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31 July, 1979

John Nott

STOCK EXCHANGE

I was interested to see the two papers which our officials have prepared about the reference of the Stock Exchange to the Restrictive Trade Practices Court.

Like you, I would have preferred a reference to the Monopolies and Mergers Commission, but I can see the force of the arguments against reversing the reference to the Restrictive Trade Practices Court now.

I remain concerned at the dangers which the reference presents in three particular ways. First, there is the danger of turbulence in the market if the Court were to strike down certain Stock Exchange arrangements: a Court ruling would, as I understand it, take immediate effect. Second there is the danger of long-term structural damage to the market, especially if the Court cannot take sufficiently wide considerations into account. Third, there is the danger that the Stock Exchange will be inhibited from desirable innovations during the long period (which I understand could be as much as three years) whilst the Court is carrying out its enquiry. I do not think I can simply accept the danger to our funding programme which a hiatus in gilt sales would represent nor the chance that long term change might come about without due attention to the implications: an effective market in gilts and in equities is essential to the economy.

That said, it seems to me that there is a way in which we could provide the necessary safeguards for allowing the reference to the RTP Court to proceed for the moment. These safeguards involve an amendment to the terms of reference of the Court and we have a

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The Rt. Hon. John Nott, M.P.



legislative vehicle to hand in the Competition Bill. I understand that it would be possible to add a clause to the Bill which would give the Court powers:-

- (a) in the event of an adverse ruling, to offer a limited "stay of execution" while alternative practices are instituted by the Stock Exchange;
- (b) to consider any alternative arrangements which the Stock Exchange might propose either during the hearings or during the stay of execution.

I should also wish to hold open, explicitly, the option of exempting the Stock Exchange altogether from the RTP legislation if it turns out that the Courts takes an extremely narrow view of the considerations which it can take into account. Another way round this problem would be to amend the "gateways" in the RTP Act but I believe that would be complicated and if the gateways did not then prove adequate it would be difficult to exempt the Stock Exchange altogether. In the case of exemption we would need to consider alternative forms of enquiry but this will, I hope, not happen.

The course I am proposing has the advantages of allowing the reference to the Court to proceed without incurring the difficulties of immediate exemption. We are all agreed that some enquiry is needed. To go ahead in this way maintains the Government's freedom to safeguard the operations of the market and it sets up positive incentives for the Stock Exchange to devise and propose their own improvements. I hope that you will feel able to accept the idea and, if you do, no doubt our officials will be discussing the drafting of the necessary clause.

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

This is a pretty cumbersome solution, not least because of the need to ensure that the changes can take effect in relation to this case. If you find it unworkable or unattractive, then I think I certainly will not make the case for making the reference altogether

(GEOFFREY HOWE)

A handwritten signature consisting of a large, stylized 'G' followed by a horizontal line and a short vertical stroke.

A handwritten signature in cursive script, appearing to read 'Geoffrey Howe'.

1 AUG 1979

