PART 4

ME

SECRET

Confidential Filing

MONOPOLIES AND MERGERS

GOVERNMENT MACHINERY

Part 1: June 1983

Part 4: March 1989

In attached folder: Report into County Natwest.

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~8.3.89~~							
~~21-3-89~~							
~~7.4.89~~							
~~13.4.89~~							
~~24.4.89~~							
~~4.5.89~~							
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~~1.6.89~~							
~~19.6.89~~							
~~26.6.89~~							
~~7.7.89~~							
20/7/89							
PT 4 ENDS							

PREM 19/2704

HMSO Dd3953031 6/88 C60 GP2265 CCN13412 (3932)

PART 4 ends:-

SS/DTI to LPC. 24.7.89

this document removed from file on 1/9/89.
Last document on file dated 21/7/89
SS
13/10/16

PART 5 begins:-

LPC to SS/DTI. 8.89.

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

CM 595. The Monopolies and Mergers Commission – Badger Holdings Ltd and Midland Red West Holdings Ltd
Published by HMSO
ISBN 0 10 105953 3

CM 651. The Monopolies and Mergers Commission – The Supply of Beer
Published by HMSO
ISBN 0 10 106512 4

Signed S. Gray Date 18/10/2016

PREM Records Team

Department of Trade and Industry documents

Reference:	Report by Inspectors appointed by the Secretary of State for Trade and Industry
Description:	Investigation - County Natwest Limited and County Natwest Securities Limited
Date:	12 July 1989

The above documents, which were enclosed on this file have been removed and destroyed.

Such documents are the responsibility of the Department of Trade and Industry and their successors. When released they will be available in the appropriate DTI Classes.

Signed J. Gray Date 18/10/2016

PREM Records Team

Papers removed from file

Date 1-9-89

55 letter to LPC 24.7.89

Govt mach: Monopolies + Mergers

PH

Prime Minister
You may like to see this commentary.

PRIME MINISTER 21 July 1989

COUNTY NATWEST AND THE BLUE ARROW INVESTIGATION

1. The investigation censures a major clearing bank and one of the biggest stockbrokers for breaches of the Companies Act and Stock Exchange Rules which caused the market to be misled. What should be emphasised is that both were very new players in corporate finance business.

2. NatWest set up County Bank from scratch, buying skilled outsiders to employ NatWest's immense financial strength in a bold attempt to storm a corporate finance market dominated by a few old established merchant banks. The Union Bank of Switzerland, then the world's largest bank by capitalisation, took over Phillips & Drew and immediately decided to build up the one area, corporate finance, in which that essentially research and fund management based firm had not wanted to expand under the old rules - because of the potential conflicts of interest.

3. NatWest and UBS wanted a return on their investment and the men brought in to run their new operations were under pressure to perform. There was a premium on aggression which made County NatWest a by-word in the City for 'hire and fire' etc. Yet neither parent bank had enough senior management of its own with relevant experience, able to supervise. They had bitten off too much.

4. In principle there was a new regime of rules to deal with problems arising out of 'Big Bang', especially within the new financial conglomerates which it made possible. In practice the compliance officers were usually young lawyers with very limited financial experience and consequently very limited status

in 1987. They were often seen as pedantic irritants; they had difficulty in creating the systems necessary for their work because management was too busy with 'the real business-doing'. This was true in all areas and most firms.

5. Lots of aggression backed by the parents' huge balance sheets did not produce overnight results. CNW and P & D decided that backing the new breed of entrepreneurs was the answer. Tony Berry of Blue Arrow was a perfect client; his ambitions matched theirs.

6. To him, CNW and P & D had to prove that they could do everything which the established banks and brokers offered. There was intense commitment, fierce competitiveness to succeed. CNW and P & D had everything to gain by the coup of the 'biggest rights issue' for such a young company, in establishing themselves, as well as in fees. The temptation to cut corners would have been huge and P & D's willingness to help CNW to deceive the Stock Exchange even before the rights issue was launched is damning evidence of that.

7. The market was sceptical of what Blue Arrow was doing. CNW's and P & D's ambitions in corporate finance were threatened with a fiasco. The 'business doers' took charge again and the investigation censures those who organised the ensuing deals and misled a market. Their basic defence - that ambiguities in the law provided adequate cover for commercial decisions - does not address the main issue; everything was done for their self-protection in terms of money and particularly prestige and market makers and investors were left with a wholly misleading impression of what had happened.

8. The moral blame is with the 'business doers'. Senior management are rightly censured for creating organisations which they could not control. Changing the Companies Act to remove

certain ambiguities is necessary but only effective sanctions on those censured will frighten managements enough to rein in the 'business doers' who have, until very recently, had most things their way. None of this invalidates 'Big Bang' but it is a vital test for the resolution of the regulators.

Howell Harris Hughes

HOWELL HARRIS HUGHES

pf.dc/55

CONFIDENTIAL

→ RA

FROM M C SCHOLAR
DATE 20 JULY 1989
EXTN 4389

MR GIEVE (IDT)

cc PS/Chancellor
Sir Peter Middleton
Mr Walsh
Mr Ilett
Mr Pirie
Mr Gray - No 10

NATWEST

I attach a final version of the question and answer brief revised to take account of the Chancellor's comments.

MCS

M C SCHOLAR

CONFIDENTIAL

pf.dc/54

PERSONAL AND CONFIDENTIAL

DTI Inspectors's Report on County Natwest Ltd and County Natwest Securities Ltd

Report published at 9.00am this morning. DTI and Bank of England press notices attached (flags A and B). Short background history of events also attached (flag C).

LINE TO TAKE

1. Q. Does the Prime Minister not agree that the Inspectors' Report reveals a shambles in Natwest, its subsidiaries and Phillips & Drew? What action will the government take to bring the culprits to book, and to put matters right in these institutions?

A. Hon Members can read the Inspectors' Report, published by my rt hon and noble friend the Secretary of State for Trade and Industry this morning, and see for themselves the carefully considered conclusions it reaches. Report criticises certain individuals and the systems within Natwest Bank Group which allowed this state of affairs to come about. My rt hon friend has passed the Report to the Serious Fraud Office and to the relevant regulatory agencies - the Bank of England, the Securities and Investment Board and the Securities Association - who are urgently considering what action they will take.

2. Q. Why was this Report published when the House of Fraser Report was not?

A. The present Report concerns a major clearing bank and its subsidiaries, and the Government has taken the view that it is in the public interest to publish the report as soon as possible. In every case an assessment has to be made of the risk to any investigation or criminal proceedings that might follow the publication of the report. In the present case my rt hon Friend the Attorney General and the Director of the Serious Fraud Office are satisfied that the Report should, on balance, be published.

PERSONAL AND CONFIDENTIAL

3. Q. Does this mean that prosecution is ruled out?

A. Matter is with the Serious Fraud Office.

4. Q. What will the Bank of England do? Will it take action to prevent those in the NWB Group criticised in the Report from holding positions of responsibility in the City?

A. The Bank of England is considering the Report urgently. It will, promptly, take whatever action is necessary under the Banking Act.

5. Q. Will the Prime Minister in due course inform the House of the action taken by the Bank of England?

A. It has not been the practice of the Bank of England to make any public announcement of the actions it has taken under the 1987 Banking Act: if there were a practice of making such announcements this would work against the objectives of the Act, the protection of depositors and the maintenance of confidence in the Banking System. Moreover, under S82 of the Act the Bank is prohibited from disclosing any unpublished information which it has obtained in the course of exercising its responsibilities under the Act.

6. Q. Should the Bank of England have taken steps at the time to question County Natwest's actions more strongly?

A. The Report records that the National Westminster Bank Group itself accepted full responsibility for these events and did not seek to share that responsibility with the Bank of England. The Inspectors agreed with that approach and their report attaches no criticism or responsibility to the Bank of England for these events.

dti

the department for Enterprise

COMMERCIAL IN CONFIDENCE, MARKET SENSITIVE

NBPM

PRG 19/7

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

Chancellor of the Exchequer
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Our ref PS3ALY
Your ref
Date 19 July 1989

Dear Chancellor of the Exchequer,

COUNTY NATWEST - INSPECTORS' REPORT

My Private Secretary wrote to yours on 13 July with a copy of this report. I can confirm that it is my intention to publish it at 9.00 am tomorrow, 20 July. Publication will be announced by means of a press release which is being cleared at official level, together with associated press briefing. A draft of the press release is enclosed.

I have decided that it would be better not to have an arranged Parliamentary Question about the report, as the procedures for tabling questions in the Commons will necessarily draw attention to the likelihood that publication is imminent and lead to the sort of speculation that we should avoid. It is not our usual practice - for this reason - to announce such reports in Parliament and on reflection we see no need to make an exception in this case. Copies will of course be made available in the Vote Office and the Printed Paper Office at 9.00 am.

Copies of the report will be supplied a short time before publication to the companies concerned, to Natwest Bank, and to various individuals criticised by the Inspectors - Section 437(3) Companies Act 1985 enables this to be done.

In responding to press comments, we shall be making it clear that further investigation and prosecution are matters for the Serious Fraud Office, whilst regulatory action is a matter for the Bank of England and relevant Self Regulatory Organisations of which the companies investigated are members. Much of the press attention can therefore be expected to come to the SFO

dti

the department for Enterprise

or you or the Bank; our officials are in touch to ensure a common line. It will, of course, be for you to consider with the Bank of England whether any changes in regulations of banks are called for as a result of this investigation.

I am sending copies of this report to the Prime Minister, the Attorney General, the Lord President, the Governor of the Bank of England and the Director of the Serious Fraud Office.

Yours sincerely,

Nick Ridley

(approved by the Secretary of State and signed in his absence)

the Enterprise Initiative

COMMERCIAL IN CONFIDENCE
MARKET SENSITIVE

DRAFT PRESS NOTICE FOR THURSDAY 20 JULY 1989

COUNTY NATWEST LIMITED
COUNTY NATWEST SECURITIES LIMITED

Lord Young, Secretary of State for Trade and Industry, has today pubished the inspectors' report on County Natwest Limited and County Natwest Securities Limited.

The Director of the Serious Fraud Office [and the Director of Public Prosecutions], with the agreement of the Attorney General, [is/are] satisfied that in this case the balance of public interest lies in publication in advance of completion of police enquiries. Lord Young has therefore decided to publish the Report, which concerns the country's largest clearing bank and its subsidiaries.

Copies of the report have been passed to the Serious Fraud Office, the Bank of England [and to The Securities Association] for their consideration. The report has been considered by the Director of the Serious Fraud Office who has asked the City of London Police to carry out certain investigations. The Bank of England is considering the report and further comment would be inappropriate at this stage.

Mr Michael Crystal QC and Mr David Lane Spence CA were appointed on 19 December 1988 under Section 432(2) of the Companies Act 1985 to investigate and report on the affairs of both companies, and to look in particular at the role of those companies in the offer by Blue Arrow plc for the whole of the issued share capital of Manpower Inc in 1987 and their subsequent interests in the shares of Blue Arrow plc.

Notes to Editor

1 Copies of the report can be obtained from Her Majesty's Stationery Office, price [£45].

2 The registered office of County Natwest Limited and County Natwest Securities Limited is at Drapers Gardens, 12 Throgmorton Avenue, London EC2.

pf.dc/54

PERSONAL AND CONFIDENTIAL

cc PM/PS/PUS DET

FROM M C SCHOLAR
DATE 19 JULY 1989
EXTN 4389

CHANCELLOR OF THE EXCHEQUER

cc Sir Peter Middleton
Mr Walsh (FIM)
Mr Gieve
Mr Ilett

NATWEST

The DTI press notice (latest draft attached) and publication of the Inspectors' Report is to be at 9.00am tomorrow. I attach some material (some questions and answers plus a background brief) for Prime Minister's questions, on which Mr Gieve could draw, which I have agreed with the Bank and the DTI.

MCS

Prime Minister

M C SCHOLAR

We will boil this material down tomorrow morning into something more manageable for Questions. But you may like to glance at this tonight in the light of your talk to the Chancellor.

PRCG
a/h

PERSONAL AND CONFIDENTIAL

DTI Inspectors's Report on County Natwest Ltd and County Natwest Securities Ltd

Report published at 9.00am this morning. DTI and Bank of England press notices attached (flags A and B). Short background history of events also attached (flag C).

LINE TO TAKE

1. Q. Does the Prime Minister not agree that the Inspectors' Report reveals a shambles in Natwest, its subsidiaries and Phillips & Drew? What action will the government take to bring the culprits to book, and to put matters right in these institutions?

A. Hon Members can read the Inspectors' Report, published by my rt hon and noble friend the Secretary of State for Trade and Industry this morning, and see for themselves the carefully considered conclusions it reaches. Report criticises certain individuals and the systems within Natwest Bank Group which allowed this state of affairs to come about. My rt hon friend has passed the Report to the Serious Fraud Office and to the relevant regulatory agencies - the Bank of England, the Securities and Investment Board and the Securities Association - who are urgently considering what action they will take.

2. Q. Why was this Report published when the House of Fraser Report was not?

A. The present Report concerns a major clearing bank and its subsidiaries, and the Government has taken the view that it is in the public interest to publish the report as soon as possible. In every case an assessment has to be made of the risk to any investigation or criminal proceedings that might follow the publication of the report. In the present case my rt hon Friend the Attorney General and the Director of the Serious Fraud Office are satisfied that the Report should, on balance, be published.

3. Q. Does this mean that prosecution is ruled out?

A. Matter is with the Serious Fraud Office.

4. Q. What will the Bank of England do? Will it take action to prevent those in the NWB Group criticised in the Report from holding positions of responsibility in the City?

A. The Bank of England is considering the Report urgently. It will, promptly, take whatever action is necessary to ensure that the National Westminster Bank, and other authorised institutions within the Group, fully meet the criteria laid down in the Banking Act.

5. Q. Will the Prime Minister in due course inform the House of the action taken by the Bank of England?

A. It has not been the practice of the Bank of England to make any public announcement of the actions it has taken under the 1987 Banking Act: if there were a practice of making such announcements this would work against the objectives of the Act, the protection of depositors and the maintenance of confidence in the Banking System. Moreover, under S82 of the Act the Bank is prohibited from disclosing any unpublished information which it has obtained in the course of exercising its responsibilities under the Act.

6. Q. Should the Bank of England have taken steps at the time to question County Natwest's actions more strongly?

A. The Report records that the National Westminster Bank Group itself accepted full responsibility for these events and did not seek to share that responsibility with the Bank of England. The Inspectors agreed with that approach and their report attaches no criticism or responsibility to the Bank of England for these events.

COMMERCIAL IN CONFIDENCE
MARKET SENSITIVE

Flag A

DRAFT PRESS NOTICE FOR THURSDAY 20 JULY 1989

COUNTY NATWEST LIMITED
COUNTY NATWEST SECURITIES LIMITED

Lord Young, Secretary of State for Trade and Industry, has today published the Inspectors' Report on County Natwest Limited and County Natwest Securities Limited.

The Director of the Serious Fraud Office, with the agreement of the Attorney General, is satisfied that in this case the balance of public interest lies in publication in advance of enquiries by the Serious Fraud Office and the police. Lord Young has therefore decided to publish the Report, which concerns a quoted company, one of the country's largest clearing banks and its subsidiaries.

Copies of the Report have been passed to the Serious Fraud Office, the Bank of England, the Securities and Investment Board, and the Securities Association for their consideration. The Report has been considered by the Director of the Serious Fraud Office who is carrying out certain investigations with the City of London Police. The Bank of England is considering the Report, in accordance with their responsibilities under the Banking Act 1987.

Note to Editors

1. Mr Michael Crystal QC and Mr David Lane Spence CA were appointed on 19 December 1988 under Section 432(2) of the Companies Act 1985 to investigate and report on the affairs of both companies, and to look in particular at the role of those companies in the offer by Blue Arrow plc for the whole of the issued share capital of Manpower Inc in 1987 and the subsequent interests of County Natwest Limited and County Natwest Securities Limited in the shares of Blue Arrow plc. The Report is therefore being published seven months and one day after the appointment of the Inspectors.

2. Copies of the Report can be obtained from Her Majesty's Stationery Office, price [£23.50].

3. The registered office of County Natwest Limited and County Natwest Securities Limited is at Drapers Gardens, 12 Throgmorton Avenue, London EC2.

COMMERCIAL IN CONFIDENCE

MARKET SENSITIVE

COUNTY NATWEST LIMITED

COUNTY NATWEST SECURITIES LIMITED

PRESS BRIEFING ON PUBLICATION OF INSPECTORS REPORT

Q1 WHY ARE YOU PUBLISHING THE REPORT WHEN YOU HAVE NOT PUBLISHED THE HOUSE OF FRASER REPORT IN SIMILAR CIRCUMSTANCES?

A1 Circumstances are different in each case. It is right that shareholders and the public generally should have an early opportunity to know the outcome of the inspectors' enquiries into the conduct of a [major publicly quoted large] UK clearing bank, and its subsidiaries, whose shares are widely traded.

Matters of great importance to the conduct of financial affairs within the City have been the subject of enquiry.

Q2 ARE YOU SAYING THAT THE HOUSE OF FRASER IS UNIMPORTANT?

A2 Of course not. What we are saying is that different considerations are present in each case. The factors [mentioned at A1 above] which have led to the decision to publish the County Natwest report are simply not present

in the case of House of Fraser. In each case, an assessment has to be made of the risk to any investigation or criminal proceedings that might follow the publication of the report. In this case, the Attorney-General and the Director of the Serious Fraud Office are satisfied that the report should, on balance, be published

Q3 DOES THIS MEAN THAT PROSECUTION IS RULED OUT?

A3 No.

Q4 HAS PROSECUTION EVER FOLLOWED PUBLICATION OF AN INSPECTORS' REPORT?

A4 Yes. This has happened on a few occasions in the past [eg Scotia Investments Limited].

Q.5 HAVE THE PROSECUTING AUTHORITIES RAISED ANY OBJECTIONS TO PUBLICATION?

A5 No.

Q6 WHAT ACTION WILL BE TAKEN ON THE INSPECTORS' RECOMMENDATIONS FOR CHANGES IN THE LAW?

A6 The inspectors' recommendations are under consideration. Clause 108 of the Companies Bill, if enacted by Parliament, could provide a route for the implementation of the Inspectors' recommendations, if so decided, without further primary legislation.

Q7 WILL THE SOS APPLY FOR DISQUALIFICATION ORDERS AGAINST PERSONS CRITICISED IN THE REPORT?

A7 Not at this stage. The Bank of England are considering whether or not any regulatory action is required. It is also possible for the criminal courts to make disqualification orders in the event that any criminal proceedings resulted in convictions.

Q8 WHEN WAS THE REPORT SENT TO THE SERIOUS FRAUD OFFICE?

A8 The day after it was received from the Inspectors.

Q9 HAD THE SERIOUS FRAUD OFFICE RECEIVED ANY INFORMATION ABOUT THIS AFFAIR BEFORE THE INSPECTORS' REPORT WAS SENT TO THEM?

A9 Yes. On 3 July 1989 they were provided with information

supplied by the Inspectors under Section 437(1A) of the Companies Act 1985.

Q10 HAS THE BANK OF ENGLAND RECEIVED ANY INFORMATION ABOUT THIS AFFAIR BEFORE THE INSPECTORS' REPORT WAS SENT TO THEM?

A10 Yes. Information was passed to them as a competent authority pursuant to Section 449(3)(e) of the Companies Act 1985.

Q11 HAVE THE SERIOUS FRAUD OFFICE CONCLUDED THAT THERE IS A SERIOUS FRAUD TO DEAL WITH (SECTION 1 CRIMINAL JUSTICE ACT 1987)?

A11 At this stage, the Serious Fraud Office have simply decided that there are matters within their remit calling for investigation.

Q12 HOW LONG WILL THE INVESTIGATION TAKE?

A12 I cannot say. It will proceed as quickly as possible.

