as a solicitor, and that Order must include a direction to the Council to enter that person's name in the roll of solicitors. Admission as a solicitor, once made, cannot be rescinded. There are however circumstances in which a solicitor's name can be removed from the roll, and in which his or her practising certificate can be withdrawn or issued subject to conditions.

4.3 As will be appreciated, the Council of the Law Society normally make all the effective judgements about the admission of someone as a solicitor. Once the applicant petitions for admission (or the Council of the Law Society do so on his or her behalf), the court has a duty to grant the petition. Moreover the Council of the Law Society are then obliged to enter the person's name on the roll of solicitors. It is not clear why the Court of Session should be troubled with this procedure in cases where the Law Society support the application. This circuitous process costs the applicant £50 (£40 petition fee and £10 for the extract) in respect of court fees alone, in addition to charges made by the Law Society.

Admission as a notary

4.4 Under section 57 of the Act only an enrolled solicitor can be admitted as a notary public, but there is a separate procedure (and fee) for admission as a notary public. The office of Clerk and Agent to the Admission of Public Notaries (and Keeper of the Register of Notaries Public) is held, not by the Council of the Law Society, but by an Edinburgh solicitor. This involves duplication and extra expense, as well as a further burden upon the Court in connection with applications for admission as notary public. Further duplication of effort arises in that the Act also provides (in section 58) that when a solicitor's name is removed from the roll of solicitors, it must also be removed from the Register of Notaries Public; and when a former notary is restored to the roll of solicitors, his or her name must be restored to the Register of Notaries Public.

4.5 It would be a tidy solution to provide that all solicitors (or all solicitors admitted from now on) shall be notaries public. However this would involve compelling all solicitors who have not yet done so, or all newly admitted solicitors, to take the oath or declaration required for admission as a notary public, which not all might be willing to do.

4.6 It seems to the Secretary of State that there are here two barriers to entry to the professions of solicitor and notary which, though not high, could be lowered. Two possibilities have occurred to him, and respondents may be able to suggest others.

4.7 The first would be to transfer formal responsibility for admitting a solicitor from the Court of Session to the Council of the Law Society. This would simplify procedures, save applicants the court fee and remove a small amount of unproductive business from the Court. Solicitors would of course continue to be responsible to the Court for the proper conduct of proceedings in general, and the disciplinary powers conferred on the Court under Section 55 of the Act would continue, including the power to strike a solicitor off the roll. The Act could provide instead that where:

> 4.7.1 someone is aged 21 years or over, and applies to the Council for admission as a solicitor; and
>
> 4.7.2 the Council are satisfied that he or she has complied with the training provisions and is a fit and proper person to be a solicitor; and
>
> 4.7.3 he or she has paid the admission fee;

the Council should determine to admit him or her as a solicitor, and consequent upon such a determination should forthwith enter his or her name on the roll of solicitors. Section 6(3) of the Act (which provides that the Court may admit as a solicitor someone who has failed to satisfy the Council of the Law Society that he or she is a fit and proper person to be admitted as a solicitor, and competent to be a solicitor) is effectively a right of appeal, and would remain.

4.8 A second possibility would be to provide that application could be made simultaneously, to and through the Council of the Law Society, for admission as a solicitor and as a notary public. This would require close liaison between the Law Society and the Clerk and Keeper of the Register of Notaries Public. It would however result in a single application process in place of separate ones, and ought to result in some reduction in the aggregate fee.

4.9 The Secretary of State would welcome comment on ways to simplify the processes of admission as a solicitor and as a notary.

5. BORROWING OF COURT PROCESSES

5.1 Section 29 of the Act provides that, while solicitors may practise in any court in Scotland, they may not borrow processes from a court unless they have a place of business within its jurisdiction.

5.2 A right to practise in civil matters is somewhat barren in the absence of a right to borrow process. This provision seems to represent an unnecessary restriction on solicitors' ability to practise throughout Scotland. In criminal matters solicitors may and do appear in sheriff courts within whose jurisdiction they have no place of business; and our transport systems today make such access to a number of sheriff courts readily practicable, at least within the Scottish central belt.

