



✓ Mr James
✓ Mr Wilson

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For information.

From the Secretary of State

The Rt Hon Geoffrey Howe MP
The Chancellor of the Exchequer
HM Treasury
Parliament Street
London, SW1P 3HE

Wb

30 May 1979

Dear Geoffrey,

RESTRICTIVE TRADE PRACTICES ACT: STOCK EXCHANGE

You will be aware that the Stock Exchange have requested that they should be exempted from the scope of the Restrictive Trade Practices Act, but are prepared, if the Government were to make this a condition of their exemption, to be subjected to some other form of enquiry.

I have considered their case afresh very carefully and Sally Oppenheim has met both the Chairman and the Chief Executive of the Stock Exchange as well as the Director General of Fair Trading to discuss the issues. The attached note sets out the background to the issues and the principal options.

We have, somewhat reluctantly, come to the conclusion that, if the legal proceedings before the Restrictive Practices Court had not already begun, following the rejection in February by Mr Hattersley of the Stock Exchange's early request for exemption, it would have been right to exempt the Stock Exchange from the processes of the Restrictive Trade Practices Act and to subject them to an alternative form of enquiry (possibly the obvious alternative would be the Monopolies and Mergers Commission).

However, the situation is very different now that the reference has been made. If we were now to take action to exempt the Stock Exchange (which would require amending the Restrictive Trade Practices (Services) Order by means of affirmative resolution), this would involve interrupting a legal process which is already in train.



From the Secretary of State

The Stock Exchange have argued that the Court is not able to give due weight to the wider implications of its operations. Although it would be possible for the Stock Exchange to seek an early ruling from the Court on this, they have decided, for understandable reasons, that it would not be in the best interests of their case to do so. I am influenced, however, by the DGFT's opinion that the Court will be able to take proper account of most of the wider issues which are of special concern to the Government.

Of the other arguments against exemption, the one to which I attach most importance is that we are just taking powers to strengthen competition policy generally, and, even if we were to couple an announcement of exemption of the Stock Exchange from the processes of the Restrictive Practices Court with a decision to subject it to another form of enquiry, this might be fiercely criticised. There have already been comments in the Press to the effect that if we were to exempt the Stock Exchange at this junction our whole stance on Prices and Competition Policy would be undermined. Such an announcement would also appear odd when we have just announced that we intend to end the Department's control of unit trust management charges, together with the related exemption from the Restrictive Trade Practices Act, and to rely in future on competition.

Must I do not believe therefore that we could justify giving special treatment to the Stock Exchange at this juncture. However, this should not rule out the possibility of our agreeing to reconsider the Stock Exchange's request should it become clear, even at a late stage in the proceedings, that the Act was not drafted so as to enable the Court to take account of the wider issues of interest to the Government and to the Stock Exchange. While the granting of exemption at such a late stage (perhaps when the case appeared to be going against the Stock Exchange) would pose its own difficulties, these would be lessened if we made it clear now that we would be prepared to reconsider the claim for exemption if the Court's ability to hear the wider issues is narrower than we believe.



From the Secretary of State

I have also considered carefully the option of using the Committee on the Functioning of the Financial Institutions (CFFI). I do not think that its existence makes it any easier to act now to exempt the Stock Exchange, although were we to decide that we wished nevertheless to find an alternative form of enquiry we could consider (with the Treasury) whether there were advantages in using the CFFI rather than the MMC. Alternatively we could decide to let the legal processes continue until we have the final Report of the CFFI which is expected towards the end of the year, and to reconsider the case for exemption in the light of that Report. It would be no more difficult technically to exempt the Stock Exchange at that stage (the Stock Exchange statement of case is not expected until 1930), and the CFFI Report, if it were effectively to support the case for exemption, could be cited as a reason for granting special treatment.

You should also be aware that Mr Goodison claimed that the Bank supported the Stock Exchange's case for exemption, and suggested that before we take a decision on this, we should have a tri-partite meeting with the Stock Exchange and the Bank. Although I doubt whether a tri-partite meeting would be appropriate, you will no doubt wish to take account of the Bank's views.

I understand that you yourself would have preferred the Stock Exchange's case to be considered by the Monopolies and Mergers Commission (as indeed I would) but I hope you will agree that the difficulties of arranging this at the present time are very considerable. If you agree with me, I think it would be right for me to make an early public statement on our decision. In my view it would be criticised by the Stock Exchange (although widely understood by its Members), but it would greatly strengthen the credibility of our Competition Policy.

I am copying this letter to the Prime Minister, to the Secretary of State for Industry and to Sir John Hunt.

JOHN NOTT

Yours ever -

John

30 MAY 1979



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10 DOWNING STREET

From the Private Secretary

4 June 1979

Restrictive Trade Practices Act : Stock Exchange

The Prime Minister has read your Secretary of State's letter of 30 May to the Chancellor of the Exchequer on the above subject, and she has also seen Martin Hall's letter of 31 May.

The Prime Minister is inclined to agree with Mr. Nott that it would be hard to justify not having the Stock Exchange investigated by the Restrictive Practices Court - at least at this juncture. However, she has noted the Chancellor's view that it would be better if some other body were to carry out such an investigation, and she is content for your Secretary of State and the Chancellor to discuss the matter. If, in the event, they are unable to agree on what should be the best approach she would like to be consulted before a final decision is taken.

I am sending copies of this letter to Martin Hall (HM Treasury), Andrew Duguid (Department of Industry), Martin Vile (Cabinet Office) and John Beverly (Bank of England).

T. P. LANKESTER

Tom Harris, Esq.,
Department of Trade.

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