Q13 WHAT ACTION WILL BE TAKEN BY THE BANK OF ENGLAND OR OTHER

REGULATORY AUTHORITY AGAINST NATIONAL WESTMINSTER BANK PLC?

A13 This is a matter for the Bank and other relevant SROs.

Q14 WHAT COURSES ARE OPEN TO THE BANK?

A14 [For Bank of England to answer].

Q15 WHAT COURSES ARE OPEN TO THE SECURITIES ASSOCIATION*?

A15 [For The Securities Association* to answer]

*To be checked.

Investigations Division
Companies Investigation Branch
DTI
19.7.89

Flag B

PRESS BRIEFING

COUNTY NATWEST - BLUE ARROW

The Bank of England is studying urgently the report by DTI Inspectors published today. Any necessary action will be taken promptly in accordance with the established procedures for administering the Banking Act 1987.

Background

Authorised institutions are required to meet the criteria set out in the Banking Act which include that the institution must conduct its business prudently and that its controllers, directors and managers are fit and proper to hold their particular positions. In the event that the Bank concludes that a criterion has not been or is not being met, the Bank may exercise its power to restrict or revoke the authorisation of the institution. The Bank has no direct powers in relation to individual controllers, directors or managers.

If the Bank decides that it should exercise its powers, it is required to notify the institution of its preliminary conclusions and give the reasons why those conclusions have been reached. If these conclusions reflect on individuals, the relevant extracts are also sent to the individuals concerned. The institution and the individuals have 14 days in which to make representations.

The Bank then has a further 14 days in which to confirm or vary its conclusions. Either an institution or an individual has the right of appeal to a tribunal.

The Bank may announce its final conclusion, but is not permitted under Section 82 of the Banking Act to publish any information which it has obtained in the course of exercising its responsibilities under the Act. Since the objectives of the Act are the protection of depositors and the maintenance of confidence in the banking system it has not been the practice of the Bank to make any public announcement of actions it takes under the Act.

Flag C

NATWEST/BLUE ARROW : Summary of events

July 1987. Blue Arrow (BA) decides to launch bid for Manpower (Mp). Prior to launch, BA starts to acquire Mp shares on market. Inadvertently, acquisitions exceed threshold which should have triggered disclosure of holding ("Class II limit") under Stock Exchange (ISE) rules. No disclosure made. ISE report has criticised Philips and Drew (PD) and County NatWest (CNW) - ISE action will follow publication of Inspector's Report.

August. BA launch cash offer for Mp, financed by rights issue. CNW underwrite. CNW find subunderwriters for only 75% of risk - leaving them with commitment of £214m.

September. Offer for Mp succeeds; BA rights issue set in motion. CNW make contingency plans with other advisers for failure of rights issue. Use of market-making arm (County NatWest Securities - "CNWS") to push BA shares.

28 September. Rights issue unsuccessful - 38% takeup. CNW and PD decide to increase their own exposure to "save" issue, and announce issue sufficiently successful (50% takeup) for "rump" of shares to be placed in market rather than left with

subunderwriters. Inspectors severely criticise several parts of this operation.

29 September. PD and CNW place rump with institutional investors. CNW retains 12% and PD 3% of the rights issue on own books. Press notice gives misleading account of placing; "deliberate decision to mislead the market". CNW force CNWS (market-makers) to take part of their holding to avoid triggering 5% disclosure requirement. Union Bank of Switzerland ("UBS" - PD's parent) take further tranche with no-loss indemnity from CNW.

Inspectors conclude UBS arrangement fell within law and that DTI should legislate to block this loophole and remove certain other loopholes.

Executive Directors and Deputy Chairmen of National Westminster Bank (NWB) informed of CNW exposure in misleading terms and approve it. Executive Directors criticised for failing to ask right questions and so to carry out their responsibilities to Group. (Deputy Chairmen not criticised; Chairman and Chief Executive absent abroad)

30 September. CNW mislead Bank of England supervisors about legal advice on non-disclosure arrangements; later, CNW ignore Bank advice to check disclosure position with ISE.

19 October. Stock Exchange crash. BA share price halves. CNW face £80m loss. Further avoidance of disclosure requirements in October and November. Losses reported to NWB Chairman's Committee on 30 November 1987. Net loss (taking into account profit on hedging and fee income from deal) £39m.

December. NWB settles indemnity payment to UBS (£30m), unwinding that part of anti-disclosure arrangement.

17 December. NWB announces capital injection to cover CNW losses; CNW unwinds anti-disclosure arrangements with CNWS and discloses 9¾% holding in BA.

1988 - 23 February. Leading figures in CNW resign. NWB launches internal investigation under Sir P Wilkinson. Bank informed of this.

29 April. Wilkinson Report completed and passed to Bank. (Inspectors say Wilkinson Report is bona fide but contains inaccuracies). Later in May, Bank asks for report to be sent to DTI, which was done on 25 May. Further material sent to DTI in August.

19 December 1988. DTI appoint Inspectors.

12 July 1989. Inspectors make their final report, concluding " events give rise to concern..... market misled.... Companies Act not complied with .... no justification ... relevant law in unsatisfactory state and changes should be made.... highly unsatisfactory state of affairs within NWB Group, and important that NWB Group carries out its stated intention of taking all possible steps to ensure that all investment banking activities are carried out to high standards of integrity and propriety."

CF-pc. 10a-6

EAMAZD SECRET AND PERSONAL

Note
Passed PM's comment on next page to Neil Ronke (DTI). They will do what they can to sort out the arguments. MH

PRIME MINISTER

COUNTY NATWEST: INSPECTORS' REPORT Refs 6, 17(7)

The final version of the DTI Inspectors' Report on County NatWest is now available. The covering letter from Lord Young's office (Flag A) indicates the plan to publish the Report next Thursday, 20 July.

The Report itself is at Flag B. You may want to flick through it, although, regrettably, there is no summary section that enables you quickly to see where blame is laid. But on the basis of a quick reading, the position seems to be:

- there is very strong criticism of the junior staff in County NatWest engaged in the Blue Arrow operation (particularly a Mr Wells);

- the main players at Philips and Drew also come in for strong criticism;

- at a senior level in NatWest itself, the principal criticism is reserved for Messrs C Green, T Green and Plastow, three of the NatWest Executive Directors (see in particular paragraphs 11.17 - 11.20);

- Tom Frost (Chief Executive) and Lord Boardman (Chairman) are effectively cleared of blame (see paragraphs 13.22 and 13.24); Mr Villiers is also cleared of blame (13.16/17) which is a relief as he is a director of the newly floated Abbey National. AT

- there is only relatively modest criticism of Sir Philip Wilkinson's interim report on the affair (see paragraph 17.21).

I have highlighted in red through the Report all of the key findings on individuals. (The highlighting in yellow has been done by DTI and signifies the main places in which the report has been changed from the preliminary version.)

SECRET AND PERSONAL

Next Steps

There are two main issues:

i. what regulatory action is to be taken against individuals and/or the bank?

ii. the link between publication of this Report and the treatment of the House of Fraser Report.

As to regulatory action, this is for the Treasury and Bank of England to pursue. I understand a series of meetings between the Treasury and Bank are planned for early next week, and the Chancellor may be able to report to you at his bilateral planned for Wednesday. But on my reading of it, it looks as if the consequences of the Report are far less dramatic than was feared at an earlier stage.

As to publication, DTI and the Attorney will have to answer the question why it is alright to publish this Report but not the House of Fraser Report. They are actively considering this. But their line is likely to be:

- the issue of whether or not to publish is always a matter of balance. There is always a general public interest in publication, but in each case the issue is whether or not this is more than offset by the prejudice to possible prosecutions;

- in the House of Fraser case, the prejudice point has been, and remains, paramount. (I am told that the intelligence I had a couple of weeks ago that the point might be coming where the House of Fraser Report could be published has been reversed, and that the SFO, DPP and Attorney remain of the view that publication would be prejudicial);

- in the County NatWest case, the public interest in publication is a very strong one, because it strikes at the heart of public confidence in the banking system; and that over-rides any prejudice of possible prosecutions.

PAUL GRAY

14 July 1989

dti

the department for Enterprise

A A

COMMERCIAL IN CONFIDENCE - MARKET SENSITIVE

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

Alex Allan Esq
Private Secretary to the
Chancellor of the Exchequer
H M Treasury
Parliament Street
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Direct line 215 5422
Our ref NP1ABE
Your ref
Date 13 July 1989

Dear Alex.

COUNTY NATWEST - INSPECTOR'S REPORT

I enclose a copy of the Report which the Secretary of State has received from the Inspectors' appointed by him under section 432 of the Companies Act 1985. Copies of this letter and the Report are also being sent to Paul Gray at Number Ten, Michael Saunders at the Law Officers' Secretariat and to Paul Tucker at the Bank of England. A copy of the Report is being sent separately to the Director of the Serious Fraud Office.

Assuming that the Report contains no significant departures from the draft version, the Secretary of State intends to publish it on Thursday 20 July and I shall therefore be grateful for very early comments from you and copy recipients on the Report and the publication proposal. Unless there are unexpected reasons why the Report cannot be published, the Secretary of State will be writing to colleagues at the beginning of next week with a draft Parliamentary Question and Answer and with details of the line to be taken with the media.

I should mention at this stage that although the Inspectors have not specifically identified offences which may have been committed, the facts described in their Report clearly point to some. For example there appears to have been shareholdings which required disclosure (paragraphs 16.06 - 16.34 of the Report), and the announcement about the take-up of the new Blue Arrow shares is stated to have been seriously misleading (paragraphs 8.19). The action by CNW and NWIB subsequently to limit their losses by transactions in the options market

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(paragraphs 13.03 - 13.07) are likely to have involved a breach of the Company Securities (Insider Trading) Act 1985. The briefing for the media will therefore refer to the fact that a copy of the Report has been sent to the Director of the SFO and to the Bank of England for them to consider, but further comment at that time would be inappropriate.

On the basis that publication is confirmed it will also be necessary to explain that the Secretary of State has decided to publish the Report, even though the Director of the SFO has considered it and asked the police to carry out certain investigations, since in this case he, the Director of the SFO and the Attorney General are satisfied that early publication will best serve the public interest.

Any questions about regulatory action in consequence of the Report will be referred to the Treasury and the Bank of England as appropriate.

Yours ever,

Neil Thornton

NEIL THORNTON
Private Secretary

Michael Crystal Q.C. **David Spence** C.A.

Inspectors appointed by the Secretary of State for Trade and Industry in connection with the affairs of

COUNTY NATWEST LIMITED
and
COUNTY NATWEST SECURITIES LIMITED

in accordance with the provisions of Section 432(2) of the Companies Act 1985

Secretary to the Inspectors: SIMON MORRIS A.C.A. GRANT THORNTON Chartered Accountants, Grant Thornton House, Melton Street, London NW1 2EP
Telephone: (01) 383 5100 Telex: 28984 GTLDN-G London Document Exchange: 2100 Euston Facsimile: (01) 383 4696

DLS/EMcG/D3030

G Clarke Esq
Inspector of Companies
Department of Trade and Industry
Ebury Bridge House
2-18 Ebury Bridge Road
London
SW1W 8QD

12 July 1989

Dear Mr Clarke

I refer to the final Report submitted to you today. I set out in this letter a brief note of the major differences between the draft submitted on 26 May 1989 and the final Report. You will appreciate that there are also a number of minor changes.

1. Other National Westminster Bank Group Investment Management Companies

In paragraph 2.34 we introduce a situation which came to our attention following the submission of the draft Report. It was brought to our attention in response to a query made some time before the draft Report was submitted but not answered by that time. You will see that a relatively small number of Blue Arrow shares is involved. The details are given in Chapters 8, 13 and 16.

2. Issued Share Capital

In paragraph 3.06 we have acknowledged that the meaning of 'issued share capital' may not be free from doubt.

3. Involvement of CNWS

In Chapter 9 we have revised our analysis of the meeting purported to have taken place between Messrs Cohen and Rimell and the conversation purported to have taken place between Messrs Dale and Rimell. The Report now contains no references to these purported events.

We have revised our provisional criticisms of Messrs Cohen and Reed. There is no reference in Chapter 9 of the final Report to criticisms of Messrs Cohen and Reed. We have introduced a paragraph 9.23 dealing with Mr Reed's knowledge of the CNWS holding.

4. Messrs C Green, T Green and Plastow

In Chapter 11 we have criticised the three Executive Directors specifically with regard to the possibility that other Blue Arrow share holdings may have existed in other NWB Group Companies. We have removed from the scope of the criticism the suggestion that they ought to have enquired further into the CNWS holding. In paragraph 11.21 we express our regret that they did not enquire further with the CNWS holding.

5. Insider Dealing

We have revised our view in paragraph 13.11 on the application of the Company Securities (Insider Dealing) Act 1985 to FT-SE 100 Index put option contracts.

6. Mr Cohen

We have introduced paragraphs (13.14 and 13.15) dealing with Mr Cohen.

7. Mr Villiers

We have introduced paragraphs (13.16 and 13.17) dealing with the position of Mr Villiers.

8. Mr Frost

We have introduced an additional paragraph (13.22) dealing with Mr Frost.

9. Lord Boardman

We have introduced an additional paragraph (13.24) dealing with Lord Boardman.

10. Mr Clark

We have reconsidered the position and responsibilities of Mr Clark. We have reduced the impact of our criticisms in respect of Mr Clark in Chapters 12, 14 and 15.

11 Registration of NWB Group Holdings

We have introduced further details on the registration of the Blue Arrow shares held by NWB Group Companies.

12. Events following the discovery of the HandelsBank holding

Messrs Wells and Clark have been removed from this criticism.

13. The meeting on 23 November 1987.

The paragraph dealing with the criticism of Mr Keat has been removed. We now state that we believe the situation following this meeting to have been unsatisfactory.

14. Mr Cohen's Memorandum to the Board of NWB

We have introduced a passage in paragraph 15.16 which states that this Memorandum overstated the extent of the legal advice which had been taken. This relates to the passage now found in paragraph 13.15.

15. NWB Group's interests in Blue Arrow shares

Chapter 16 has been subject to extensive revision.

16. Sir Phillip Wilkinson's Report

Paragraph 17.21 now includes 'observations' rather than 'criticisms'. We have revised the wording of our observations.

I hope that this summary is helpful to you. Please let me know if you would like any further information or observations. Michael Crystal and I would be pleased to meet you to discuss any points you may wish to raise.

Yours sincerely

DAVID SPENCE

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

11 July 1989

BEER

Thank you for your letter of 10 July enclosing the revised statement your Secretary of State made yesterday afternoon, and explaining the position on tenants' security. The Prime Minister has noted your Secretary of State's decision not to refer explicitly to non-retrospection.

I am copying this letter to Alex Allan (H.M. Treasury), Colin Walters (Home Office), Nick Steven Catling (Lord President's Office), Shirley Stagg Gibbons (Lord privy Seal's Office), Ministry of Agriculture, Fisheries and Food), Alan Ring (Department of the Environment) and to Trevor Woolley (Cabinet Office).

Neil Thornton, Esq.,
Department of Trade and Industry.

Paul Gray

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the department for Enterprise

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

Paul Gray Esq
Private Secretary
to the Prime Minister
10 Downing Street
London SW1A 2AA

Prime Minister

You may like to glance at the final version of the statement. It went reasonably well in both Houses. You will see at X overleaf that Lord Young preferred not to spell out non-retrospection.

RACG 10/7

Department of Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5422
Our ref PS1CTG
Your ref
Date 10 July 1989

Dear Paul,

BEER

I enclose a copy of the revised statement my Secretary of State will be making this afternoon, after his discussion with the Business Managers this morning, and helpful comments from others who saw the previous version over the weekend.

We discussed whether our proposals on tenant's security would be retrospective in effect.

The transitional provisions will work in this way. If a tenancy of licensed premises is for a fixed term which will run out within the next three years, the proposed legislation will not apply at all. If the tenancy will not run out until more than three years from now, the legislation will apply when it runs out. If the tenancy is not for a fixed term but is subject to notice - usually six months' notice - the proposed legislation will apply if notice is given to expire more than three years from now, but will not apply if notice is given to expire within the next three years unless there is a rent review within that period.

You will see that there is nothing retrospective in any of this. The only sense in which there can be said to be any retrospection is that existing tenancies will in three years time be covered by a different regime from that which prevailed when they were negotiated. That is not, however, what is normally thought of as retrospection, and is no different from many other pieces of legislation which change the law applicable to agreements negotiated beforehand.

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X My Secretary of State however feels that to refer explicitly to retrospective (or rather non-retrospective) in the statement would go too far to reassure the brewers and conflict with his call to them to exercise restraint.

I am sending copies of this letter to Alex Alan, Colin Walters, Steve Catling, Nick Gibbons, Shirley Stagg, Alan Ring and Trevor Woolley.

Yours ever,

Neil Thornton.

NEIL THORNTON
Private Secretary

the enterprise initiative

HoL Fin

STATEMENT ON THE MMC REPORT ON THE SUPPLY BEER, MONDAY 10 JULY

My Lords, with the leave of the House, I wish to announce the Government's response to the report from the Monopolies and Mergers Commission on the Supply of Beer.

This was a comprehensive report. It recommended far reaching changes in the brewing sector. Passionate views for and against its recommendations have been expressed forcefully to me and to my colleagues since I published it on 21 March. I have listened carefully to views from all quarters - large and small brewers, the tenants, and, most importantly, the consumers. But before I announce my decisions I should like first to restate the Government's position in relation to this and all other MMC reports.

The essence of the Government's view is this: competition is good for industry and commerce and, above all, for consumers. It encourages enterprise, greater productivity, greater diversity and lower prices. In general the operation of the market delivers the benefits of competition to the consumer. But sometimes the Government has to step in - in mergers, restrictive and anti-competitive practices, and monopolies. And the ultimate sanction which the

Government holds - and exercises when necessary - is to order divestment. Without this sanction our policies to ensure that competition is kept free would be without force and effect.

Certain preliminary conclusions were announced by my Hon Friend the Parliamentary Under Secretary of State on 8 June; and I made a further statement of the Government's position during a debate in this House on 14 June. We made it clear that certain measures would apply to the national brewers but not to regional and local brewers.

I now turn to the specific decisions I have reached on matters covered in the MMC's recommendations.

I have taken particular note of recent further evidence of the need for more competition in the supply of soft drinks and low alcohol beers to pubs. We have decided therefore that tenants of the national brewers should be free to buy these and certain other products from any source, free of ties. Products thus freed from the tie will include non alcoholic and low alcohol beers, soft drinks, ciders wines and spirits.

These measures should significantly enhance competition in the supply of these products.

All brewers will be required to supply beer to the wholesale trade at prices no more than those in a published list. The MMC showed that some wholesalers had been prevented from operating in the market because brewers had refused them supplies. These measures, and others I shall shortly come to, should stimulate a more open and competitive wholesale market in beer and other drinks.

We agree with the MMC's conclusion that licensed tenants must be given greater security of tenure in the new circumstances. I confirm that amendments to the Landlord and Tenant Act 1954 will be brought forward as soon as Parliamentary time permits to give licensed tenants the same protection as other business tenants. I am conscious that many tenants have found themselves in an uncertain position since the MMC Report was published. In some cases they have already been served with notice to quit. It is regrettable that some brewers have seen fit to take this action before firm decisions have been announced.

We envisage that subject to Parliamentary approval of the necessary legislation, all tenancies which have three or more years to run from today's date will fall within the scope of the Act. In the case of tenancies without a definite term, they will fall within the scope of the Act with effect from three years from today, or from the first rent review after the legislation takes effect, whichever first occurs.

The MMC made a number of recommendations aimed at giving tenants further protection, beyond that provided by the Landlord and Tenant Act. I have considered this carefully, and have taken particular note of the representations made by the National licensed Vituallers' Association that the power the brewer landlord has over the tenant is such as to justify a special level of tenant's protection.