5.3 It is of course necessary for the efficient working of the courts that they should be able to ensure that processes borrowed by solicitors are duly returned. Court rules already provide a sanction for the failure to return a process. (For example the ordinary cause rules in the Sheriff Court provide for the Sheriff to impose a fine upon a solicitor who borrows a process and fails to return it when the court needs it.) Such fines provisions would appear to do all that is necessary to induce a solicitor to return a borrowed process.

5.4 These arguments appear to apply with equal force to Sheriff Courts and the Court of Session. If section 29 were repealed it would of course remain open to solicitors to employ correspondents for business in other Sheriff Courts or in the Court of Session, where it appeared to them efficient or otherwise in the interests of their client to do so.

5.5 In suggesting a repeal of section 29, the Secretary of State recognises that consideration would need to be given to the implications for the rules and practices of the courts, and the efficient running of the courts, but he would welcome views at this stage on the principle of this possible change.

6. ROLE OF LAW SOCIETY IN RELATION TO PROFESSIONAL PRACTICE

6.1 Although the objects of the Law Society include promoting the interests of the public in relation to the solicitors' profession, the Council have not to date published definitive guidance as to the principles and ethics governing professional practice by solicitors. The Society publishes a booklet, "Professional Ethics and Practice for Scottish Solicitors": Webster and Webster; but insists that the text is the authors', and not binding on the Council.

6.2 The Report of the Royal Commission on Legal Services in Scotland recommended in 1980 (paragraphs 18.2-4) that the Law Society should promulgate an authoritative guide to the professional conduct of solicitors in Scotland. The English Law Society have recently published such a guide. It is in loose-leaf form in recognition of the fact that ideas as to what constitutes acceptable practice change from time to time.

6.3 The lack of such a guide leaves a void which makes the work of the Scottish Solicitors Discipline Tribunal no easier. In the Tribunal's Report for Year to 31 October 1985 an English text was cited as an authority for determining a point at issue. The absence of a guide not only affects the disciplining of offending solicitors, it makes it unnecessarily hard for solicitors to know when they might be offending, and it makes it hard to teach trainee solicitors what will be required of them. The ability to refer to a guide might also be useful to the Law Society in considering action on complaints against solicitors, and explaining such action to the complainant. The public have an interest, too, in knowing authoritatively why, for example, a solicitor may have to refuse to act for them, or why he or she may not be able to carry out certain instructions.

6.4 That such a guide can be produced is evident from the Websters' book, the English Law Society's publication, the Law Society's production of a practice rule on conflict of interest. The question is whether the Council should be obliged to publish guidance. The need for an authoritative guide is clear, yet none exists. It may therefore be necessary to impose a statutory duty on the Council to publish such guidance.

6.5 It therefore seems to the Secretary of State that, unless the Law Society make an early commitment to promulgate guidance on the ethics and standards of professional conduct and practice required of solicitors in Scotland, he should introduce a statutory requirement on them to do so. Before reaching a firm view, however, he would welcome observations prompted by this discussion of the issue.

ANNEX

SOLICITORS (SCOTLAND) ACT 1980

MINOR IMPROVEMENTS

A. Reducing the restrictions on rights of practising as a solicitor

1. Seeking employment when disqualified: Section 28 of the Act makes it an offence for a solicitor who has been struck off or suspended to seek or accept employment (presumably in an unqualified capacity) by another solicitor without first informing him that he is so disqualified. This seems a somewhat heavy-handed approach: it would seem reasonable to expect any employing solicitor to vet job applicants for such matters. Neither is it particularly rational for the present offence to be attached only to seeking employment from a solicitor. Such behaviour does not seem to constitute criminal activity, and it is proposed that this offence should be removed from the Act.

2. Liability for Fees: Section 30 of the Act regulates the question of one solicitor's liability for the fees of another. Such regulation seems barely appropriate to an Act of Parliament (and there is no corresponding provision for payment of counsel by solicitors), and if the profession wished to maintain a presumption about liability for fees, they could achieve it by means of practice rules. It is therefore proposed that the statutory determination of liability for the fees of another solicitor should be abolished by the deletion of section 30.