I have however decided that it would not be right to go further than affording licensed tenants the same protection as all other business tenancies.

I hope that those landlords who have issued notices to quit to their tenants as a consequence of the MMC Report will now withdraw such notices. I have announced what I believe are appropriate transitional arrangements I do not wish to see the position of tenants unduly jeopardized in the period before any amendments take effect. If necessary I will make an interim Order under the Fair Trading Act 1973 as amended by the current Companies Bill to safeguard their position.

The MMC recommended the prohibition of all new loan ties. The effect of loan ties is however very different from that of ties resulting from ownership, which are permanent ties to one brewer's products. Loan ties can and do change

from brewer to brewer frequently. It is clear that in the right circumstances they can be pro-competitive. I have also been persuaded that these loans can be an invaluable source of finance for new public houses and particularly for clubs.

I have therefore decided not to prohibit them, but instead require that they conform to certain conditions to ensure that they are not used anti-competitively. All loan ties must be capable of termination at no more than 3 months' notice without penalty, and in the case of loans from the national brewers must be confined to beer.

We have already made it clear that the requirement recommended by the MMC that tenants should be allowed to offer a guest beer should apply only to the national brewers. We have also made it plain that the guest beer will be a cask-conditioned beer, other than stout. The issues to be resolved are who should be permitted to supply the guest beer; and whether the requirement should apply to all exclusive ties entered into by national brewers, whether through ownership or loans.

We have decided that the right to take a guest beer should indeed apply to all exclusive ties entered into by national brewers. As to who should be able to supply to the houses of the national brewers, one view is that any brewer, other than the one responsible for the tie, should be able to

supply the guest beer. On the other hand the Brewers Society have suggested that only brewers with an annual output of less than 200,000 barrels may supply. That would exclude any other than small, local brewers.

We would welcome further views on this during the statutory consultation period.

I now turn to measures to address the central question of the size of the tied estate of the national brewers.

The MMC recommended that no brewer should be allowed to own more than 2,000 on licenses. I have always made it clear that I was prepared to consider alternatives provided that they dealt with the public interest issues clearly identified by the MMC.

The national brewers made it clear that nothing which fundamentally affected the strength of the tied house system would be acceptable to them. But this is the central detriment identified by the MMC. Furthermore it is clear that greater freedom to purchase products outside obligations imposed by the brewers would be widely welcomed both by publicans and by their customers.

I have decided that all brewers who own more than 2000 on-licensed premises will be required to release from ties one half of premises above this threshold. They must be

leased free of ties to the company's products. As these premises will now become Free Houses the owning brewer will be permitted to make the new form of tied loans, should the new tenants require them.

At present there are some 15000 free houses. On the basis of the data in the MMC report, these measures will add an additional 11,030 free houses. These proposals should enable a major freeing of the market without the compulsory divestment originally recommended by the MMC.

The central problem identified by the MMC was that the tied house system restricts choice and competition. The MMC identified a number of ways in which the operation of the licensing system itself has this effect.

The licensing system exists to control the supply of alcoholic drinks and to ensure that such drinks are sold only by fit and proper persons. However in practice licensing justices take account of a wide range of factors in deciding whether to grant a licence to an applicant, including whether in their view there is a demonstrable need for a new licensed premises.

The MMC took the licensing system as given. However I think that in view of the consequences for competition I believe we should consider this matter further, even though the MMC made no recommendation to this effect.

It is no part of Government policy to seek to increase the number of licensed premises. But equally a licensing system devised for one purpose should not be used for another purpose, namely to fortify a local monopoly. Mr Rt Hon Friends the Home Secretary and the Lord President and I have agreed to look into this point further.

The main measures I have announced will take some time to put into effect. I propose that a period of 2 years should be allowed for those measures which involve modifying tenancy agreements, or separating a business into a tied and free estate. At the end of one further year I propose that the effect of these measures should be reviewed by the Director General of Fair Trading. They involve significant structural changes to the market, and it will be important to review whether they have had the desired pro-competitive effects.

Throughout my consideration of the MMC report I have been in close touch with the European Commission who are themselves conducting a review of competition in the brewing sector throughout the Community. The measures I intend to take are compatible with the terms of the existing block exemption from Article 85 of the Treaty of Rome. The Commission's own examination is also looking closely at the effects on competition of vertical tying and I look forward with interest to the conclusions of the Commission's

study. When the position in the UK is reviewed at the end of three years we shall take fully into account the results of the EC review and any consequent change to the EC block exemption regulation.

Drafts of Orders to give effect to the measures I have announced today will be published as soon as possible. Parties whose interests are affected by such Orders will have a period of at least six weeks, in which to make representations after they have been published, before the Orders are placed before Parliament.

FROM the Rt Hon Lord Young of Graffham

10th July 1989

Dear Colleague,

SUPPLY OF BEER

I have today announced the Government's decision on its response to the Monopolies and Mergers Commission report on the Supply of Beer. The full text of the statement Tony Newton and I have made is available from the Whips' Office and I attach a note of the key elements of the package.

The consideration of this report has been a complex and time consuming process, but we were determined that it should be thorough. I am particularly grateful to colleagues in both Houses who have explained their concerns to us in such detail.

On a range of issues we have been pleased to discover a wide consensus; for example the extension of the Landlord and Tenant Act (1954) to pub tenants, but without the additional provisions suggested by the MMC, has wide support.

Similarly, our decision that the guest beer provision should be modified to a cask-conditioned beer has alleviated the fears of the small and regional brewers that their beers would inevitably lose out to nationally advertised lagers, and has been widely welcomed. It was their concern on this point which largely determined their initial opposition to the report, and I am therefore encouraged by their change of view.

We received many representations on the future of the loan tie; in particular a variety of members' clubs were concerned that their ability to finance improvements would be inhibited if we proceeded with the MMC's recommendations. I have been persuaded by their arguments and I have therefore decided that the loan tie should continue, but with easier "exit conditions" to ensure that tenants and clubs do not find it impossible to extricate themselves from agreements when they repay the loans.

The most contentious issue was the MMC recommendation that there

should be compulsory divestment by the national brewers of a substantial proportion of their pub portfolio.I am, of course, concerned that we should not hand the lobbyists on future MMC reports a trump card by ignoring the strong adverse public interest findings of this report and the main recommendation designed to address them. It is crucial to remember that the MMC's findings were largely related to the issue of vertical integration in the industry.

However, we clearly understood the concern of a number of MPs and peers that, if at all possible, we should seek to address the competition issue without requiring divestment. We believe that the solution we have now settled on does this, and also avoids the rough justice of the original MMC proposals that all brewers should divest to the same absolute level of pubs.

A number of members of both houses have suggested to me that this problem would not have arisen in the first place if the licensing system operated differently. It is the restrictions on market entry this system imposes that underlie many of the issues at stake. Douglas Hurd, John Wakeham and I have therefore decided to undertake a review of the system, as I outline in the statement.

The eventual package we have settled upon will not please everyone - nor should it if the MMC's analysis was correct - but we believe it to be the best solution. It will represent a very considerable opening of the market to small, local and regional brewers. It will also maintain the integrity of our competition policy at a time when the government is being accused, quite wrongly, of retreating from the principles of a competitive economy. With further potentially contentious MMC reports in the pipeline, such as that on petrol, this is clearly important.

The DTI ministerial team is,of course, open to you for any further information you may want. I, Tony Newton and Francis Maude would be delighted to talk to you at any stage to discuss our proposals.

Yours

David Young

David Young

THE SUPPLY OF BEER - GOVERNMENT'S CONCLUSIONS IN SUMMARY

10TH JULY 1989

The key elements of the package are:

*brewers owning more than 2000 pubs will have to keep at least 50 per cent of the additional pubs as free houses, leased free of ties to the company's products

*this will create 11,000 more free houses, but will allow the brewers to retain their properties

*a review of the licensing system to see whether magistrates should in future only take account of whether applicants are "fit and proper", and no longer risk fortifying local monopolies

*pub tenants will be given greater security of tenure under the Landlord and Tenant Act which will give them greater confidence in meeting their customers' wishes

*publicans of all tied and tenanted premises owned by national brewers, and all recipients of exclusive tied loans from them, must be free to choose and sell at least one cask-conditioned guest beer - this will affect more than 12,000 pubs

*publicans of all tenanted premises tied by national brewers will be free to buy wines, spirits, ciders, soft drinks and non and low alcohol beers from any source

*publicans of all free houses (including those owned by national brewers) will be free to obtain loan ties (with easy exit for the borrower) from any brewer

*all brewers will be required to supply beer to the wholesale trade on the basis of published maximum price lists

These decisions will be implemented by means of statutory orders - views on how the guest beer provision would be most effective will be welcome during the statutory consultation period

Brewers will be given two years to put this into effect, and there will be a review of the way it has worked after three years (ie one year after the two year time limit).

Beer (MMC Report)

3.31 pm

The Chancellor of the Duchy of Lancaster (Mr. Anthony Newton): With permission, Mr. Speaker, I wish to announce the Government's response to the report from the Monopolies and Mergers Commission on the supply of beer. This was a comprehensive report. It recommended far-reaching changes in the brewing sector. Passionate views for and against its recommendations have been expressed forcefully since it was published on 21 March. We have listened carefully to views from all quarters—large and small brewers, the tenants, and most importantly, the consumers. But before we announce our decisions I should like to restate the Government's position in relation to this and all other MMC reports.

The essence of the Government's view is that competition is good for industry and commerce and, above all, for consumers. It encourages enterprise, greater productivity, greater diversity and lower prices. In general, the operation of the market delivers the benefits of competition to the consumer. But sometimes the Government have to step in—in mergers, restrictive and anti-competitive practices, and monopolies. And the ultimate sanction which the Government hold—and exercise when necessary—is to order divestment. Without this sanction our policies to ensure that competition is kept free would be without force and effect.

Certain preliminary conclusions were announced by my hon. Friend the Parliamentary Under-Secretary of State on 8 June; and my right hon. and noble Friend made a further statement of the Government's position during a debate in another place on 14 June. We made it clear that certain measures would apply to the national brewers but not to regional and local brewers.

I now turn to the specific decisions we have reached on matters covered in the MMC's recommendations. We have taken particular note of recent further evidence of the need for more competition in the supply of soft drinks and low-alcohol beers to pubs. We have decided therefore that tenants of the national brewers should be free to buy those and certain other products from any source, free of ties. Products thus freed from the tie will include non-alcoholic and low-alcohol beers, soft drinks, ciders wines and spirits. These measures should significantly enhance competition in the supply of those products.

All brewers will be required to supply beer to the wholesale trade at prices no more than those in a published list. The MMC showed that some wholesalers had been prevented from operating in the market because brewers had refused them supplies. These measures, and others I shall shortly come to, should stimulate a more open and competitive wholesale market in beer and other drinks.

We agree with the MMC's conclusion that licensed tenants must be given greater security of tenure in the new circumstances. I confirm that amendments to the Landlord and Tenant Act 1954 will be brought forward as soon as parliamentary time permits to give licensed tenants the same protection as other business tenants. We are conscious that many tenants have found themselves in an uncertain position since the MMC report was published. In some cases they have already been served with notice to quit. It is regrettable that some brewers have seen fit to take this action before firm decisions have been announced.

We envisage that subject to parliamentary approval of the necessary legislation, all tenancies which have three or more years to run from today's date will fall within the scope of the Act. In the case of tenancies without a definite term, they will fall within the scope of the Act with effect from three years from today, or from the first rent review after the legislation takes effect, whichever first occurs.

The MMC made a number of recommendations aimed at giving tenants further protection beyond that provided by the Landlord and Tenant Act. We have considered this carefully, and have taken particular note of the representations made by the National Licensed Victuallers Association that the power the brewer landlord has over the tenant is such as to justify a special level of tenant's protection. We have, however, decided that it would not be right to go further than affording licensed tenants the same protection as all other business tenancies.

We hope that landlords who have issued notices to quit to their tenants as a consequence of the MMC report will now withdraw such notices. We have announced what we believe are appropriate transitional arrangements. We do not wish to see the position of tenants unduly jeopardised in the period before any amendments take effect. If necessary, my right hon. and noble Friend will make an interim order under the Fair Trading Act 1973, as amended by the current Companies Bill, to safeguard their position.

The MMC recommended the prohibition of all new loan ties. The effect of loan ties is, however, very different from that of ties resulting from ownership, which are permanent ties to one brewer's products. Loan ties can and do change from brewer to brewer frequently. It is clear that in the right circumstances they can be pro-competitive. We have also been persuaded that these loans can be an invaluable source of finance for new public houses and particularly for clubs.

We have therefore decided not to prohibit them, but instead require that they conform to certain conditions to ensure that they are not used anti-competitively. All loan ties must be capable of termination at no more than three months' notice without penalty and, in the case of loans from the national brewers, must be confined to beer.

We have already made it clear that the requirement recommended by the MMC that tenants should be allowed to offer a guest beer should apply only to the national brewers. We have also made it plain that the guest beer will be a cask-conditioned beer, other than stout. The issues to be resolved are who should be permitted to supply the guest beer; and whether the requirement should apply to all exclusive ties entered into by national brewers, whether through ownership or loans.

We have decided that the right to take a guest beer should indeed apply to all exclusive ties entered into by national brewers. As to who should be able to supply to the houses of the national brewers, one view is that any brewer, other than the one responsible for the tie, should be able to supply the guest beer. On the other hand, the Brewers Society has suggested that only brewers with an annual output of less than 200,000 barrels may supply. That would exclude any other than small, local brewers. We would welcome further views on this point during the statutory consultation period.

I now turn to measures to address the central question of the size of the tied estate of the national brewers. The MMC recommended that no brewer should be allowed to own more than 2,000 on licences. We have always made it

[Mr. Anthony Newton]

clear that we were prepared to consider alternatives provided that they dealt with the public interest issues clearly identified by the MMC.

The national brewers made it clear that nothing which fundamentally affected the strength of the tied house system would be acceptable to them. But this is the central detriment identified by the MMC. Furthermore, it is clear that greater freedom to purchase products outside obligations imposed by the brewers would be widely welcomed both by publicans and by their customers.

We have decided that all brewers who own more than 2,000 on-licensed premises will be required to release from ties one half of premises above this threshold. They must be leased free of ties to the company's products. As these premises will now become free houses, the owning brewer will be permitted to make the new form of tied loans should the new tenants require them.

At present there are about 15,000 free houses. On the basis of the data in the MMC report, these measures will add an additional 11,030 free houses. These proposals should enable a major freeing of the market without the compulsory divestment originally recommended by the MMC. The central problem identified by the MMC was that the tied house system restricts choice and competition. The MMC identified a number of ways in which the operation of the licensing system itself has this effect.

The licensing system exists to control the supply of alcoholic drinks and to ensure that such drinks are sold only by fit and proper persons. However, in practice, licensing justices take account of a wide range of factors in deciding whether to grant a licence to an applicant, including whether in their view there is a demonstrable need for a new licenced premises.

The MMC took the licensing system as given. However, in view of the consequences for competition, we believe we should consider this matter further, even though the MMC made no recommendation to that effect.

It is no part of Government policy to seek to increase the number of licensed premises. But, equally, a licensing system devised for one purpose, should not be used for another purpose, namely, to fortify a local monopoly. My right hon. and noble Friend, together with my right hon. Friends the Home Secretary and the Lord President, have agreed to look into this point further.

The main measures we have announced will take some time to put into effect. We propose that a period of two years should be allowed for those measures which involve modifying tenancy agreements, or separating a business into a tied and free estate. At the end of one further year we propose that the effect of these measures should be reviewed by the Director General of Fair Trading. They involve significant structural changes to the market, and it will be important to review whether they have had the desired pro-competitive effects.

Throughout our consideration of the MMC report we have been in close touch with the European Commission, which is conducting a review of competition in the brewing sector throughout the Community. The measures that we intend to take are compatible with the terms of the existing block exemption from article 85 of the treaty of Rome.

The Commission's own examination is also looking closely at the effects on competition of vertical tying and we look forward with interest to the conclusions of the Commission's study. When the position in the Unite Kingdom is reviewed at the end of three years we shall tak fully into account the results of the EC review and an consequent change to the EC block exemption regulatio

Drafts of orders to give effect to the measures that w have announced today will be published as soon a possible. Parties whose interests are affected by suc orders, will have at least six weeks after they have bee published in which to make representations before th orders are placed before Parliament.

Mr. Bryan Gould (Dagenham): Does the Chancello recall the enthusiastic welcome given by the Secretary State to the Monopolies and Mergers Commission repor his readiness to grapple with the monopoly identified b the commission and his proclaimed keenness to protect th consumer? What has happened in the meantime to explai the embarrassing shift from initial welcome to the crave and complete capitulation which he has announced toda Could it conceivably be something to do with the immen lobbying power of the big brewers and the fact that th are major bank rollers of the Tory party?

Is this not a blatant example of a Government bei bought and sold by its major commercial backers, phenomenon which should be regarded as whol unacceptable to all who are committed to goo government? What price now the Government's com petition policy and the authority of the MMC? Does n this climb-down completely undermine the role of t MMC? What weight can now be given to the import reports which are still expected on credit cards and petrol retailing?

Does the right hon. Gentleman accept that allowing big brewers to retain their ownership and their continu power to loan-tie the so-called free houses gives them the power they need, irrespective of any formal tie, compel tenants to accept their products? Is this therefore a complete failure to address what, in Chancellor's own phrase, is the central detriment identi by the Monopolies and Mergers Commission?

One other issues, we welcome the extension of Landlord and Tenant Act to tenants, but what protect is to be offered to tenants who will come under imme pressure from owners to contract out of the Act? Doe not accept that without that safeguard the so-ca protection is largely illusory? Is this not an extr disappointment to the smallest breweries? For exam what has happened to the sliding scale for duty on w they placed such hopes to improve their access to market? Is it not the truth that after so much posturing Secretary of State has shown, as many of us foresaw, he simply does not have the bottle to take on the brewers? Many public houses carry the name "The K Head". After this climb-down we can expect many pu houses to be renamed "Lord Young's Scalp".

Mr. Newton: I can only assume that the Gentleman scripted his remarks before he had a chanc study the statement. The notion that the proposals th have put before the House represent anything other a substantial change in the structure of the industr produce a much more competitive framework in respo the national brewers is far-fetched. The hon. Gentle might recall that the comments that were made follo the publication of this report contained not m objections by some brewers, but vigorous objections b

Cite ... 9a

9(a-b)

PRIME MINISTER

MMC REPORT ON BEER

Lord Young now proposes to make a Statement on his conclusions on beer on Monday.

I attach a draft of his Statement setting out the final package. This is in two parts:

Flag A - the main Statement

Flag B - a further element he proposes to include, subject to agreement from the Home Secretary, about a possible review of the concept of 'need' in the licencing system.

Untying

The licencing system aspect apart, the package is broadly the same as Lord Young last described to you. The main change is to the nature of the untying proposal for the Big Six. Rather than having a single absolute threshold for all Six (at say 3,500) it is now proposed to have a proportional formula under which the brewers are obliged to untie 50 per cent of their pubs above a 2,000 limit. I have marked on the text the implications for the different brewers.

Tenants' Protection

The one aspect of the package that I do not find entirely clear from the draft is on tenants' security. The paragraph at the bottom of page 2 of the draft could be taken as implying retrospective legislation. But I have checked that this is not the case. The phrase 'all tenancies which have three or more years to run from today's date will fall within the scope of the Act' simply means that 'today's date' will be used to define the period of the tenancies covered, and does not imply retrospective effect.

6.

In the period immediately after Lord Young's announcement, he will be relying on 'moral persuasion' (see the middle paragraph on page 3) to persuade landlords not to evict their tenants. With effect from the spill-over, he does however envisage (see the square-bracketed sentence on page 3) using his powers under the Fair Trading Act and the present Companies Bill to make an interim order which would effectively prevent evictions until the new landlord and tenant legislation was brought into effect.

Conclusion

(i) Are you content with the terms of Lord Young's proposed announcement?

Or

(ii) Are there any comments you want to make?

PAUL GRAY

7 July 1989

SL2AVT

dti

the department for Enterprise

CC DTM

CONFIDENTIAL AND MARKET SENSITIVE

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

Paul Gray Esq
Private Secretary to the
Prime Minister
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Direct line 215 5422
Our ref PB5BKC
Your ref
Date 7 July 1989

Dear Paul.

MMC REPORT ON BEER

I enclose a draft of the statement my Secretary of State proposes to make on Monday in response to the MMC's report. Business Managers in both Houses have made arrangements for the statement.

My Secretary of State will be considering the draft further over the weekend, but would like the Prime Minister to see the present version over the weekend.

I also enclose (not to all copy addressees) a copy of my letter today to Colin Walters (Home Office) about what might be said about the licensing system.

I am sending copies of this letter to Alex Allen (HM Treasury), Stephen Catling (Lord President's Office), Nick Gibbons (Lord Privy Seal's Office), Shirley Stagg (MAFF) and to Trevor Woolley (Cabinet Office).

Yours ever,

Neil

NEIL THORNTON
Private Secretary

the Enterprise initiative

dti

the department for Enterprise

CONFIDENTIAL AND MARKET SENSITIVE

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

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Direct line 215 5422
Our ref PB5BKB
Your ref
Date 7 July 1989

Dear Colin,

MMC REPORT ON BEER - LICENSING

My Secretary of State spoke with yours in the margins of Cabinet yesterday.

I attach an extract from the MMC's Report on The Supply of Beer, in which the Commission comment on the impact of the licensing system on the market in Beer. As you know, Lord Young thinks it will be most helpful if, as an element of the announcement he proposes to make on Monday, he could announce some form of review of the "need" criterion, since this directly addresses the market entry question identified by the MMC. I attach a first draft of what my Secretary of State might say on this subject (together with the full statement to put it in context).

I am sorry that this proposal only arose late in my Secretary of State's discussion with colleagues on his response to the Report, and that you have therefore had little time to consider it. The Chancellor of the Exchequer has shown an interest in this issue; and the Lord President is of course concerned as Chairman of the relevant inter-departmental Committee.

Lord Young may well wish to speak to the Home Secretary over the weekend; failing which I hope they can be in touch on Monday morning.

I am sending copies of this letter to Paul Gray (Number 10), Alex Allen (HM Treasury), Stephen Catling (Lord President's Office), and Nick Gibbons (Lord Privy Seal's office).

Yours ever,

Neil Thornton.

NEIL THORNTON
Private Secretary

the Enterprise initiative

BEER : PROPOSED TEXT ON NEED IN THE LICENSING SYSTEM

The central problem identified by the MMC was that the tied house system restricts choice and competition. However the tie has this effect because among other things the licensing system limits market entry. The MMC identified a number of ways in which the operation of the licensing system has this effect.

The licensing system exists to control the supply of alcoholic drinks and to ensure that such drinks are sold only by fit and proper persons. However in practice licensing justices take account of a wide range of factors in deciding whether to grant a licence to an applicant, including whether in their view there is a demonstrable need for a new licensed premises. Indeed, in some circumstances they pointed out that existing licensees could challenge new applicants on this point, thereby protecting themselves from new competition.

The MMC took the licensing system as given. However I think that in view of the consequences for competition I believe we should consider this matter further, even though the MMC made no recommendation to this effect.

My rt Hon Friend the Home Secretary and I have therefore agreed that we should look into whether it is now appropriate for a criterion of need to be applied in this way by licensing justices. We have it in mind to consider whether it is right that justices should be required to consider such commercial matters at all, or whether in doing so they might also take account of whether the grant of an application in a particular case would increase an individual brewer's local monopoly.

dti

the department for Enterprise

CONFIDENTIAL AND MARKET SENSITIVE

DRAFT 3 16:00 July 7, 1989

BEER : DRAFT STATEMENT

With permission, I wish to announce the Government's response to the report from the Monopolies and Mergers Commission on the Supply of Beer.

As the House is aware, this is a comprehensive report. It recommends far reaching changes in the brewing sector. It has generated great controversy. Passionate views for and against its recommendations have been expressed forcibly to me and to my colleagues since I published it on 21 March. I have listened carefully to views from all quarters - large and small brewers, the tenants, and the consumers. But before I announce my decisions I should like first to restate the Government's locus in relation to this and all other MMC reports.

The essence of the Government's view is this: competition is a good thing. Competition is good for industry, commerce and consumers. It encourages enterprise, greater productivity, more choice and lower prices. In general the operation of the market delivers the benefits of competition to the consumer. But sometimes the Government has to step in to keep competition free. This is true of all aspects of competition policy - mergers, restrictive and anti-competitive practices, and monopolies. And on mergers and monopolies the ultimate sanction which the Government holds - and exercises when necessary - is to order divestment. Without this sanction our policies would be without force and effect.

These powers pose hard decisions for Government. But the Government is not led by a blind belief in market forces. Where the Government believes it to be right, we take forceful action - including divestment - to ensure that competition is kept free.

It is against this background that I have considered the MMC report on the supply of beer, and listened to the many representations of all the interested bodies. Since I reported my thinking to your Lordships House on 14v June I have focussed particularly in my discussions on the views of the national brewers. But having listened carefully to all the views put to me, I have now reached decisions on the action I consider appropriate to remedy the detriments identified by the MMC.

PRELIMINARY DECISIONS

Certain preliminary conclusions were announced by my Hon Friend the Parliamentary Under Secretary of State on 8 June; and I made a further statement of the Government's position during a debate

in this House on 14 June. We have made it clear that certain measures would apply to the national brewers but not to regional and local brewers.

I now turn to the specific decisions I have reached on matters covered in the MMC's recommendations.

SPECIFICS : NABLABS AND NON BEER DRINKS

I have taken particular note of recent further evidence of the need for more competition in the supply of soft drinks to pubs. It is also important for social reasons that low alcohol and non-alcoholic beers should be freely available at competitive prices. We have decided therefore that tenants of the national brewers should be free to buy these and certain other products from any source, free of ties. Products thus freed from the tie will include non alcoholic and low alcohol beers, soft drinks, ciders wines and spirits.

These measures should significantly enhance competition in the supply of these products.

WHOLESALE PRICE LISTS

All brewers will be required to supply beer to the wholesale trade at prices no more than those in a published list. The MMC showed that some wholesalers had been prevented from operating in the market because brewers had refused them supplies. This measure, and the creation of a larger free trade as a result of the freeing of part of the estates of the national brewers, should stimulate a more open and competitive wholesale market in beer and other drinks.

TENANTS SECURITY

In relation to tenants security, we agree with the MMC's conclusion that licensed tenants must be given greater security of tenure if they are to be free to play a proper role in meeting their customer's preferences. I confirm that amendments will be brought forward as soon as Parliamentary time permits to the Landlord and Tenant Act 1954 to give licensed tenants the same protection as other business tenants. I am conscious that many tenants have found themselves in an uncertain position since the MMC Report was published. In some cases they have already been served with notice to quit. I view it as a matter for regret that some brewers have seen fit to take this action before firm decisions have been announced.

We envisage that subject to Parliamentary approval of the necessary legislation all tenancies which have three or more years to run from today's date will fall within the scope of the Act. In the case of tenancies without a definite term, then

they will fall within the scope of the Act with effect from three years from today, or from the first rent review after the Act takes effect, whichever occurs sooner.

In their Report the MMC made a number of recommendations aimed at giving tenants further protection, beyond that provided by the Landlord and Tenant Act. I have considered the issues raised by this carefully, and have taken particular note of the representations made by the NLVA to the effect that the power the brewer landlord has over the tenant is such as to justify a special level of tenant's protection.

I have however decided that it would not be appropriate to go further than affording licensed tenants the same protection as all other business tenancies.

I hope that as a result of my announcement today those landlords who have issued notices to quit to their tenants as a consequence of the MMC Report will judge it appropriate to withdraw such notices. [Although I have announced what I believe are appropriate transitional arrangements I do not wish to see the position of tenants unduly jeopardized in the period before any amendments take effect, and if it seems appropriate I would consider making an interim Order under the Fair Trading Act 1973 to safeguard their position.]

On the basis of discussions I have had with the brewers I believe that there is agreement that the measures I have announced on tenants' security are appropriate.

LOAN TIES

I propose also to take steps to ensure a free and open market in loan ties. The effect of loan ties is very different from that of ties resulting from ownership. The latter are permanent ties to one brewer's products. Loan ties on the other hand can and do change from brewer to brewer frequently. It is clear that in the right circumstances they can be pro-competitive. I have also been persuaded that these loans can be an invaluable source of finance particularly for clubs.

I have therefore decided not to prevent loan ties altogether, but instead provide that they conform to certain conditions to ensure that they are not used anti-competitively. The main condition will be that all ties linked with loans must be capable of termination if the borrower so chooses at no more than 3 months notice without penalty.

GUEST BEER

The guest beer proposal has emerged as a potentially very significant market opening measure. It is however difficult to

assess where exactly the balance should be struck between the interests of the customer in having the widest possible choice of beers, and the need for smaller brewers to be guaranteed at least a minimum level of sales through their own houses.

We have already made it clear that the requirement to take a guest beer should apply only to the national brewers. The issues to be resolved are who should be permitted to supply the guest beer; and whether the requirement should apply to all exclusive ties entered into by national brewers, whether through ownership or loans.

We have decided that the requirement to take the guest beer should indeed apply to all ties entered into by national brewers.

The only matter this leaves to be settled on this issue is who should be able to supply to the houses of the national brewers. There is a range of possibilities. One could provide that any brewer other than the one responsible for the tie should be able to supply the guest beer. On the other hand, the Brewers Society have suggested that the only brewers who should be permitted so to supply should be brewers with an annual output of less than 200,000 barrels. This would have the broad effect of excluding any other than small, local brewers.

We would welcome further views on this. On this matter, draft Orders we publish will have a consultative character. The final formula will depend on how this proposal is received.

BIG SIX TO FREE HOUSES

I now turn to measures to address the central question of the size of the tied estate of the national brewers. Here I regret to say that despite our discussions I have not been able to accept the arguments put by the brewers.

The issues raised by the MMC were serious and required a measured response. I appreciate that many of the remedies proposed by the MMC were unwelcome to the brewers, but I have always made it clear that I was prepared to consider alternatives provided that they dealt with the public interest issues clearly identified by the MMC. The discussions we have had with the parties over the last few weeks have been invaluable in clarifying the issues. The major brewers have however made it clear that nothing which fundamentally affects the strength of the tied house system will be acceptable to them. This however is central to the detriments identified by the MMC. Furthermore it is clear that greater freedom to purchase products outside obligations imposed by the brewery would be widely welcomed both by publicans and by their customers.

I have decided that all brewers who own more than x000 on-

licensed premises will be required to release from ties x% of premises above this threshold. These premises are to be put into a separate company within the group and operated at arms length. They will be leased free of ties to the company's products at open market rents. The owning brewer will be permitted to make tied loans to premises in the owned free estate, provided such loans conform to the general conditions outlined above, and provided they also permit at least one guest beer to be supplied beside the owning brewer's products.

At present three quarters of the pubs in the UK are brewer owned. There are some 15000 free houses. These measures will add an additional x000 free houses.

LICENSING SYSTEM

[Section on possible study to be inserted here.]

IMPLEMENTATION PERIOD AND REVIEW

The main measures I have announced will take some time to put into effect. I propose that a period of 2 years should be allowed for those measures which involve modifying tenancy agreements, or separating a business into a tied and free estate. At the end of one further year I propose that the effect of these measures should be reviewed. They involve significant structural changes to the market, and it will be important to review whether they have had the desired pro-competitive effects.

EC POSITION

Throughout my consideration of the MMC report I have been in close touch with the EC Commission who are themselves conducting a review of competition in the brewing sector throughout the Community. As in the UK there is a strong commitment at the Community level to see competition in this sector operate more freely. [I believe the measures I intend to take are compatible with the terms of the existing block exemption from the competition rules of the Treaty of Rome.] The EC Commission's own examination is also looking closely at the effects on competition of vertical tying and I look forward with interest to the conclusions of the Commission's study. When we review the position in the UK in three years time we shall take fully into account the results of the EC review and any consequent change to the EC block exemption regulation.

Drafts of Orders to give effect to the measures I have announced today will be published as soon as possible. Parties whose interests are affected by such Orders have a statutory period of between four and six weeks, depending on the Order, in which to make representations after they have been published, before the Orders are made and placed before Parliament.

dti

the department for Enterprise

CONFIDENTIAL AND MARKET SENSITIVE

1. DTI - to us
2. CF - pc.

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

Department of
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Direct line 215 5621
Our ref PB5BJP
Your ref
Date 7 July 1989

Dear Stephen,

BEER - STATEMENT

I am writing to confirm my conversation yesterday with Gillian Baxendine about my Secretary of State's proposed statement on the MMC report on Beer.

The present plan is for my Secretary of State to announce his decision on the report to the House of Lords on Monday with the Chancellor of the Duchy offering an equivalent statement in the Commons. I hope it will prove possible to circulate a draft of the statement tonight.

In case developments in discussion with the brewers make a statement on Monday impracticable, we have a fall-back - less satisfactory both to you and to us - of making the statement on Tuesday, and I should be grateful if you could keep that option open against that possibility.

I am sending a copy of this letter to Ralph Hulme (Lord Privy Seal's Office) with a similar request; and to Paul Gray (Number 10), Alex Allen (HM Treasury), Colin Walters (Home Office) and Trevor Wolley (Cabinet Office).

Yours,

PP NEIL THORNTON
Private Secretary

the Enterprise initiative

10 DOWNING STREET

Prime Minister

1. Did Lord Young echo them to you on Sunday?

No

2. If not, are you content to take no action at this stage?

RLC
3/7

CF - p.c. No action at this stage.

RLC
4/7

CONFIDENTIAL

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT
30 June 1989

Dear David,

You copied to me your letter of 20 June to Nick Ridley renewing your bid to table amendments to the Local Government and Housing Bill which would extend to pub tenants the protection which the Landlord and Tenant Act 1954 already gives to business tenants generally. I have also seen Nick Ridley's reply of 23 June in which he reserved his position on the substance of your proposals but said that, if the Government's Business Managers were content, and there was agreement to the substance of what you propose, he would be happy to see your amendments added to the list of Lords amendments which he sent to John Belstead on 20 June.

I have discussed your proposals with John Belstead, David Waddington and Bertie Denham. From a business management point of view, we continue to see a number of serious difficulties about them. You suggest that although the central issue of how to tackle the brewers' monopoly remains difficult and controversial, the same is not true of the question of pub tenants' security. I am advised, however, that if specific amendments on this issue were brought forward in the Lords, where Marcus Kimball is already active about the MMC report, they would undoubtedly still generate a substantial debate. Moreover, as Nick Ridley himself noted, even if your amendments passed easily through the Lords, they would have to be considered by the Commons in the spillover, where there must be a real likelihood that the Opposition would seek to use them to open up discussion of the MMC report as a whole. Nick Ridley has already given notice that he hopes to table some 100 amendments to the Local Government and Housing Bill in the Lords, and there will additionally be a very substantial number of amendments from Malcolm Rifkind and Peter Walker. The Bill is, as you know, unguillotined. There is, I am afriad, no doubt that the addition to the Bill of your proposed amendments, at a point in the Session where legislative time is increasingly constrained, would further complicate the handling of what is already a very difficult measure.

I do not in any way underestimate the difficulties which you have in responding to the MMC report and I look forward to discussing with you on 3 July the wider handling of the package which you are preparing. If you secure policy approval to your proposals on tentants' security, I should be ready to give thought to the inclusion of the necessary legislation in some suitable way in next Session's legislative programme, provided that the overall length of that programme can be kept within the limits already agreed by Cabinet. I am afraid that I cannot, however, see my way to the inclusion of the amendments you propose in this Session's programme.

I am copying this letter to the Prime Minister, Nick Ridley, John Belstead and John MacGregor.

Yours ever,
John

JOHN WAKEHAM

The Rt Hon Lord Young of Graffham
Secretary of State for Trade and Industry

CONFIDENTIAL

HOUSING: Policy Pt 15

SW2AXU

CONFIDENTIAL

PRIME MINISTER

MMC REPORT ON THE BREWERS: TENANT PROTECTION

When Lord Young last came to see you he asked if you would support his proposal that legislative space should be found in the Local Government and Housing Bill for the proposed provision to extend to pub tenants the protection of the Landlord and Tenant Act. But when you subsequently saw Lord Young's letter on this point, you decided to wait until Nick Ridley and the Business Managers had commented before intervening. Their comments are now available.

The papers attached are:

Flag A - Lord Young's letter

Flag B - letter from Nick Ridley in which he effectively leaves the decision to the Business Managers

Flag C - letter from the Lord President, in which the Business Managers firmly resist inclusion in this Session's bill, but undertake to consider the possibility of legislation next Session if policy approval is given to the tenancy protection proposal.

You will want to consider whether to intervene now. On balance I think it might be best for you to stay out of it at this stage. Lord Young has still to complete his discussions with colleagues on the nature of his overall package. It might be better to let him complete this process and come back to you with his final proposals. Once the nature of the final package is known, you may need at that stage to have a word both with Lord Young and the Business Managers to resolve the legislative handling.

Content to take no action at this stage?

If so, you may wish to bear this issue in mind when Lord Young comes to see you on Sunday; although the beer package is not the purpose of that meeting he may mention it.

PAGG

(PAUL GRAY)

30 June 1989

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The National Archives

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Extract details: PM to Clark dated 26 June 1989	X
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Enter the piece and item references, .
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2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

The Rt Hon the Lord Young of Graffham
Department of Trade and Industry
Victoria Street
LONDON
SW1

23 June 1989

Dear Secretary of State

Thank you for your letter of 20 June about your wish to amend the Landlord and Tenant Act 1954 to bring all tenants of on-licensed premises within its provisions and using the Local Government and Housing Bill as a vehicle to do so.

I am looking urgently at the substance of what you propose to do and will come back to you on this early next week. There is also the point that your proposed amendment may not be straightforward to draft, particularly in relation to transitional provisions.

Previously my main concern was to avoid a controversial debate on the MMC report during the proceedings on the Local Government and Housing Bill as this would only jeopardise the Bill's progress. I am reassured by what you say about the recent Lords debate on the Report, although we have to recognise that even if your amendments passed easily through the Lords they would have to be considered by the Commons in the spillover. If they led to a major Commons debate on the Report in the last few days of the Session this could lead to problems. But if the Business Managers are content, and if we can agree on the substance of what you propose, I would be happy to see your amendments added to the list of Lords amendments which I sent to John Belstead on 20 June.

I am sending a copy of this letter to the Prime Minister, John Wakeham, John Belstead and John MacGregor.

pp NICHOLAS RIDLEY

(Approved by the Secretary of State
and Signed in his Absence)

Gert Mack
Menops + Meyer

Graham Riddick MP (Colne Valley)

HOUSE OF COMMONS
LONDON SW1A 0AA

22nd June 1989

The Rt. Hon. Margaret Thatcher MP
No. 10 Downing Street
London
SW1A 2AS

Dear Prime Minister

The MMC Report on the Brewing Industry

We are writing to you now because we are very concerned at recent developments on the above issue. Two weeks ago all the reports emanating from the Department of Trade and Industry suggested that Lord Young did not intend to proceed with the MMC's proposal that the National Brewers should only be allowed to own 2,000 public houses. After last week's debate on the matter in the House of Lords it would seem that this proposal, or at least a proposal not far removed from it, is still being considered by the Government.