B. Improving the definition of business reserved to solicitors

3. Section 32 of the Act reserves certain business to solicitors. The Secretary of State decided in early 1986 - for the time being and subject to continuing review - that the preparation of writs relating to heritable estate should remain the preserve of solicitors. Some of the other reserved activities seem to be expressed rather loosely, however, and the impact of one provision is unclear.

4. Writs relating to moveable estate: The restriction in respect of writs relating to moveable estate is, rather unclear as to purpose and effect. The Department is unaware of any documents relating to rights in moveable estate where a solicitors' monopoly is in practice claimed. It is therefore proposed that section 32 should be amended to delete the reference to moveable estate.

5. Writs relating to legal proceedings: The restriction relating to "legal proceedings" in section 32(1)(b) is not expressed in the same terms as that used in the restriction on rights of practising where reference is made to "any action or proceedings in any court". This formulation, from section 26 of the Act, seems more precisely to capture what should be reserved to solicitors. "Legal proceedings" is somewhat imprecise, and it is not desirable that it should be construed too widely eg to include various statutory tribunals and appeals bodies. It is therefore proposed that the reference to "any legal proceedings" should be replaced by "any action or proceedings in any court".

6. Legal advice: Section 33 of the Act also provides that no unqualified person should be entitled to recover fees for "giving legal advice". This reference seems too wide to be reasonable. For example, planning consultants advise clients for a fee on the application of

planning law to development proposals. This seems wholly appropriate: they are probably better able to give good advice on such matters than many solicitors; and equally do not hold themselves out as competent to advise on matters of matrimonial law, for example. Any attempt to define what constitutes "legal advice" in terms that do not impinge on the activities of a whole range of professional advisers seems fraught with difficulty, and in any case seems unlikely to add to the other references to "acting as a solicitor or as a notary public without being duly qualified so to act". It is therefore proposed that the reference to "giving legal advice" should be deleted from section 33 of the Act.

C. The Roll Etc

7. The Roll and the Lord President: Section 11(1) of the Act enables the Lord President to give directions to the Council about keeping the roll. Schedule 2, paragraph 1 sets out some ways in which the Lord President may authorise the Council by direction to carry out certain tasks: for example, to remove from the roll the name of any solicitor who has died, but the Lord President's discretion is limited in that he can only authorise the actions specified. With a view to relieving the Court of the burden of unproductive business, it seems better to amend Schedule 2 to give these powers directly to the Council in statute, thus avoiding the need for the Lord President to issue individual directions to achieve such a straightforward and commonsense outcome. However the Lord President should retain his general power to issue directions under section 11. It is therefore proposed that section 11(2) of the Act should be deleted and in its place a new section 7(4) should provide for schedule 2 to have effect in relation to the keeping of the roll. Consequential amendments to the title of Schedule 2 would also be needed.

8. The Roll and the Discipline Tribunal: Section 9 of the Act provides that before an enrolled solicitor can have his or her name voluntarily removed from the roll, the Scottish Solicitor's Discipline Tribunal must be satisfied that adequate arrangements have been made for the business he or she has in hand at that time. It seems unnecessary to involve the Discipline Tribunal in that way: the Council of the Law Society already have a number of powers to safeguard clients' interests in solicitors' practices, the exercise of which does not involve the Discipline Tribunal. It is therefore proposed that where an enrolled solicitor wishes to have his or her name removed from the roll, it should be the duty of the Council of the Law Society to satisfy themselves under section 9(6) that adequate arrangements have been made for his or her current business; and upon being so satisfied the Council should remove his or her name from the roll. Similarly as regards restoration of a solicitor's name to the roll, there should be no requirement, as in the present section 10(1), to consult the Discipline Tribunal in cases where the solicitor's name has been removed voluntarily under section 9; though the Council should be empowered to restore that name only after such inquiry as they see proper (which could include consulting the Tribunal on any undetermined charges against the solicitor).

9. Prescription of Fees by Court: It should not be necessary for the fees charged by the Council of the Law Society for keeping the roll of solicitors, or the Clerk to the Admission of Notaries for admitting notaries public, to be prescribed by rules of court under sections 12 and 57 of the Act. Instead it could be left to the Law Society and the Clerk to recover in fees the reasonable cost of the procedures involved. It is therefore proposed that section 12 of the Act should be replaced, by a power for the Council of the Law Society to charge fees in connection with admissions and the keeping of the solicitors roll sufficient to cover the reasonable cost of the procedures involved. Similarly the reference to fees relating to the admission of notaries public being prescribed in rules of court should be removed from section 57(4), and from section 57(5), which should instead refer to such fees as are necessary to cover the reasonable cost of the procedures involved. However the ban in section 57(3) on a person being required to find caution for admission as a notary public should be retained.

10. Notaries public: The Act creates separate offences of acting as an agent for an unqualified person, whether as solicitor (section 26) or as notary (section 60). These offences seem to overlap so that section 60 is redundant. It is therefore proposed that the two statutory offences of acting as an agent for an unqualified person should be amalgamated. Section 60 should be removed, and section 26(1) might, for the avoidance of doubt, begin "Any solicitor or notary public.....".

11. Accounts rules: Section 35 of the Act allows solicitors to keep accounts relating to individual clients in a building society or bank, but general accounts and deposits of moneys kept by solicitors but not belonging to them may be kept only in certain specified banks. This seems an unnecessary restriction on solicitors' freedom to place moneys in whatever institution can offer the best facilities for their clients, and it is therefore proposed to extend section 35, and also section 36 (Interest on clients money) to allow solicitors to keep general as well as individual clients' accounts in building societies.

2530/8/14

FROM: R D KERLEY
DATE: 14 December 1987

1. MR BURR 14/12.
2. FINANCIAL SECRETARY

cc Chancellor
Chief Secretary
Paymaster General
Economic Secretary
Sir P Middleton
Mr Anson
Mr Monck
Mr Gilmore
Mr Burgner
Mr Gray
Mr Kaufmann
Mr Wynn Owen
Mr Flanagan

COMPETITION AND EMPLOYMENT LAW

Lord Young copied you his letter of 9 December to the Secretary of State for Employment on the possibility of referring broadcasting labour practices to the Monopolies and Mergers Commission (MMC). We recommend that you write to the Secretary of State for Employment supporting Lord Young's position that officials should meet to discuss the scope and terms of a possible reference in this area.

Background

2. The Secretary of State for Employment wrote to Lord Young on 28 July asking for suggestions from Lord Young and colleagues on potential cases of restrictive Labour practices which could be referred to the MMC. On 13 October Lord Young wrote to the Secretary of State suggesting that broadcasting restrictive practices would be a suitable subject for a reference. You wrote on 26 October in support of Lord Young's position. However on 18 November the Home Secretary wrote to Mr Fowler reaffirming his position, originally outlined in a letter of 28 August, arguing that a reference to the MMC (under section 79 of the Fair Trading Act 1973) would not be helpful at this stage. The Home Secretary's argument was that it would be difficult to provide the MMC with the specific evidence of restrictive practices needed for a Section 79 reference and that in any case a programme of action to make the broadcasting industry more competitive was already well in hand. Lord Young responded to these points in his 9 December letter.

The Issue

3. Whilst the Home Secretary is quite correct in pointing out that the changes to the broadcasting industry being proposed at the moment should make it more competitive and efficient, and thus help to undermine the present restrictive practices, it will, of course, take time for these to take effect. Meanwhile there are economic costs to be borne as the restrictive practices continue. The present TV-AM dispute is a sign that future reforms are not enough to secure present improvements.

4. It is also true, however, that the section 79 procedure, designed to deal with restrictive labour practices, has never been used before. Therefore Lord Young's suggestion that officials should meet in order to discuss the scope and terms of a possible reference and exactly how much information would be needed, seems a sensible one, although Lord Young is surely right in saying that there is unlikely to be any lack of evidence for some of the practices.