We believe that a Government move to force companies to divest themselves of property assets which they have built up legally and enterprisingly over many years and decades would run contrary to the basic Conservative principle of the right to own and accumulate private property. Lord Young's most recent suggestion, namely that the national brewers be allowed to retain ownership of pubs above the 2,000 threshold but not to actually run them, would amount to the most appalling and unwarranted interference in the market place imaginable while continuing to offend the Conservative principle of owning private property and operating a business from such property.

Perhaps the most telling moment during last week's Lords' debate was when Lord Williams of Elvel, speaking from the opposition front bench, commended Lord Young on his conversion to "industrial policy and clear industrial planning." Lord Williams also said that the Government was right to reject a solution to the problem based on "pure theology of market forces". Furthermore, it is notable that of seventeen peers who spoke, fifteen, mostly Conservative peers, were hostile to the proposals contained in the MMC Report. Similarly, a hundred colleagues in the Commons have signed the Early Day Motion urging the Government to shelve the MMC Report and we believe that the Government should think twice before enacting proposals whose main supporters have come from the Labour party, in particular Bryan Gould.

From a purely practical point of view could we point out that we

believe that Lord Young's compromise proposal that the national brewers would operate their property portfolios on an independent arms length basis, would almost certainly signal the death of tenanted pubs as currently operated because the brewers would simply charge full commercial property rents without the certainty of profits from drinks trading. Such rents would then make many of the smaller, more traditional pubs unviable. We also have little doubt that one or two of the major brewers would decide to get out of brewing altogether so as to concentrate on retailing thus possibly allowing the major Continental, American or Japanese brewers the chance of getting a foothold in the British brewing industry. We seriously fear the political repercussions if such a thing were to happen.

We do seriously question some of the premises on which the MMC based its proposals. The most glaring failure by the MMC was its inability, despite two and a half years of preparation, to realise that far from meekly selling off the appropriate number of pubs to bring themselves within the 2,000 limit, some of the national brewers would simply sell off their breweries and retain their retailing interests. This omission could lead from the MMC's mistaken analysis that the brewers make most of their profits from brewing and wholesaling and that their managed houses are only marginally profitable at best. The brewers deny this emphatically.

The MMC has totally failed to prove that there is any great degree of consumer dissatisfaction with the current set-up and closer examination of the one survey quoted (carried out by the Consumers' Association) certainly does not back up the charge of consumer dissatisfaction.

We believe that the MMC's failure to carry out a proper comparison with the brewing experience in other countries is an extraordinary omission. Had it done so it would have discovered how <u>low</u> the concentration of the UK brewing industry is compared to other brewing industries overseas. The MMC would also have discovered that the UK brewing industry offers more brands in total, sells its beer cheaper and offers more choice of brands <u>per outlet</u> than any other major beer drinking countries. The MMC has inexplicably underplayed the considerable competition which exists <u>between</u> pubs and has also underplayed the massive investment which has been made in the refurbishment of public houses, amounting to well over 3 billion pounds in the last six years.

The MMC Report also failed to appreciate that its recommendation to end tied loans to the free trade would deny the opportunity for a large number of clubs, particularly sports clubs, to start up because they do not have the necessary collateral to obtain normal commercial loans. In our view the Report, despite its length and the length of time it took to prepare, displays a number of shortcomings and its proposals should therefore be viewed with some caution.

Since Graham Riddick had his adjournment debate on this subject he

has had some contact with the Brewers Society and also the national Brewers. He believes that a compromise settlement is perfectly possible and we would like to put some suggestions to you which we believe the brewers would accept, albeit unwillingly, and which the Government could sell as being in the best interests of consumers. We believe that such a settlement could be as follows:

1) No national brewer to own more than 30% of public houses in any petty sessional division area. This would clearly put an end to any regional monopolistic situations which exist currently.

2) Small brewers currently producing not more than 200,000 barrels a year to be allowed to sell cask conditioned ale into the tenanted pubs of the national breweries. This would have the two-fold effect of extending consumer choice and providing opportunities for the smaller brewers.

3) Every free trade outlet should be free to change brewers and dissolve a tied loan within a month, legal requirements permitting. We should point out that competition in this area is ferocious between the brewers at the moment anyway but this would ensure that competition was maintained, if not increased.

4) Every tenant of the national brewers should be free to buy wines and spirits, soft drinks, ciders and low and non alcohol drinks from whatever source they choose.

5) The Government should accept the MMC proposal that the restrictive covenants and ties imposed on property which has been sold by the brewers should be ended.

6) The Landlord and Tenant Act should be amended so that pubs are put on an equal footing to other commercial premises but the proposed code of practice should not be implemented.

We believe that the above proposals would represent an honourable settlement from the Government's point of view and at the same time avoid a major clash with the national brewers. We believe that any moves on the Government's part to force brewers to divest themselves of some of their pubs would be wholly unacceptable and would be resisted by many colleagues. We therefore urge you to ensure that this does not happen and respectfully submit the above proposals as a sensible way forward.

Yours ever

Graham Riddick

GRAHAM RIDDICK

Michael Mark

Marion Fox

SIR PETER HORDEN

SIR ANTHONY GRANT

SIR CHARLES MORRISON

SIR ANTHONY BUCK

JIM SPICER.

(DUNN)

cc
Rt. Hon. Lord Young of Graffham
Hon. Francis Maude MP
Rt. Hon. David Waddington QC

The National Archives

DEPARTMENT/SERIES PREM 19 PIECE/ITEM ..... (one piece/item number)	Date and sign
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C.F.

Re ACF [illegible].

[illegible]
26/6

Note
Told Ben Slocock (DTI) that PM would not be coming to this stage.

PRIME MINISTER

PRC 6 26/6

MMC REPORT ON BEER: LANDLORD AND TENANT ACT PROTECTION

You will recall that when Lord Young came to see you yesterday he said he would be writing round to colleagues renewing his request for clauses to be added to the Local Government and Housing Bill in order to provide tenant protection for publicans. Lord Young said he hoped you felt able to agree to support his proposal, but you were non-committal.

The promised letter has now arrived (attached). It adds little to what Lord Young said to you.

You will want to consider whether to express a view now, or wait until Nick Ridley and the Lord President have commented.

I have discussed the position informally with their offices. My impression is that the worries on business management grounds about adding to the Local Government and Housing Bill have if anything increased over the last few weeks. The Bill is running into substantial timetable difficulties in the Lords (e.g. two recent 4 am sittings) and the business managers are already pressing DOE to limit the number of amendments they want to include. It may therefore be best for you to wait for the business managers to respond before you react to Lord Young's latest letter.

(i) Content to wait until others have commented? Yes

OR

(ii) Is there any steer you want to give at this stage?

No

PRC6.

PAUL GRAY
21 June 1989
EL3DPG

The National Archives

DEPARTMENT/SERIES PREM 19 PIECE/ITEM 2704 (one piece/item number)	Date and sign
Extract details: Colston to Powell dated 21st June 1984	
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dti

the department for Enterprise

A A cc PS

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

CONFIDENTIAL

Rt Hon Nicholas Ridley AMICE MP
Secretary of State for the Environment
Department of the Environment
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London SW1P 3EB

Department of
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Direct line 215 5422
Our ref NP2ABV
Your ref
Date 20 June 1989

Dear Nicholas,

MMC REPORT ON BEER: LANDLORD AND TENANT ACT 1954

I am writing again about the possibility of using the Local Government and Housing Bill to make a minor change to the Landlord and Tenant Act 1954. You will remember that we exchanged letters about this earlier this year, and that correspondence rests with your letter of 22 May.

Your concern then, and that of John Wakeham, was that the Bill would be used as a vehicle for debating the MMC Report as a whole. Since then matters have developed somewhat, and you will have seen that we had a full debate in the Lords last week.

While the central issue of how to tackle the brewers monopoly remains difficult and controversial, the same is not true of the question of tenants' security. There is a consensus that basic Landlord and Tenant Act protection would be appropriate, and that it would not be right to go further and set up a special regime under the Act, or to supplement it with the mandatory Code of Practice. During the Lords debate, no-one spoke against this position; speakers on the Opposition benches were in favour of it.

I believe that, rather than opening up the matter to general debate, action now on this aspect would help the later handling of the general question of the response to the MMC Report. I say this for a number of reasons. First, now that the Lords have had an opportunity to debate the Report as a whole, the introduction there of a non-controversial part of the implementation package should not be cause for further discussion.

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the department for Enterprise

Second, tenants security is fundamental to a proposal that I have put to the brewers that will address the problem of the tie without forcing property divestment. This is the suggestion that the national brewers should be required to put pubs above a certain threshhold into an arms length property portfolio, where they would be leased free of ties to the brewer's products. For this to be effective, tenants must be able to resist any attempts by the brewers to introduce surreptitious ties. The extent to which we can secure the necessary backbench support for measures to remedy the detriments identified by the MMC may depend on delivering solutions that avoid forced divestment of assets. Having said this I would not like you to gain the impression that this is the only way forward, and I am clear that the arguments for greater tenants security stand in their own right.

Finally, we shall shortly be moving into final discussions with the national brewers before announcing decisions on the remainder of the response to the MMC Report. The fewer loose ends that remain at that stage the easier will be the handling of the central issue.

I understand that the Local Government and Housing Bill is to have its Second Reading in the Lords on 4 July. I should be very grateful if you would give your agreement that in the light of these arguments this Bill could after all be used to introduce the few clauses necessary to protect the position of licensed tenants.

I am sending copies of this letter to the Prime Minister, John Wakeham, John Belstead and John MacGregor.

Yours ever,

David

the Enterprise initiative

· GOUT MACH · Leopold 2 Kreuzer 1804

CONFIDENTIAL AND PERSONAL

RLa
EJMAWP

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

20 June 1989

Dear Neil,

MMC REPORT ON THE BREWERS

Your Secretary of State and Mr Maude came to see the Prime Minister this morning to discuss the latest position on the handling of the MMC Report.

I should be grateful if you would ensure that this letter is seen only by those with a strict need to know.

Your Secretary of State said that there was strong Parliamentary pressure, from both Houses, to drop any proposals designed to remedy the problems identified by the MMC. But he was sure that such a response would not be appropriate (the Prime Minister concurred). Indeed, in the meetings which he and the Parliamentary Secretary had already had with the brewers, substantial progress had been made in charting a way forward on some aspects of the Report. These included:

- the introduction of a cask-conditioned guest beer in public houses owned by the Big Six brewers;

- measures to improve tenants' protection;

- changing the terms of loan-ties so that tenants had no continuing obligations to the brewers once loans had been fully repaid.

But there was one major issue that still had to be tackled. The MMC had recommended divestment of public houses owned by the Big Six in excess of ownership of 2,000 public houses each. This proposal had failed to anticipate the reaction of the brewers that, faced with that position, they would dispose of their brewing interests rather than their 'excess' public houses. It was therefore necessary to devise an alternative remedy to the competitive problem identified by the MMC.

Continuing, your Secretary of State said he was now attracted to a mechanism under which the large brewers would be allowed to operate only a given number of public houses under the existing tied arrangements with the tenants; above that threshold the brewers would not be required to divest

EA

ownership but they would be obliged to allow tenants to operate on a non-tied basis. Although the large brewers would not be required to sell the 'excess' public houses, they could of course decide to do so in some cases. A parallel measure would be to introduce amendments to the Landlord and Tenant Act in order to give protection to the tenants of public houses above the threshold.

Your Secretary of State said that, if he decided to go down this route, the key decision would be the level of the threshold; he was currently contemplating a figure in the range 3,500 to 5,000. He did not envisage reaching a decision on this point until after he had had discussions with the large brewers following his return from Russia in ten days time. He did not anticipate - or indeed favour - an outcome in which the brewers publicly agreed with the figure on which he decided; it was therefore likely that the Government would have to take action to impose the threshold through Orders.

In discussion, the Prime Minister noted it was likely to be necessary to proceed by means of Orders and that a balance would need to be struck in deciding the figure for the threshold. But she felt that it could be difficult to go much higher than 3,500, bearing in mind that this would already be seen to be substantially higher than the figure of 2,000 identified by the MMC.

There was also some discussion of the likely timing of an announcement of your Secretary of State's decision. It was agreed that there was a strong case for this being done as soon as practicable, and certainly before the Summer Recess, although it was noted that this could still mean that the final implementation of the Orders did not take place until the carry over in October.

In further discussion, your Secretary of State and Mr Maude stressed that the planned amendment to the landlord and tenant legislation was an important aspect of the overall package, which would be necessary to reassure public confidence. Indeed, once the package was announced it would be desirable for the tenant protection to come into force immediately and so prevent the possibility of large-scale evictions of tenants by the brewers. Against that background, it would be extremely helpful if the legislative provisions could be included in the current Session's Local Government and Housing Bill. The business managers currently saw difficulty with that course, and were mindful of the possibility that this could provide an oppportunity for the whole debate on the MMC Report to be opened up in Parliament. Your Secretary of State would shortly be writing to the business managers urging them to reconsider this point; he would find it helpful if at that stage the Prime Minister felt able to support it. The Prime Minister noted this.

Yours,
Paul

PAUL GRAY

Neil Thornton, Esq.,
Department of Trade and Industry

chex.jp/jmt1/11

NBPM
MF 20/6

CEPO

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

19 June 1989

Rt Hon Lord Mackay of Clashfern
Lord Chancellor
Lord Chancellor's Office
House of Lords
LONDON
SW1A 0PW

with AT / will request if req'd.

RESTRICTIVE TRADE PRACTICES LEGISLATION AND THE LEGAL PROFESSION

David Young sent me a copy of your recent letter on this subject along with his reply of 13 June.

I very much agree with David that it would be wrong to safeguard the Law Society ban on multi-disciplinary practices (MDPs) for solicitors from the provisions of the RTP legislation. On the face of it, the Law Society ban represents an unnecessary and unwarranted restriction on competition and the free play of market forces, and it seems to me only right that the Competition Authority should be allowed to form a definitive view on whether it is indeed anti-competitive. I should add that, like David, I am not at all convinced that the ending of this ban would seriously threaten the maintenance of a healthy and independent profession. Indeed, I believe it would lead to a better service for the consumer.

The arguments in respect of the Bar Council ban on partnerships may well be different. I do wonder, however, whether it is right, as David suggests, to exclude the Bar Council ban from the provisions of the RTP legislation. First, because this would mean treating the Bar Council differently from the Law Society (assuming we are not to provide a safeguard for their ban), and this would be difficult to defend. Second, because this would lead to unwelcome pressure for similar concessions for other professions. And, third, because, if the arguments are as strong as you suggest, the Competition Authority would be highly unlikely to find that the Bar Council ban was anti-competitive. I think it

would be better, therefore, in the case of both the Law Society and the Bar Council, to leave it to the Competition Authority to decide on what is and what is not consistent with free competition and the best interests of the consumer.

I am copying this letter to the recipients of yours.

Yours

NIGEL LAWSON

10 DOWNING STREET

Prime Minister

MEETING WITH LORD YOUNG AND FRANCIS MAUDE

You saw No papers are to be sent. I am also putting them back in case you wanted another look this evening.

PRCG
19/6

cc Background

PRIME MINISTER

MMC REPORT ON THE SUPPLY OF BEER

You agreed last night to see Lord Young and Francis Maude next Tuesday to discuss their latest thinking on the handling of the MMC Report. You also decided not yourself to chair a meeting with other colleagues; I have told Lord Young's office this.

As promised Lord Young has now sent over a note for Tuesday's meeting, at Flag A below. You may like to have a look at this over the weekend.

The key issue is how to handle the MMC's recommendation for divestment above the maximum of 2,000 pubs. This is dealt with in paragraphs 5-8 of the Flag A note. Lord Young now envisages the alternative approach which he signalled in his speech in the Lords this week (Flag B). It would involve requiring the national brewers to let out to others, on non-tied terms, all their pubs above a threshold of say 3,000. He hopes to be able to agree this with the brewers, but is seeking your reaction to the fall-back option of imposing an "arms-length" remedy on this basis.

Paragraph 6 of the Flag A note mentions the trend in public opinion in favour of remedying the points identified by the MMC. This is borne out again by today's press, in which a number of editorials are urging the Government to act.

I also include in the folder the MMC Report itself. I do not advocate you going through it. But if you wanted quickly to refresh your memory of the arguments, the key points are on pages 1-5. The conclusions are set out in a bit more detail from pages 266-295.

PEG.

P. GRAY
16 JUNE 1989

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the department for Enterprise

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MARKET SENSITIVE

PRIME MINISTER

THE SUPPLY OF BEER

1. We need to consider how we should bring to a conclusion our consideration of the Monopolies and Mergers Commission (MMC) report on the supply of beer. As you know, the MMC found substantial public interest detriment in the way the market operates at present. Their recommendations to remedy these defects were radical, and have proved controversial.

2. Since the report was published, the position has changed to a considerable extent. We have announced publicly that we do not propose to take those steps in respect of the small and regional brewers which caused them, to our surprise, to be hostile to the report at the outset. Much of the concern expressed by colleagues in the Party flowed from these aspects. Attention now focuses on measures to be taken in respect of the national brewers.

3. We have already made considerable progress on a number of measures. The nationals have effectively conceded the breaking of the tie on non-beer drinks, including cider, soft drinks, wines and spirits and on non-alcoholic and low-alcohol beers. There has been widespread abuse of this tie, and its abolition will prove very popular with many in the industry, with publicans and with consumers. The brewers have also conceded that measures to reduce local concentrations of pubs would be appropriate in principle, although details remain to be resolved. In addition,

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we have made considerable progress on the introduction of guest beers into the national brewers' pubs, although the brewers have not yet conceded the important principle that the tenants should be able to purchase the guest beer from a supplier of his own choice.

4. We have in addition come to the tentative conclusion that it would be wrong to implement the MMC's recommendation that tied loans should be abolished. So long as it is possible for pub owners to repay the loans early without penalty, these loans provide a useful alternative form of finance for publicans to exploit.

5. This leaves the MMC's central recommendation, that all brewers should have to divest down to a maximum of 2,000 pubs. It is this that has proved totally unacceptable to the national brewers, as one would expect, but which has also excited most anxiety from colleagues in both Houses of Parliament. We have made clear that we are prepared to be flexible about the number of pubs involved; and in addition I made clear in the debate in the Lords last Wednesday (Hansard enclosed) that I was considering an alternative approach which falls short of divestment. This would require the national brewers to make all their pubs above a threshold, which might well be more than 2,000, available to be let at full market rental without being tied to the brewer's own products. Philosophically I find this attractive because it tackles the central issue of the grip of the national brewers on the distribution system without requiring divestment. The brewers would be free to profit as now from the ownership of pubs; they

would not have to choose, as they claim the MMC's recommendation would force them to, between brewing and pub owning; and they would be able to compete freely for beer sales on an arms length basis.

6. The politics of this are complex. The promotion of competition is central to our approach to the economy, and the role of the MMC in achieving this is crucial. They will be reporting in November on competition in the retailing of petrol, in which many of the same issues of vertical integration arise; and it is essential that we do nothing that might be thought to undermine the MMC's authority at this stage. In addition, most of the national press has supported the MMC's report; and if we were seen to be giving way to pressure from the national brewing companies, we would be subject to very great criticism.

7. In addition, as the debate has continued, opinion has moved in our favour. Recent opinion surveys suggest that pub-goers and publicans themselves support many of the MMC's recommendations, including restricting the tied pub system. And excluding the letters clearly from the employees of the national brewers, this confirms the impression that we have from our post bags.

8. I remain hopeful that we shall secure from the national brewers, agreement to a package which will satisfy potential critics that the detriments identified by the MMC are being rectified. But in the absence of such agreement, we need to be able to impose remedies using our statutory powers under the Fair Trading Act. Before I continue discussions with the Brewers it would be very helpful to know whether the fall-back position of imposing the "arms-length" remedy on all pubs above a threshold of, say, 3,000 would have your support. We should bear

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the department for Enterprise

in mind that the political situation will improve markedly for us if the national brewers are seen to have turned down a reasonable compromise proposal. You may wish to consider a small meeting of those of our colleagues who are most closely involved.