5. Attached is a draft letter in support of Lord Young's position.

R D KERLEY

2530/8/14

DRAFT LETTER FROM THE FINANCIAL SECRETARY TO THE SECRETARY OF STATE FOR EMPLOYMENT

I have seen David Young's letter to of 9 December suggesting that officials discuss the scope and terms of a possible reference to the Monopolies of Mergers Commission of restrictive practices in the broadcasting industry. I have also seen Douglas Hurd's letter of 18 November on the same subject.

2. I very much agree with David Young's position that a reference to the Monopolies and Mergers Commission in this area would be useful. Whilst it is true that the changes to the broadcasting industry we are proposing will help to undermine these practices, it will, of course, take time for these to come into effect. Indeed the present TV-AM dispute is a sign that future reforms are not enough to secure present improvements.

3. Given the lack of any precedent in a reference to the MMC under section 79 of the Fair Trading Act 1973 I also agree with David Young's suggestion that officials should first meet to discuss the scope and terms of a possible reference in more detail.

(Prop)

TMD Williams

CHANCELLOR OF THE EXCHEQUER

Ch.

E(CP)

Cabinet Office have suggested that you might like to ask Mr Rifkind to come to the E(CP) discussion on competition in the legal professions.

(His recent paper on competition amongst Scottish lawyers was quite helpful).

What do you think?

Good idea. NL

17/12

p waters

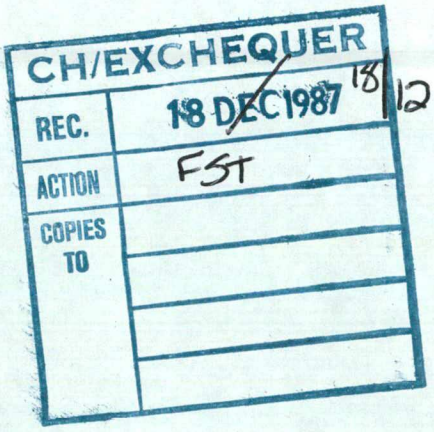
q20 - 6091

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

Secretary of State for Trade and Industry

18 December 1987

The Rt Hon Malcolm Rifkind QC MP
Secretary of State for Scotland
Scottish Office
Whitehall
London SW1A 2AU



Dear Malcolm

COMPETITION INITIATIVE

Thank you for copying to me your letter of 10 December to Nigel Lawson, with a copy of your discussion paper "The Practice of the Solicitor Profession in Scotland".

I was interested in particular to see your proposal to remove the statutory ban on solicitors sharing fees with non-solicitors, which our officials have previously discussed. As you say, this would allow solicitors to form mixed partnerships with members of other professions, as recommended in the report by the Director-General of Fair Trading on restrictions on the form of professional practice. It is clearly relevant to our intended discussion of the legal profession in E(CP). It is also a point which I think should be included in the Competition Initiative Action Programme, which is currently being revised, and I am asking my officials to agree a suitable form of words with yours.

I am copying this letter to the other members of E(CP), the Lord Chancellor, the Lord Advocate and Sir Robert Armstrong.

Yours ever,

LORD YOUNG OF GRAFFHAM

JG6ATW

AR6244p

DEPARTMENT OF HEALTH & SOCIAL SECURITY
Alexander Fleming House, Elephant & Castle, London SE1 6BY
Telephone 01-407 5522
From the Secretary of State for Social Services

The Rt Hon The Lord Young of Graffham
Secretary of State
Department of Trade and Industry
1 Victoria Street
LONDON SW1

18 December 1987

COMPETITION INITIATIVE

I apologise for the delay in responding to your letter of 31 July to Nigel Lawson. We have a major new item for the Competition Action Plan, aimed at improving the freedom of patients to choose their health care, and I wanted to wait until our proposals were reasonably firm before giving you details. Unfortunately, the "Promoting Better Health" white paper in which these proposals are set out was delayed - it was finally published on 25 November - and your letter was lost sight of in the process. Once again, apologies.