N R

(copied by the Secretary of State & signed in his absence).

D Y

16 June 1989

DEPARTMENT OF TRADE & INDUSTRY

the enterprise initiative

B cc Backup

LORDS DEBATE ON BEER

OPENING SPEECH FOR SECRETARY OF STATE

My Lords, I thank the Noble Lord for raising this subject today. I welcome the opportunity to hear further views on the subject of the Monopolies and Mergers Commission Report.

The MMC made their Report to me in February of this year. It was the result of an extensive investigation lasting two and a half years.

The Report was published on 21 March. I said then that I accepted its conclusions. I stand firm on this. I have not so far heard anything to persuade me that there are not substantial public interest detriments which need to be remedied.

As to the recommendations I said when the Report was published that I was minded to accept them. However I indicated that I was ready to listen to views from any interested party about precisely how the recommendations should be put into effect. I was open to representations, both public and private before reaching a final view.

We have now had the best part of 3 months consultation

since the report was published. This is bound to be an unsettling period for the brewing industry and for publicans. As far as they are concerned the sooner firm decisions are reached the better. But it is also important that our decisions, when they are made, should be the right ones.

My Lords, the representations made have taken many forms. Your Lordships will have seen advertisements in the campaign sponsored by the Brewers society. These have suggested that the effect of the MMC recommendations would be the closure of many pubs, and a reduction in consumer choice.

However we have also seen the subject debated by pub-goers themselves. My Department has received a number of letters from them. In the last analysis they are the most important of all because the issue we are debating is how best the consumer should be served.

Last week the Haig Whisky company published the results of a survey, conducted by MORI of pub-goers. According to the Press Release announcing the results of this survey, and I quote:

"Most regular pub-goers want the monopoly of the big brewers broken ....The majority are in favour of the Government implementing the Monolopies Commission Repo

Only a third of adults surveyed opposed the idea that the major brewers should be required to sell off some of their pubs.

84% said that the landlords should have more freedom to introduce more beers. The majority of consumers thought that the recommendations would be good for the traditional British pub. 66% said that the choice of beers would increase, and 60% that the quality of pubs would increase."

These results confirm what the Consumers Association found in their own survey in May 1987. The conclusions of this were given in evidence to the MMC. Two thirds of respondents agreed that all pubs should be allowed to sell draught bitter from more than one brewer. Only 7% disagreed with this proposition.

Furthermore, there was overall agreement that pub prices were too high compared with supermarkets and off-licences. 61% agreed; 11% disagreed.

I am sure that your Lordships will also have seen reference to the article on prices of soft drinks in the June edition of "Which". The Consumers Association reported a restricted choice of soft drinks in many pubs, and prices which could be higher than those for alcoholic drinks, on which of course duty is paid. The Consumers Association agreed with

the MMC that these are detriments which result from the operation of the tie. The public is often obliged to buy such products from the brewers rather than bring able to shop around for the best range and prices.

Publicans themselves, when questioned in opinion surveys, show substantial support for many of the MMC recommendations. On 27 May the newspaper "The Publican" gave the results of their own survey of publicans. I quote from their article:

"Around 90% of publicans want greater security of tenure under the Landlord and Tenant Act, want see an end to the non-beer tie, and want a choice of guest draught beer".

My Lords, over the last few weeks Francis Maude and I listened carefully to the views of a great many people who have come to see us to discuss the MMC Report.

We have had a number of meetings with the Brewers' Society. We have also met representatives of individual brewers, either at their own request, or through the offices of their Members of Parliament.

We have heard from the National Licensed Victuallers Association, which represents many licensees, the Consumers Association, the Campaign for Real Ale, and others.

As a result of these extensive consultations I believe a number of matters are clear. I believe that the MMC were clearly right that there is a need to increase competition in this industry.

The MMC were clearly also right in recognising the important part that regional and local brewers have to play in maintaining diversity and choice in beer supply.

We have already made plain the importance the Government attaches to the role of the regional and local brewers in a Written Answer in another place last week.

We said then that our intention was that certain measures should apply to the national brewers but not to other brewers. We had in mind particularly the requirement to allow tenants to choose a cask-conditioned guest beer; the abolition of the tie on low-alcohol and non-alcoholic beers, ciders, wines and spirits and soft drinks; and any measures to reduce local monopoly.

I agree with the MMC's conclusion that publicans need to have their position strengthened so that they can more effectively meet consumer preferences.

There are 2 main ways in which this role of publicans can

be enhanced.

First I am glad to say that there seems to be consensus among the main parties that tenants security of tenure should be increased by bringing them the scope of the landlord and Tenant Act 1954, as the MMC reommended.

However there also seems to be agreement that certain further steps recommended by the MMC would not be appropriate. The MMC recommended that the parties to a tenancy should not be allowed to contract out of the provisions of the Act, as is the case with other business tenancies. They also recommend that brewers should be required to incorporate certain standard provisions into the tenancy agreements. These would cover such matters as assignability of tenancies and restrictions on the brewer's ability to take back premises at the end of a tenancy for his own use or for redevelopment.

It is generally agreed that these further provisions might in the long run make tenancies unattractive and should not be pursued. The National Licensed Victuallers Association themselves have indicated to us that they accept this.

Second, tenants have a role in improving choice. One of the ways they may do this is through the guest beer proposal. Fears have been expressed that this proposal

could result in a flood of heavily promoted mass produced brands, which would not contibute to a genuinely greater choice. My Lords, we are clear that we should specify that the guest beer should be cask-conditioned - that is to say a real beer of individual character.

This accords with the views of most publicans on what they would wish to offer, and we believe will be welcomed by regional and local brewers.

In relation to the national brewers I am still considering the position. Here I do have concerns about the extent to which a few dominate the market. The six national brewers account between them for 74% of brewer-owned tied houses. 75% of beer production and 86% of loan ties.

I should like first briefly to consider the issues in relation to the national dominance of the major brewers.

I should like to put before your Lordships' House some of the ideas which have been canvassed to address this national dominance of the major brewers. First let me raise one dimension of the problem which particularly concerns me. That is the question of local concentration and local choice. In a number of licensing districts one or other of the national brewers owns over a quarter of all the pubs, in some districts over a third of all the pubs, and in a few districts over half.

It is hard to see that this situation can encourage vigorous competition. Choice at a local level is important to the individual consumer. I am inclined to think that no major brewer should be allowed to tie more than a limited proportion of the pubs in any local authority area. Any excess pubs should be sold to owners who are not already dominant in that area. I would welcome your Lordships views on this important aspect of the position held by the national brewers.

Second, let me turn to how increasing competition and choice might be addressed at the national level. The MMC recommended that no company with brewing interests should be permitted to own more than 2000 on-licensed premises. The MMC believed that an approach of this kind was necessary if the detrimental effect of the vertical tie were to be remedied, and the market freed.

The MMC also recommended that there should be a ban on all future loan tying, whereby the brewer provides financing on favourable forms in return for a commitment by the publican to purchase drinks. The MMC correctly identified that loan tying can be used to reinforce a dominant market position akin to ownership of the pub. But I am reflecting further on this proposal because it does seem that there are some circumstances in which loan tying may be acceptable. I have in mind as an example the position of members' registered clubs, where I see an argument that they should be free to enter into loan ties if that is the collective wish of the members on a free vote. In these circumstances I would however want to ensure that loan agreements do not unreasonably lock borrowers in to a particular supplier. They should be free to change the loan and supplier easily if another offers better terms.

I see many attractions in the overall approach recommended by the MMC. And I have received many representations in its favour. Many who know the industry well believe direct action of this kind is necessary to ensure that vertical integration is broken down and the market opened effectively.

However I have also received representations on a variety of alternative approaches designed to achieve the same basic

objectives by different means. One interesting suggestion which has come from a number of sources is that competition and choice would be greatly increased if the national brewers were required to operate their property portfolios above a threshold on an independent arms length basis. In other words each of the national brewers would be able to retain their property investment but would lease on an arms length basis to independent tenants, groups of tenants or separate companies the management of their pubs above the threshhold. These independent managers would be free to negotiate their finance and their supplies of drinks - including beer - from where ever they chose, from the most competitive source.

This idea was first canvassed by CAMRA but has also been proposed by the Wolverhampton and Dudley Brewery who have set out their ideas in a document now placed in the library of your Lordships' House.

The idea has been canvassed in outline only. Philosophically, I find it attractive. It may offer an opportunity to remedy the detriments resulting from vertical integration which the MMC have identified, without forcing property disposals. If a way could be found of opening the market to much greater competition through the creation of many more free houses and breaking the grip of the

national brewers, without forcing property disposals, I would welcome it.

The meetings we have held with the Brewers Society over the last few weeks have been very valuable, and I am grateful to the Society for their help in conducting the first round of exchanges. We announced by written answer in Another Place the conclusions we have reached in the light of those meetings. I fear that I cannot now continue discussions with the Brewers' Society when we turn to the highly market-sensitive question of the MMC's divestment proposal.

I have decided that the next stage is for me to discuss the MMC's divestment proposal, and alternatives to it, with the national brewers. I shall be meeting them shortly for private discussions on these market sensitive issues. I will be ready to hear constructive proposals from them which address the central issue of the extent of the vertical tie. But I should say at this stage that it is for them to persuade me that the arms length proposal or other options, can offer a remedy as effective as the MMC's own recommendation.

I would welcome your Lordships' views on this, or other alternative remedies provided they meet the basic criteria that they address the dominance of the national brewers and the grip on the market they have secured by vertical integration.

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Note

PRIME MINISTER

Spoke Neil Thornton and passed on PM's views.

BRCG
16/6

MMC REPORT ON BREWERS

Lord Young's office rang me this evening, at his request, to discuss the handling of future discussions on the final package to implement the MMC Report.

Since he last discussed this with you, Lord Young has been having further discussions with the various interested parties. He now has an outline package - I do not yet know the details - which he would like to process in two stages:

- a discussion with you, at which he would be joined by Francis Maude;

- a talk with other colleagues having a direct interest, ie. the Chancellor, John McGregor and Nicholas Ridley and the business managers.

He would like to complete both these stages next week, in time for him then to see brewers again at the end of the week before his trip to Russia. I responded that the first talk with you should be fitted in at 0930 on Tuesday, which we already had scheduled for a bilateral. If there was any other bilateral business which could not be got through at that time, there might be 15 minutes available at the end of next Wednesday after the MISC 128 meeting. In advance of Tuesday's talk, Lord Young would let you have a note summarising his proposals.

So far so good. But the main difficulty concerns the second meeting with other colleagues. Lord Young would strongly prefer you to chair it. His main motive seems to be that this gives him the best chance of securing colleagues' agreement to whatever the two of you have settled at the first meeting.

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I have doubts about this. We are, as always with these policy issues, in the area of Lord Young's quasi-judicial functions. It is one thing for him to discuss his ideas informally with you in the privacy of your study. But it is another for you to take the chair at a more formal meeting with other colleagues. I would have thought it better for the second meeting to be chaired by Lord Young, and for him to conduct it by saying that he wanted to hear colleagues' latest views before he reached his decisions. Hopefully, that would lead to an amicable solution; if not he might want to seek another informal meeting with you before deciding how to proceed.

(i) content to schedule a talk with Lord Young and Francis Maude next Tuesday morning? Yes

(ii) as to the second meeting, would you prefer:

- to chair the meeting yourself? No

OR

- to let Lord Young handle it? Yes

PIP. PAUL GRAY

15 June 1989

SL3BKZ

dti

the department for Enterprise

LCCPU

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The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

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

MBPM
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Department of Trade and Industry
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Fax 01-222 2629

Direct line 215 5422
Our ref PS1CND
Your ref
Date June 1989

Dear Minister,

MMC REPORT ON BEER

Thank you for your further letter of 26 May. It was helpful to have both detailed views from you on particular MMC recommendations and suggestions for other ways of approaching the public questions.

As you know, I too have reservations about the consequences of some of the MMC's recommendations.

Francis Maude and I are at present negotiating with the Brewers Society to find the best way forward. In addition to meetings with the Brewers Society we are talking to other shades of opinion connected with the industry. Some of the ideas in your letter accord very closely with our own thinking and with the basis of proposals we have put on the table in discussions with the brewers.

My intention is to strike a fair balance between stimulating competition and avoiding consequences which would damage the good features of the present system.

In view of the sensitivities of these negotiations I am only copying this letter to the Prime Minister, and to Sir Robin Butler.

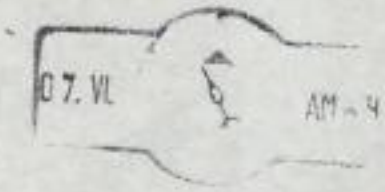
Yours sincerely

N R Thomas

(approved by the Secretary of State and signed in his absence)

the Enterprise initiative

GOV MACH Monopoly & Mergers



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MAFF

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

From the Minister

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

26 May 1989

Dear Secretary of State

MONOPOLIES AND MERGERS COMMISSION INQUIRY INTO THE SUPPLY OF BEER

You wrote to me on 19 April about the MMC's Report on beer, and we have since had several discussions about its implementation, and I have written to you with some thoughts following them.

I nevertheless thought it would be helpful if I were now to write more formally. Since the Commission's report was published, Richard Ryder and I have - in addition to meeting the Brewers' Society - sought the views of a number of other interested organisations representing small brewers, pub tenants and the registered clubs. We have also met with some leading city analysts and received papers from them. Representatives of Bulmers have also been to see us.

I would like to comment first on the major public interest detriments which the MMC attributed to the operation of the tied house system, namely a reduction in competition at the wholesale level leading both to a narrower choice of draught beers available to the consumer in individual public houses and to higher retail prices than would otherwise be the case. I know that you are anxious not to 'second guess' what was a long and detailed analysis, and I fully understand that. Nevertheless, since any remedies proposed must be related to the actual detriments involved, I do think we need to be satisfied that the MMC have got it right. I must say that I myself feel that the analysis and the remedies in the Report are flawed in several respects.

First, the Commission itself recognised that there is a physical limit on the number of draught beers that any one public house can sell; likewise, the range of such beers currently available in managed and tenanted houses is similar to that in free

/houses which are ...

houses which are not subject to any loan tie arrangement. The MMC's point really hinges, therefore, not on the number of beers available in any given public houses, but on choice being increased if those beers come from more than one source. That seems a somewhat marginal point, particularly as there appears - even on the MMC's own evidence - to be little discontent among consumers at present. Likewise, although there obviously have been real increases in retail prices in recent years, I do not believe we should place undue emphasis on the much quoted 15% increase since 1979. This does not properly take into account the major investment which the brewers have made in recent years to improve the amenity value of their public houses and which has to be recouped.

However, even if these considerations did not arise, I am concerned that the MMC have apparently failed to consider in any detail the likely effects of some of their more radical recommendations. Richard Ryder and I have concluded that these seem likely, if anything, to reduce consumer choice, and I judge by what you and Francis Maude have said in recent public statements that you too consider that some of the recommendations need further thought. I think you are right, therefore, to explore alternative remedies, and I hope that the brewers will cooperate fully in agreeing measures that will help improve the competitive position to the benefit of consumers, whilst preserving the many good features of the present set up.

In the meantime, I hope the following specific thoughts on each of the main recommendations will be helpful:

The 2000 Limit on Ownership Of On-Licensed Premises

I think it is now fairly clear that the Big Six brewers, if forced, will not in fact choose to sell off the bulk of their tied estates, but will either split up their operations or divest themselves of their breweries. In that case the result would not be the one foreseen by the MMC. Instead, there would be likely to be greater emphasis on foreign lager brands brewed in the UK by the new brewery owners and supplemented by imports. The pubs still in the hands of the Big Six would lose the benefits of a vertically integrated operation and would in any case seek to maximise profit levels on sales. None of the informed commentators think that the result will be cheaper beer and all are convinced that it will lead to greater standardisation on heavily advertised lager brands.

I am also concerned at the distractions and disadvantages for the companies this is likely to bring about at a time when we want them to be seeking to expand their opportunities in the Community in working up to 1992, and from a strong (and not weaker as the recommendations would bring about) home base. I also have some doubts about the free enterprise/free market aspects of this interventionist proposal when there are insufficient anti-competition factors to justify it.

/I think, therefore, ...

I think, therefore, that we need to look again at what the MMC had hoped to achieve through this recommendation. If the objective is greater choice of beers within easy reach of each other, then this is more likely to be achieved through the breaking up of local monopolies. It would be possible for example, to require that no brewery should own in excess of, say, 30% of pubs in a specified area (possibly petty-sessional divisions). If this requirement was thought to bear too heavily on regional brewers, it could be restricted to brewers owning more than 2000 pubs. Alternatively, a higher limit (say, 50%) could be set for those with less than 2000 pubs. How the desired changes could be achieved would be for the brewers themselves to determine, but OFT could maintain a check on the position. Care would be needed, however, to avoid forcing the sale of marginal country pubs which might well be sold for property development - a fear which weighs heavily in East Anglia. Maybe these pubs could be identified by barrelage and permitted to remain in brewers' ownership in excess of the permitted percentage.

The Loan Tie

While the Club and Institute Union supported the proposal to prohibit breweries from making tied loans, the other associations representing the Conservative, Liberals, British Legion and sporting clubs were apprehensive about the loss of this source of finance. The arguments against this proposal have been well rehearsed. The ones that most impress me are:

(a) that the brewers are more likely to lend money to finance improvements in marginally competitive pubs than would be the banks and the other lending institutions. They thus contribute to the maintenance of smaller country pubs which might otherwise cease to continue as licensed premises;

(b) the licensee is free either to apply for a loan or to negotiate discounts on his beer sales, and can terminate or transfer a loan at will. Why should he be denied that choice and why should the brewers be denied the opportunity to compete fiercely with each other (as the MMC acknowledged they do) and with the lending institutions for this business?

(c) The use of loan ties in some other Member States is extensive and in many cases much more restricting in its effect than the arrangements operating in this country. If we legislated to deny this freedom to UK brewers, would we be able to prevent foreign brewers from making such loans to UK licensees? If not, we should find ourselves in a pretty indefensible position.

For all these reasons Richard Ryder and I feel strongly that this is one recommendation that we should reject as it stands.

/Guest Beers ...

Guest Beers

I was initially very attracted to this proposal as a means of widening choice of beers in all pubs and of helping the smaller brewers to compete through the tied outlets of the larger brewers. However, it is now fairly obvious that the pub tenants represented by the NLVA (who are the ones most likely to be expected to welcome this proposal) see no advantage in it.

The guest beer chosen would obviously be the one which gave the tenant the best return. Inevitably, that would be likely to be the most heavily advertised and heavily discounted at the wholesale level. To the extent that this reduced the owner-brewers' throughput in his estates, he would be obliged to increase rents, so the tenants would end up no better off and neither, of course, would the consumer. The regional and small brewers who are especially dependent on the throughput of their tied estates would, ironically, be hardest hit by this proposal and they are obviously very worried by it.

As an answer to these criticisms of the MMC recommendations, one alternative would be to restrict the guest beer to an ale. Another would be to require only the brewers with more than 2000 pubs to permit a guest beer in their outlets if their tenants chose. Both ideas, or, indeed, a combination of them, are I think worthy of further consideration.

Prohibiting The Tie On Low Alcohol Drinks

This too was a proposal that initially I found attractive, but it suffers from similar disadvantages to the guest beer proposal. It will not lead to more choice, but less, since the smaller brewers will be discouraged from investing to produce their own brands. This would run counter to the encouragement which John Wakeham's Group has been giving to the brewers to produce and market more of these drinks. Consequently, I think we should look for alternative solutions along the same lines that I have suggested for guest beers.