"Promoting Better Health" (Cm 249) sets out a programme for major changes in the delivery of primary health care. One of its stated objectives is to increase competition and give the public a greater choice. We intend that patients as consumers should be better informed about the services they can expect their family doctors to provide and better able to exercise their right to choose the doctor that best suits them. An important element in achieving this will be to make doctors' remuneration more sensitive to the range of services provided and the number of patients accepted for care. We will be opening discussions with the medical profession aimed at improving incentives and introducing greater equity so that those family doctors who provide comprehensive patient-oriented services will be appropriately rewarded while those who do not will have to improve their performance if they are to maintain their current incomes.

People can only make sensible choices if they know what they are choosing. We are therefore going to require Family Practitioner Committees in England and Wales, and the Health Boards in Scotland and Northern Ireland, to provide and make readily available detailed information about the medical practices in their areas: opening hours, services provided and arrangements for emergencies and night calls, and so on. There will also be more detailed information about the doctors themselves, including their qualifications and the years in which they were obtained.

Many of the better practices already publish factual leaflets or brochures explaining the services they provide and the organisation of the practice. This is a useful supplement to the information that will be available from FPCs and we will be encouraging the wider provision of practice booklets. But we believe there are still too many restraints on the type of information that can be included and the ways in which it can be published and so we will try to reach agreement with the General Medical Council on a reduction of these restaints subject to proper professional safeguards.

We will be making it easier for patients to change doctors and improving the procedures for dealing with complaints. And we will explore the possibility of practices making annual reports to their FPCs or Health Boards on the services they have provided. These measures, together with improvements in the information that dentists provide to prospective patients and increased competition in sight testing by opticians, will go a long way towards making primary care properly competitive and responsive to the needs of consumers. Much remains to be done, however, and as well as reviewing progress in the primary care area we will be seeking opportunities to take similar steps on secondary care. I have put work in hand on this but have nothing specific to report as yet.

I should like to bring you briefly up to date on the DHSS Items already in the Action Plan. First, the action taken so far by the General Dental Council to relax its restrictions on advertising does not satisfy either the Director General of Fair Trading or me. So he is, with my approval, consulting interested organisations on the terms of a reference to the Monopolies and Mergers Commission. Secondly, E(CP) has agreed that my Department should arrange for internal reviews of the new pharmacists' contract and the Pharmaceutical Price Regulation Scheme, to begin on 1 April and 1 September 1988 respectively, involving other interested Departments as appropriate. Thirdly, the start date for the personal pension scheme is now July 1988 not January as reported in the current Plan.

Finally, Fancis Maude wrote to me on 17 November suggesting a meeting with one of us here to discuss the competition initiative. I am of course happy to agree, and since the bulk of our items in the Action Plan are concerned with initiatives in the NHS I have asked Tony Newton to take this on. His office will be in touch with Francis's.

E.R.

Copies of this letter go to the Prime Minister, Cabinet colleagues, Robin Butler and separately, to Fancis Maude in reply to his letter of 17 November.

JOHN MOORE

QUEEN ANNE'S GATE LONDON SW1H 9AT

21 December 1987

Dear Francis,

COMPETITION INITIATIVE

I am sorry not to have replied sooner to your letter of 17 November, in which you suggest a meeting with Malcolm Caithness to discuss our thinking on the introduction of private sector interests into prison management and ancillary services; and the possibility of ending the Tote monopoly and the Horserace Betting Levy scheme.

We are hatching initiatives in these areas. Malcolm plans to make a speech early in the New Year on the general theme of privatisation of the prison system and ancillary services. This will serve as a backdrop to our formal response to the Home Affairs Select Committee. On the horseracing front, I have agreed with Sir Ian Trethowan that he will prepare a personal report on the Levy and the future funding of horseracing. We still have to finalise a number of points of detail, including the timetable. We expect both these initiatives to be underway by January. I have asked Malcolm's office to agree a mutually convenient time with yours for your meeting to discuss them.

I am copying this letter to Nigel Lawson.