Tenant Security

I share the views of the Commission that pub tenants need greater security of tenure than they presently enjoy under the Voluntary Code of Practice. I do not, however think that it would be right to grant them more security than is offered to other business tenancies. This could be very damaging to the interests of the smaller and regional brewers who would be powerless to remove a poor tenant and who cannot move over as readily to a managed house system. The NLVA recognise that the MMC's proposals go too far and would be likely to lead to a drastic reduction in the number of tenanted pubs. They would be content with inclusion in the Landlord and Tenant Act with, of course, a let out for the brewer if the tenant lost his license. This seems to me to be right and I am glad to see from Francis Maude's recent letter to Nicholas Ridley that this is the course that you now favour.

/I know that ...

I know that you met the Brewers' Society recently and I hope that they will have shown the willingness to cooperate in the finding of alternative solutions. If, when you receive their ideas, Richard Ryder and I can help in any way in your consideration of their ideas or in the development of the thoughts which I have set out above, we are, of course, very willing to do so. Similarly, perhaps our officials could be in touch.

≠ I am sending copies of this letter to the Prime Minister and to other Cabinet colleagues and To Sir Robin Butler.

Yours Sincerely

JOHN MacGREGOR

GOVT MACH: Transfers and Mergers Pt 4

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PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

17 May 1989

To note that this aspect of Lord Young's brewers package may run into problems of lack of legislative

Dear David Thx. Rec'd 17/5

MMC REPORT ON BEER: LANDLORD AND TENANT ACT 1954

Thank you for sending me a copy of your letter of 11 May to Nicholas Ridley in which you propose that amendments be tabled to the Local Government and Housing Bill to extend to pub tenants the same protection that the Landlord and Tenant Act 1954 currently provides for business tenants generally.

I discussed the matter with my Business Manager colleagues yesterday, and it seemed to us that these amendments would open up for debate the whole of the MMC report which, of course, is likely to be highly controversial in both Houses. I would therefore have considerable reservations about dealing with this matter in the Local Government and Housing Bill since this would be likely further to complicate the handling of an already difficult Bill. Furthermore, I am afraid that I do not see any scope for fitting in a self-contained measure on such a controversial topic during the remainder of the current Session.

I am sending copies of this letter to the Prime Minister, members of H and L Committees, Nigel Lawson, John MacGregor, Sir Robin Butler and First Parliamentary Counsel.

Yours ever

JOHN

JOHN WAKEHAM

The Rt Hon Lord Young of Graffham
Secretary of State for Trade and Industry

GOVT MACH: Monopolies + Mergers A4

dti

the department for Enterprise

CONFIDENTIAL

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

The Rt Hon Nicholas Ridley AMICE MP
Secretary of State for the Environment
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Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5422
Our ref PS3AGD
Your ref
Date 11 May 1989

Dear Nicholas.

MMC REPORT ON BEER : LANDLORD AND TENANT ACT 1954

Thank you for your letter of 26 April about the difficulties you saw with implementing the MMC full recommendations on licensed tenants' security. I have been considering the matter further, and we have also had a chance to hear the views of a number of brewers and others on the subject. I am now writing to ask for your help in moving forward on a slightly different basis.

As you will have seen, the Brewers' Society have mounted a major advertising campaign to oppose the MMC recommendations. Early on in this, they published an "Open Letter" to me from most of the regional brewers, suggesting that they opposed the Report. One of the main factors behind the opposition of the regional brewers, who might in general be expected to benefit from the more open market the MMC set out to create, has turned out to be the tenants' security recommendations. Their feeling was that to go beyond the basic protection interest in the Landlord and Tenant Act in the way the MMC recommended would be to swing the pendulum too far towards the tenant, to the extent that tenancies would become unattractive. On the other hand it is becoming clear that the brewers in general accept that greater protection for tenants is desirable. Provided this protection is aligned with that given by the Act

dti

the department for Enterprise

to business tenants generally, the regional brewers would take a more positive view of implementation of the bulk of the remainder of the Report.

I am inclined to accept their case on this. Certainly it would in no sense contribute to a freer market in beer if, as a consequence of implementing all the MMC recommendations on tenants security, the brewers began a major shift into running managed houses instead of having tenants. I have also been persuaded by your arguments as to the wider difficulties of creating a special class of tenancy.

I understand from Francis Maude who met the National Licensed Victuallers' Association that the NLVA's sole concern is quite simply that pub tenancies should be brought within the Act. There seems little reason for doing more than the NLVA asks since theirs is the only quarter from which complaint that we have not gone as far as the MMC recommended is likely to come.

I am advised that it would be a straightforward matter to amend the Act to remove the present exception for licensed tenants. The main problem is finding a suitable legislative vehicle for the 3 or 4 clauses likely to be required. There are no suitable opportunities in the legislative programme for 1989/90 which has been approved by Cabinet. And in any case, we need to move sooner if possible because of the need to settle urgently the whole question of the MMC Report and to protect the many tenants whose position has become uncertain in the last couple of months. This means we would have to take particular care with the transitional arrangements and it may be necessary to act on existing tenancies. The most suitable current legislative vehicle appears to be your own Local Government and Housing Bill. If you were able to agree it should be possible to introduce the necessary clauses perhaps at the beginning of its passage through the Lords.

I will of course be putting proposals to colleagues for policy clearance next week but for the moment I should be grateful for your agreement in principle that we might make use of the Local Government and Housing Bill in this way, and that my officials and yours should explore in more detail the mechanics of the necessary amendment. Because of the way the debate on the MMC Report is developing I feel I need to be in a position to announce firm proposals on this aspect at the beginning of June.

I am sending copies of this letter to Nigel Lawson, Douglas Hurd and John MacGregor, John Wakeham, John Belstead and other members of H and L Committees.

Yours ever,

David

the Enterprise Initiative

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PRIME MINISTER

MMC AND BEER

Following the discussion this morning, you may like to see the attached extract from a speech Lord Young made yesterday. I gather from his office that he has now written to the brewers inviting them to come to see him to make their representations.

If you want to put your views to Lord Young the most convenient opportunity might be at his next bilateral, currently scheduled for 9 May.

PRCG.

(PAUL GRAY)

4 May 1989

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CONSERVATIVE PARTY NEWS SERVICE

Press & Public Relations Department
Phone: 01-222-9000
01-222-0151/4

Conservative Central Office,
32 Smith Square,
London SW1P 3HH

RT HON LORD YOUNG OF GRAFFHAM

Release Time: 20.00HRS, WEDNESDAY 3RD MAY 1989

Extract from a speech by Rt Hon Lord Young of Graffham, Secretary of State for Trade and Industry, speaking to the North Warwickshire Patrons Club in the Palace of Westminster, on Wednesday 3rd May 1989 at 20.00hrs

I have seen a large number of advertisements, some of them anonymous, from the brewers, threatening the end of the world for the public house. Let us remember where we are.

The Monopolies and Mergers Commission sat for two and a half years and collected a mass of evidence from all parts of the trade. Its report is over 500 pages long and its detailed findings just cannot be ignored.

The MMC found that a complex monopoly situation exists in favour of the brewers with tied estates and loan ties, with serious public interest detriments:

-the price of a pint of beer in a public house has risen too fast in the last few years

-the high price of lager is not justified by the cost of producing it

-the variation in wholesale prices between regions of the country is excessive

-consumer choice is restricted because one brewer does not usually allow another brewer's beer to be sold in the outlets which he owns; this restriction often happens in loan-tied outlets as well

-consumer choice is further restricted because of brewers' efforts to ensure that their own brands of cider and soft drinks are sold in their outlets.

CONT.

Printed and published by Conservative Central Office, 32 Smith Square, London SW1P 3HH

YOUNG 3RD MAY

-tenants are unable to play a full part in meeting consumer preferences, both because of the tie and because the tenant's bargaining position is so much weaker than his landlord's

-independent manufacturers and wholesalers of beer and other drinks are allowed only limited access to the on-licensed market.

So I say to the brewers, if you don't like the MMC proposals, then write to me and make your own. But whatever solutions you propose must remedy the facts that the report has revealed.

Given the Commission's findings, the Government cannot and will not just ignore the report. It is our consistent policy to improve the power of the consumer through the proper functioning of competitive markets.

We cannot allow restrictions in choice and distortions in the market such as those found by the MMC to continue.

ENDS

SCOTTISH OFFICE
WHITEHALL LONDON SW1A 2AU

The Hon Francis Maude MP
Parliamentary Under Secretary
of State for Corporate Affairs
Department of Trade and Industry
1/19 Victoria Street
London
SW1H OET

2 May 1989

Dear Francis,

MMC REPORT INTO THE SUPPLY OF BEER

I have seen your letter of 13 April to John MacGregor about the above report, copied to Cabinet colleagues, and note David Young will be convening a meeting to discuss the next steps in implementing the recommendations of the MMC report into the supply of beer.

You asked colleagues what representations, if any, they had had from brewers on MMC report's findings. We have only had one such representation, from the Managing Director of Tennent Caledonian Breweries Ltd (the Scottish subsidiary of Bass). This takes the form of a letter to constituency MPs who have any of the Tennents' operations in their area and in turn encloses a circular to employees and others with an interest.

Tennent Caledonian's Managing Director points to 2 main concerns about the effects in Scotland of implementing the MMC's recommendations. First he argues that the abolition of the loan tie will make it more difficult for new entrants to set up in the trade and for independent retailers to improve pub and club premises. Second, Tennents suggest allowing wholesalers to collect beer supplies directly from the breweries will mean loss of jobs in the brewers distributive operation.

On the first point, I must say I am not convinced by these arguments. Brewers without loan tie agreements could presumably use the saving from no longer providing soft loans to reduce their prices to the retailer, who could take a commercial judgement on whether to pass on the savings to the consumer direct or use them to fund improvements. On the second point, it is not clear what net job losses, if any, would result from a freeing of wholesalers from the brewers own distribution arrangements. Apart from the potential advantages of an improved network of independent wholesalers for the small brewer who currently finds it difficult to market his products widely because of poor distribution, one might expect any reduction in employment in the brewers' distribution network to be offset by new employment created among the independent wholesalers.

RBI116MI

We shall adopt the line you suggest in reply to Tennents and inform them that their representations have been passed to DTI for consideration.

I am copying this letter to other Cabinet colleagues.

Yours ever,

Malcolm

MALCOLM RIFKIND

GOVT. MACH: Monopolies &
Mergers Part 4.

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

From the Minister

Hon Francis Maude MP
Parliamentary Under Secretary of State
for Corporate Affairs
Department of Trade & Industry
1-19 Victoria Street
London
SW1H OET

24 April 1989

Dear Francis,

MMC REPORT INTO THE SUPPLY OF BEER

Thank you for your letter of ~~23~~ 24 April. I would be glad to have an early opportunity to discuss this report with David Young, though I would prefer to do this after I have heard what the brewers have to say when they come in to see me on 28 April.+

In the meantime, you say in your letter that you will be making it clear to anyone who approaches you that our intention is to implement the MMC's recommendations, whilst welcoming comments on how best this might be done. Obviously, any of us receiving representations on this subject must make clear that the Government's position is as stated by David Young when the MMC's report was published. Equally, I do think it important that we should not give the impression of having totally closed minds on the subject. Whilst there is much in the report that we could all accept, it does not necessarily follow that each and every recommendation should be accepted as it stands. In short, I think we must be prepared to listen, not just to comments on how these should be implemented, but on more fundamental points as well.

I am copying this letter to other Cabinet colleagues.

+ Indeed I cannot physically do a meeting before then as I am abroad till Wednesday and am fully committed until meeting for the rest of the week.

Yours ever,

JOHN MacGREGOR

dti

the department for Enterprise

The Hon. Francis Maude MP
Parliamentary Under Secretary of State for
Corporate Affairs

Department of
Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

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Rt Hon John MacGregor OBE MP
Minister of Agriculture,
Fisheries and Food
Whitehall Place
LONDON
SW1P 2HH

Direct line 215 4417
Our ref
Your ref
Date 13 April 1989

Dear Mr Macgregor,

MMC REPORT INTO THE SUPPLY OF BEER

David Young will write to you early next week to invite you and other colleagues directly concerned to meet him at the earliest opportunity to discuss next steps in implementing the recommendations in the MMC's inquiry into the supply of beer.

As you know he is minded to implement the MMC's recommendations in full and expects to proceed where possible by Order using his powers under the Fair Trading Act. The Act provides for a formal consultation period of at least six weeks on the basis of published Orders. We do not expect to reach this stage before June. Meanwhile the brewers are likely to make wide representations throughout Whitehall. Of course the MMC, during the course of their thorough investigation, took evidence from brewers of every size as well as from other interested parties. In addition the Fair Trading Act provides for a further period of consultation on the basis of the Draft Orders. However, it seems unlikely that the brewers will wait. We therefore intend to make clear to all those who approach this Department that we intend to implement the MMC's recommendations but that we welcome comments on how best this should be executed.

Clearly all we can do at this stage is to listen to what the brewers have to say. In the meantime it would be helpful to know of any particular concerns expressed to colleagues so that we can consider how they might be met. You may also wish to indicate to those who lobby that the DTI is very ready to listen to representations and direct them to me, or to my officials.

LM5ACM

the Enterprise initiative

dti

the department for Enterprise

2

I am copying this letter to all Cabinet Ministers.

Yours sincerely

Chris Nott

pp **FRANCIS MAUDE**

(Approved by the Minister and signed in his absence)

LM5ACM

SECRET

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QUEEN ANNE'S GATE LONDON SWIH 9AT

NBPM 7 April 1989

PRCG
7/4

Dear Norman,

RESTRICTIVE LABOUR PRACTICES IN TV AND FILM MAKING: MMC REPORT UNDER SECTION 79 OF THE 1973 FAIR TRADING ACT

Thank you for your letter of 30 March commenting on this report.

I have studied this report with interest, and have noted the substantial changes in the industry which it records. As you yourself recognise there are a number of forces now having a substantial effect on the way broadcasters conduct their business, and not before time. Satellite competition is here in the form of Sky, the BSB will start broadcasting in the autumn. We are changing the levy on commercial television, so that it taxes income rather than profits and thus acts as greater spur to efficiency. The ITV companies are facing the prospect of competitive tender by 1993, and we know that they are taking this very seriously. The BBC licence fee increase is now indexed to the RPI, which is quite restrictive for an industry such as broadcasting with a history of high growth in costs and increasing demand for the talent available. Both the BBC and ITV are covered by the independent production initiative. In response the broadcasters are making substantial changes in the way they do things; and the cutting of work forces, the abandonment of long standing agreements and the termination of restrictive practices all form part of a pattern.

Given this background and what we know about the pressures on and developments in the industry at the moment, I do not regard the report's findings as surprising. Indeed, I recall pointing out before it was commissioned that the pressures for change were already there. The number of practices which have terminated during the course of the inquiry show that judgment to have been right. The existence of the MMC inquiry might have helped the process, and indeed one or two of those who were subject to it said as much, but the considerable external pressures are mainly responsible.

/We need

The Rt Hon Norman Fowler, MP
Department of Employment

SECRET

6

We need to welcome what has already happened; it is right to keep the pressure on for the process to be completed; and I am content that we should invite the major parties to tell us how they intend to proceed further.

Bearing these comments in mind, I suggest that one change is made to the statement:

> Line 12, delete the word "therefore" (ie I think we should make clear our objective of monitoring without associating ourselves with the suggestion that change may not be sufficiently radical or rapid).

I understand that David Young is taking the lead on repeat fees and consents. Perhaps I could at this stage register my interest in the Government taking action on this subject, and suggest a further amendment to cover this:

> Lines 13/14 after the word "note" insert "and agree with" and in line 16 replace "performances and we" by "performances. We".

Copies go to the Prime Minister, other members of E(CP) and Sir Robin Butler.

Yours,

David.

Gevt Loch: Meeps & Meijer

fst.04.6.4.89 **SECRET** COPY NO: 2 OF: 25

NBPM
BRC6
T/K
3a

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

6th April 1989

Dear Norman

MMC REPORT ON RESTRICTIVE LABOUR PRACTICES IN TV AND FILM MAKING

Thank you for your copying your letters of 30 March to me.

I agree that the Monopolies and Mergers Commission's (MMC) report is disappointing. There is a danger that the film and TV industries will suggest the report exonerates them from charges of inefficiency. It is therefore important that we draw attention to the evidence of improvements in employment practices that occurred during the course of the Commission's investigations, as you propose. It would also be worth stressing that these improvements are happening partly as a result of the Government's policy of promoting competition in the broadcasting industry.

I also support your view that we may need a further investigation of repeat fees and performers's rights over repeats of original performances. The MMC report notes that employers have begun negotiations with the relevant unions on this issue. It would be helpful if David Young could put recommendation to E(CP) when these have been concluded.

Finally, in the light of this disappointing report you suggest we do not refer further restrictive practices to the MMC for investigation, at least for the time being. I agree that we should not make further referrals when restrictive practices can be tackled more directly. But I do not think we should rule out using this route again in other case.

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

Yours

NORMAN LAMONT

dti

the department for Enterprise

CONFIDENTIAL

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

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

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1-19 Victoria Street
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01-215 7877

NBPM

RLG

Direct line 215 5422
Our ref PS5CEM
Your ref
Date 6 April 1989

RESTRICTIVE LABOUR PRACTICES IN TV AND FILM PRODUCTION :
MMC REPORT

Thank you for your letter of 30 March containing your proposals for the announcement and publication of this report.

I too found the report disappointing and would have preferred that the MMC had assessed the cumulative effect of all the restrictive practices which they found, including those where changes are expected or promised. Unfortunately, I think that this experience points up some difficulty in examining general labour practices across a disparate industry which is not ideally matched by the MMC's normal style of enquiry. I agree that there is nothing to be gained from pursuing further enquiries of this sort under Section 79 for the time being.

On the question of repeat fees and consents an initial examination suggests to me that a reference to the MMC, assuming it could be drafted to get round the statutory restriction, would not be beneficial. Therefore I do not think that competition legislation offers a way forward.

Turning to your proposal for the Government response to the report, I am happy to agree to early publication and announcement by Written Answer. Printing has already been put in hand and I know that our officials are in touch to

CONFIDENTIAL

ensure the quickest possible circulation to HMSO outlets, which is a prerequisite to publication. I understand however that this could not take place before 12 April.

I am also content with your draft with one exception. I would not wish to see the answer express the Government's surprise "at the equanimity with which the Commission appear to view some of the practices". It is not that I disagree with the sentiment in this case but that I fear such a statement could be seriously damaging to the standing of the Commission and the reports it produces. As colleagues know, there is an increasing tendency to resort to legal challenge in the competition area generally, and notably in the are of mergers and monopolies. I would be most reluctant to see anything that encouraged that process by denigrating the MMC.

On a minor point, the purpose of the last sentence of your draft answer is not entirely clear. If it is necessary, it might benefit from a further sentence to explain why the point is being made.

I hope therefore that you are able to agree to respond, as you have suggested, with the exception of the sentence discussed above and I am pleased to agree, subject to that, that publication should be at your convenience.

I am copying this letter to recipients of yours.

Gov't Mach: Monops + Mergers
Pt 4

SECRET

file SRW

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10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

3 April 1989

Dear Bryony,

RESTRICTIVE LABOUR PRACTICES IN TV AND FILM MAKING
MMC REPORT UNDER SECTION 79 OF THE 1973 FAIR TRADING ACT

The Prime Minister has seen your Secretary of State's letter of 30 March to the Home Secretary. She has noted that he proposes to make the Government's response by means of a Written Answer.

I am copying this letter to the Private Secretaries to members of E(CP), and Trevor Woolley (Cabinet Office).

Yours,
Paul

(PAUL GRAY)

Miss Bryony Lodge,
Department of Employment.

SECRET

KF

JH/S/7

SECRET

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Department of Employment
Caxton House, Tothill Street, London SW1H 9NF
5803
Telephone 01-273 . . . . . .
Telex 915564 Fax 01-273 5821

Secretary of State

Prime Minister 2

PRIG

31/3

The Rt Hon Douglas Hurd MP
Home Secretary
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

30 March 1989

Dear Secretary of State

RESTRICTIVE LABOUR PRACTICES IN TV AND FILM MAKING MMC REPORT UNDER SECTION 79 OF THE 1973 FAIR TRADING ACT

I am writing to you and David Young with my reactions to the MMC's report on our reference which they have now sent to us in typescript. I find it disappointing.