Yours,

Douglas

The Hon Francis Maude, MP

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH

From the Minister

The Hon Francis Maude MP
Parliamentary Under Secretary
for Corporate and Consumer Affairs
Department of Trade and Industry
1-19 Victoria Street
LONDON
SW1H 0ET

23 December 1987

Dear Francis,

COMPETITION INITIATIVE

Thank you for your letter of 17 November about possible further work on the Competition Initiative.

I have asked Jean Trumpington to discuss with you the points you have raised in the light of my comments below. Her office will contact you shortly to discuss suitable dates.

You asked about the transfer of the production of tuberculins from the Central Veterinary Laboratory (CVL) of my Department to the private sector. A strong element of competition was present in seeking a suitable candidate. An advertisement was published in the Official Journal of the European Communities inviting tenders for the supply of tuberculins. The same invitation was also brought to the attention of five home companies who had previously shown an interest. In the event only one company tendered and will, subject to their obtaining a product licence under the Medicines Act, be awarded the contract. The size of the market is small and it would not be economic for there to be more than one production unit at a time because of the relatively low volumes required and the critical importance of quality control over the end products which we will require to be monitored by the CVL.

/Although the effect...

Although the effect of this change will be the continuation in the United Kingdom of a monopoly supply, this will partly be offset by the CVL retaining a two year supply of tuberculins in reserve for safety and quality control reasons. There is no reason however why the possibility of alternative suppliers should not be kept under review subject to the riders mentioned above.

Turning now to the Forestry Commission, it manages its forests on behalf of the Forestry Ministers and sells timber from its forests in accordance with commercial considerations. The sales take place in a market that is dominated by imports - UK forests, whether Commission or privately managed, meet only about 12% of the national timber needs at present. In these markets circumstances the Commission has to sell at competitive prices and to competitive standards. There is no monopoly market for timber.

The Forestry Commission has entered into long-term contracts with major timber processors, subject to price review at least annually based on market prices. However, much of its timber is sold by auction and tender, at prices that reflect the state of the market. Some of the timber is sold cut and by the roadside, and some is sold standing, again to meet the demands of the market and to maximise the profitability of the operation. I really wonder whether there is any real scope for further pro-competitive measures here.

You mentioned development councils. You will of course be aware of the current consideration of the role of these councils in the R & D field. But there is no reason why they can not be discussed.

Finally, I think your point about the system of tendering for food aid may have been covered in recent legislation. You may like to take the matter up with Chris Patten whose responsibility it is.

I am copying this letter to Nigel Lawson and Chris Patten as well as the other two Forestry Ministers.

Yours ever,

JOHN MacGREGOR

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

Mr Neilson
for ECCP) briefing
22/1
c - M. Monger

22 January 1988

Dear Norman,

RESTRICTIVE LABOUR PRACTICES

My Private Secretary wrote to yours on 23 December to say that I wanted to reflect further on the possibility of referring broadcasting labour practices to the Monopolies and Mergers Commission under Section 79 of the Fair Trading Act 1973, taking account of the views expressed in your letter of 15 December and David Young's of 9 December.

There is no difference between us in terms of objectives but I continue to have doubts about whether the untested step of a Section 79 reference would contribute to the programme of action which we have already set in train to make the broadcasting industry more competitive and efficient. We also need to bear in mind the view of ITV management that a reference would not help their welcome, if overdue, efforts to tackle restrictive practices. A great deal more clearly needs to be done by them but my Department is preparing a short paper summarising the recent progress made by a number of the companies and which has been helped by our initiative on independent producers.

However, I am prepared, as you and David Young have suggested, for our officials to get together and discuss, without prejudice to a final decision on a Section 79 reference, the scope and terms of such a reference, the evidence needed to justify it, how its results might be deployed and whether it will assist our wider programme for broadcasting reforms. We can then look at the question again in the light of this work and of current industry conditions.

I am copying this letter to all members of E(CP) and Sir Robin Butler.

Yours ever,
Douglas

DOUGLAS HURD

The Rt Hon Norman Fowler MP

1628A