In the areas covered by the production unions they conclude that restrictive practices either did not exist by the end of last year or could be expected to disappear as a result of current or intended negotiations, or management decisions. As regards Equity and the Musicians' Union they confirmed that the closed shops and, in the MU case, minimum manning arrangements were restrictive practices, but held "on balance" that they do not operate against the public interest.

There has of course been genuine progress in the industry under the spur of competition, new technology and employment law reform. And there is evidence that the MMC inquiry has helped to push change along. The BBC have got rid of many previous restrictions concerning employment and working practices, and the Director General issued instructions for the removal of the rest towards the end of the inquiry. The TV companies are replacing national bargaining with their own

b

Secretary of State
for Employment

individual agreements. Among the independent producers change is less easy to see, but they must also respond to competition and technology changes. The MMC make much of this new climate and report that they were "shooting at a moving target".

The basic defect in the MMC's approach is that their method was confined to questionaires and interviews with the parties and the study of documents, without independent observation and questioning of working practices. Their evaluation was far too complacent. Time and again they report their acceptance of statements that demarcation, minimum manning and closed shop arrangements have been or are about to be discontinued, and where evidence conflicts they have accepted denials without checking the facts themselves. Union practices restricting employment and commercial activity which they do identify are passed over without critical comment. No recommendations are made to exert pressure on the parties to deliver the further changes they are said to be negotiating.

In sum, the report is neither penetrating in analysis nor positive in prescription.

The Commission clearly have some misgivings about their findings. They record their "concern about whether change will be sufficiently radical and rapid, particularly in the independent sector which will have a growing role in film and TV programme-making". They note particularly the problem of repeat fees (which was outside the possible scope of a Section 79 reference) and the related issue of consents (performers' rights to limit repeats) which they more questionably excluded. They suggest these problems could well merit separate investigation. I understand that your department's lawyers are looking into the possibilities of this.

Government Response

The MMC have told the parties that they have sent us the report and early publication is expected in the usual way. I should like us to publish, if possible, within the next week and my officials are in touch with yours about the practicalities. Unless you disagree I would propose to make the Government's response by Written Answer as in the attached draft.

MT

Secretary of State
for Employment

I suggest our response should be to:

(a) focus on the positive aspects of the report, especially the remarkable number of changes in working practices that have occurred in the course of the reference; but

(b) note the report's concern that change may not be sufficiently radical and rapid, and therefore Government will examine ways of monitoring further progress;

(c) note the concern about repeat fees and consents and that the possibility of further investigation of these issues is being studied;

(d) express some surprise at the apparent equanimity with which the MMC can regard practices they discovered such as in paragraph 5 above;

(e) indicate that the report does not conflict with the Government's case for giving the individual the right to complain that he has been refused a job because he is not a union member.

Follow-through

Immediately on publication we should invite the major parties to tell us how they intend to proceed further, and explore the prospects for follow-through action, for example by a research project or, possibly, ACAS. That would keep open the way for a progress report to E(CP) later on. It would of course have resource implications.

Further MMC References

On the wider scene, the trawl among departments for further suitable MMC references, about which I wrote to you on 14 May, has not produced any new candidates. In view of that and the quality of this TV and film-making report I conclude there is nothing to be gained from pursuing this particular route, at least for the time being.

d

Secretary of State
for Employment

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

Yours faithfully

Bryony Hodge

NORMAN FOWLER
(Approved by the Secretary of State
and signed in his absence)

DRAFT PARLIAMENTARY QUESTION AND ANSWER

Q.

To ask the Secretary of State for Employment when the report of the Monopolies and Mergers Commission on Labour Practices in TV and Film Making is to be published; and if he will make a statement?

A.

The MMC report, made under Section 79 of the Fair Trading Act 1973, is published today. Copies are available in the Library The Government welcome the evidence of changes for the better in employment and working practices that have occurred in the industry during the course of the Commission's investigations. These are attributed to increased competition, advances in technology and changes in employment law. The Commission expect further change to continue as a result of current or intended negotiations, or management decisions, though they record their concern about whether change will be sufficiently radical or rapid. The Government will therefore be examining ways of monitoring the necessary further progress. We further note the Commission's concern about the problem of repeat fees and performers' rights regarding their consent to repeats of original performances, and we are studying the possibility of further investigation of these issues. The Government is nevertheless surprised at the equanimity with which the Commission appear to view some of the practices, union rules and agreements they discovered, which makes further monitoring of progress all the more necessary. The report does not however conflict with the Government's case for giving the individual the right to complain that he has been refused a job because he is not a union member.

dti

press notice

89/203

21 March 1989

MONOPOLIES AND MERGERS COMMISSION REPORT ON ELDERS IXL LIMITED AND SCOTTISH & NEWCASTLE BREWERIES PLC

The proposed acquisition by Elders IXL Limited (Elders) of Scottish & Newcastle Breweries PLC (S & N) may be expected to operate against the public interest. Elders' holding of 23.6 per cent of S & N's shares may be also be expected to operate against the public interest. These were the main conclusions in a unanimous Monopolies and Mergers Commission report published today.

The Commission have concluded that bringing together Courage and Scottish and Newcastle may be expected to operate against the public interest. The Commission have recommended that the proposed merger should be prohibited and that Courage's parent company, Elders, should be required to reduce its shareholding to 9.9 per cent of S & N's issued ordinary share capital over a twelve month period.

In accordance with the advice of the Director General of Fair Trading, Lord Young, the Secretary of State for Trade and Industry, has accepted the Commission's conclusions. He has asked the Director General of Fair Trading to seek the following undertakings from Elders:

(a) Within 12 months to reduce its holding of ordinary shares in S & N to not more that 9.9 per cent and not thereafter to increase it above that level;

(b) in the meanwhile, not to increase its ordinary or preference shareholding in S & N, and not to exercise voting rights in respect of shares amounting to more than 9.9 per cent of S & N votes on any issue;

(c) after divestment, not to increase its ordinary shareholding above 9.9 per cent, not to increase its holding of preference shares, and not to exercise voting rights in respect of shares amounting to more than 9.9 per cent of S & N votes on any issue.

more...

Department of Trade and Industry 1 Victoria Street London SW1H 0ET Fax 01-222 4382

Detail

The acquisition would bring together Scottish and Newcastle with one of the other "big six" UK brewers, Courage. In reaching their conclusions the Commission found that the acquisition would have adverse effects on competition in the brewing industry by:

(a) reducing consumer choice and competition between brands, leading to a large increase in the scope of the control of a single brewer;

(b) reducing competition for the supply of beer to the free trade;

(c) restricting competition in Scotland;

(d) reducing competition in the supply of beer to off-licenses; and

(e) creating a second major beer group which, together with Bass (the largest supplier) would control over 40 per cent of the supply of beer.

The Commission found no significant advantages to the public interest arising from the proposed merger to offset these detriments.

NOTES TO EDITORS

1. The Secretary of State for Trade and Industry referred the proposed acquisition by Elders IXL Limited of Scottish and Newcastle Breweries plc to the Monopolies and Mergers Commission on 9 November 1988. He referred the acquisition by Elders of a partial holding in S & N to the MMC on 7 December 1988. The Commission was required to make a single report covering the two references within four months of the date of the first reference.

2. The Monopolies and Mergers Commission report on the merger (CM 654) is available from HMSO, price £10.30.

Press Enquiries: 01-215 4469/71/72/75
(Out of Hours: 01-215 7877)
Public Enquiries: 01-215 4751-6

ENDS

dti

the department for Enterprise

CONFIDENTIAL AND MARKET SENSITIVE UNTIL 3.30PM, 21 MARCH

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

The Rt. Hon. John MacGregor MP
Minister for Agriculture
Ministry of Agriculture,
Fisheries and Food
Whitehall Place
London
SW1A 2HH

Department of
Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Switchboard
01-215 7877

Telex 8811074/5 DTHQ G
Fax 01-222 2629

Direct line 215 5422
Our ref PS2CDC
Your ref
Date 21 March 1989

Dear Minister,

MMC INQUIRY INTO THE SUPPLY OF BEER

Thank you for your letter of 20 March. You will by now have seen my letter to you and colleagues yesterday in which I explained that I shall say that I am minded to implement the MMC recommendations when I publish the report today. In these circumstances there will be an opportunity for discussion once the report is published, and for your points to be taken along with others.

I am copying this letter to the Prime Minister, Geoffrey Howe, Nigel Lawson and Sir Robin Butler.

Yours ever

N.R.T.

(approved by the Secretary
of State and signed in his absence)

the Enterprise Initiative

GOUT MACH: Monoplace +
Menem PTA.

dti

the department for Enterprise

The Rt. Hon. Lord Young of Graffham
Secretary of State for Trade and Industry

The Rt Hon John MacGregor Esq OBE MP
Minister of Agriculture, Fisheries and Food
Ministry of Agriculture, Fisheries and Food
Whitehall Place
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Fax 01-222 2629

Direct line 215 5422
Our ref MM1AFO
Your ref
Date 20 March 1989

Dear Minister,

You will wish to know that I intend to publish tomorrow the MMC monopoly report on the supply of beer. I shall also publish (earlier in the day, for Stock Market reasons) the MMC report on the proposed merger of Elders and Scottish & Newcastle.

On the beer report the MMC has found that a complex monopoly situation exists in favour of those brewers with tied estate and loan tied estate, and restricts competition at all levels. The MMC's main recommendations are as follows:

any brewer may not own more than 2000 on-licensed outlets and must sell its excess outlets within 3 years.

tenants of remaining tied outlets should be free to sell at least one beer from another brewer.

product ties should be abolished in respect of low-alcohol beer, non-alcohol beer and other non-beer products.

no new loan ties to be made.

abolition of restrictive covenants on the use of on-licensed premises when sold by brewers.

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the department for Enterprise

security of tenure for tenants through inclusion of tenancies in Landlord and Tenancy Act 1954.

publication by brewers of wholesale price lists.

There are EC Regulation difficulties in respect of the product and loan tie recommendations. Discussions are in train with the Commission on those and may take time to resolve. Publicly however, I shall say that I am minded to implement these recommendations, discussing specific steps where appropriate with Leon Brittan. Although the brewers will continue to lobby hard against these recommendations, I believe this is another important area in which the Government should demonstrate its commitment to competition.

On timing, you will wish to be aware that under the Fair Trading Act I am required to provide the monopolies with a copy of the report 24 hours in advance of its being laid in the House. Thus the 72 brewers, large and small, identified in the report, will receive copies at 3.30 pm today. I have myself written to all of them warning that the report must be treated in confidence till published, but you should be aware of the risk of leaks and lobbying from that time onward.

The Elders/Scottish and Newcastle report will be published at 9.00 am on Tuesday, with a short simultaneous statement to the Stock Exchange. It will be laid in both Houses at 11.00 am.

The monopoly report will be published at 3.30 pm simultaneously with written Parliamentary answers and laying in both Houses.

I am copying this letter to all Cabinet colleagues.

Yours sincerely,

N.R.T.

APPROVED BY THE SECRETARY OF STATE
AND SIGNED IN HIS ABSENCE

the Enterprise initiative

Cab V

Ministry of Agriculture, Fisheries and Food
Whitehall Place, London SW1A 2HH

NBPM

PRC6
6/3

From the Minister

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

20 March 1989

Dear David,

MCC INQUIRY INTO THE SUPPLY OF BEER FOR RETAIL SALE

We had a brief word yesterday about the handling - as against the substance - of the MMC report on the supply of beer for retail sale. Since we spoke, the European Commission have announced its own review of the way brewers sell their beers in the Community. This decision does seem to me to complicate further the difficulties that have already been identified in relation to the authorisation which Community regulation 1984/83 - largely adopted we should remember in response to UK needs and pressures - explicitly provides for the tie in certain respects.

I am sure that you will be considering the implications of the European Commission announcement. I understand the potential procedural pitfalls which you see in relation to your responsibilities under the Fair Trading Act. For this reason, I have not commented on the substance of the MMC report. But on the previous occasion when these issues were in play, there was collective discussion I understand before any Government position was announced. It does seem to me highly desirable, especially given the far-reaching consequences for the Industry concerned, that other Ministers with a direct responsibility should have the opportunity of commenting before a definitive Government announcement is made.

I know that you are under pressure because of the link with the Elders' bid for Scottish and Newcastle. I hope, however, that, if you are committed to an announcement on Tuesday, you will avoid any firm Government position which implies acceptance of the main recommendations so that we have a proper opportunity to discuss them in the context of the Commission's initiative.

/I am copying ...

I am copying this letter to the Prime Minister, Geoffrey Howe, Nigel Lawson and Sir Robin Butler.

Yours ever

John

JOHN MacGREGOR

dti

press notice

R8/3.

89/151

8 March 1989

MONOPOLIES AND MERGERS COMMISSION REPORT
ON THE ACQUISITION BY BADGERLINE HOLDINGS LIMITED OF
MIDLAND RED WEST HOLDINGS LIMITED

The acquisition by Badgerline Holdings Limited (BHL) of Midland Red West Holdings Limited (MRWH) may be expected to operate against the public interest. This is the conclusion reached by the Monopolies and Mergers Commission in their report on the acquisition published today.

In accordance with the advice of the Director General of Fair Trading, Lord Young, the Secretary of State for Trade and Industry, has accepted the Commision's conclusion that the merger may be expected to operate against the public interest.

The Secretary of State is considering whether it is possible to remedy the adverse effects of the merger by way of undertakings as to the conduct of contract services: or whether divestment should be sought because such undertakings may not be adequate to remedy the adverse effects. Before he reaches a final view on the appropriate remedy, Lord Young has asked the Director General of Fair Trading to explore the matter with BHL on his behalf, and report to him as soon as possible but in any case within six months.

Detail

BHL, trading as Badgerline, provides bus services in the area surrounding Bristol and linking it to the centre of the city. MRWH, trading as City Line, provides bus services in the centre and suburbs of Bristol. BHL acquired MRHW on 22 April 1988.

The Commission found that there was no material loss of competition in the provision of commercial services in the area specified in the reference (the County of Avon and parts of the Counties of Somerset, Wiltshire and Gloucester within 15 miles of Avon).

On contract services however - the services subsidised by local authorities, principally Avon - the Commission identified serious detriments to competition. The first detriment was the expectation of an increase in the anti-competitive practice whereby Badgerline, having deregistered certain commercial services, reregistered them partially or wholly after failing to win the tendered contracts for the subsidised services replacing them. The second was the loss of City Line as an independent major competitor for Avon's contract services.

Substantial benefits arose from the merger but in the Commission's view these benefits were not sufficient to outweigh the particular detriments it had identified. The Commssion concluded therefore that the merger may be expected to operate against the public interest. The particular effect adverse to the public interest was that the merger would weaken competitive tendering and thus increase the cost to Avon of supporting socially necessary bus services or, in certain circumstances, make it impossible for Avon to support these services to the full extent that it would wish to support them.

In reaching its conclusion, the Commission found that the quality of bus services provided by Badgerline and City Line was generally appreciated, and that the restoration of interavailability of tickets between them was popular with passengers. The Commission also accepted that benefits in respect of rationalisation and the associated cost savings would be substantial.

The Commission recommended that the Director General of Fair Trading should seek undertakings from BHL as to its future behaviour in regard to Avon's contract services. Should the Director General be unable to obtain satisfactory undertakings, the Commission recommended that the merger should not be allowed and BHL should be required to divest itself of MRWH in part by selling City Line to a third party or to dispose of MRWH as a whole to a third party.

Dissenting Opinions

Two members dissented from the conclusion that the merger may be expected to operate against the public interest. They thought it reasonable to give more weight to the benefits of the merger than to the loss of a major competitor and the hypothetical possibility of future tender price increases in a small and decreasing number of cases at a time when competition from other bus companies seems to be strengthening. They concluded that neither of the undertakings as recommended in the report was necessary to protect competition for contracts and that both had serious disadvantages.

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One of these members additionally took the view that there was not a "merger situation qualifying for investigation" within the meaning of Section 64(1) of the Fair Trading Act 1973. He considered that the area covered by the merger did not meet the requirement of Section 64(3) of the Act, that the specified area should be a "substantial part of the United Kingdom".

NOTES FOR EDITORS

1. The Secretary of State for Trade and Industry referred the acquisition by Badgerline Holdings Limited of Midland Red West Holdings Limited to the Monopolies and Mergers Commission on 17 October 1988. The Commssion was required to report within three months.

2. The Monopolies and Mergers Commission report on the merger (Cm 595) is available from HMSO, price £5.90.

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PART 4 begins:-

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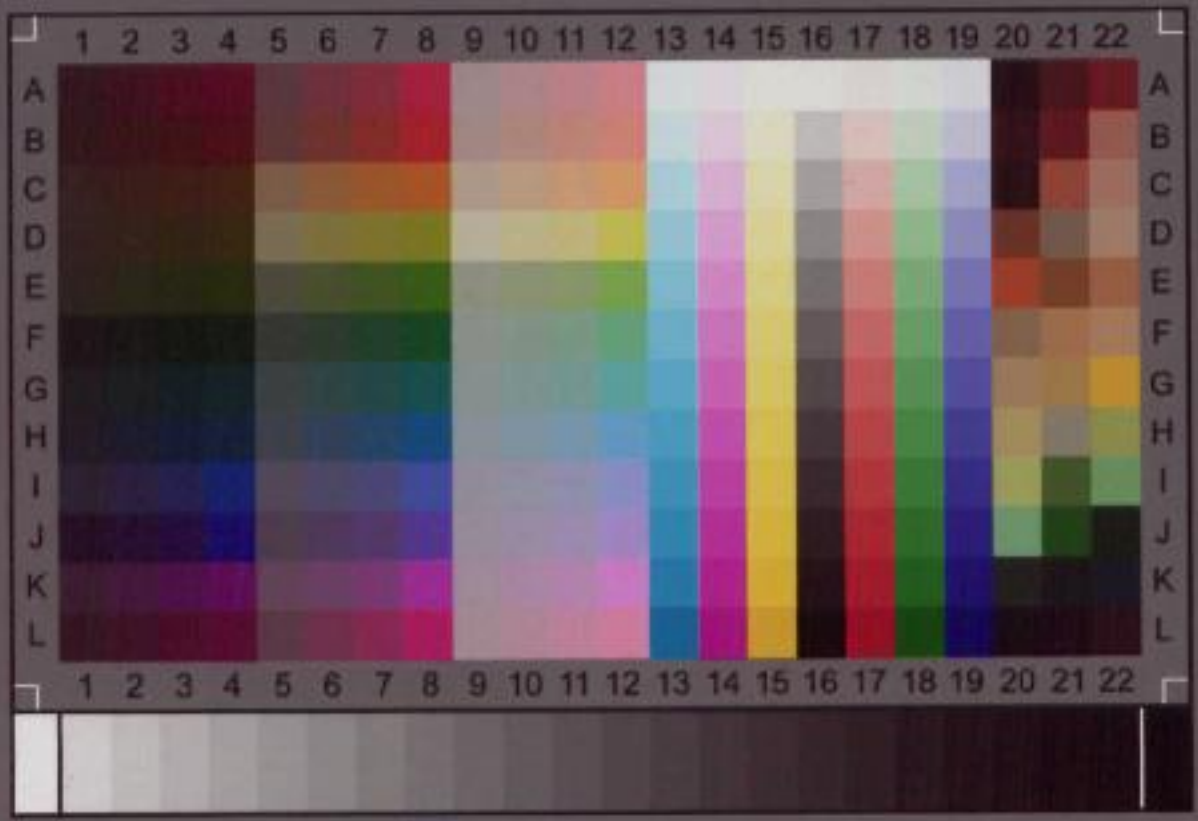

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