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RESTRICTIVE TRADE PRACTICES ACT 1976: THE STOCK EXCHANGE

On 23 October 1979 the Secretary of State for Trade announced that he could not meet the request of the Stock Exchange that their Agreement should be removed from the scope of the Restrictive Trade Practices Act 1976. This note explains the reasons for the Government's decision.

THE RESTRICTIVE TRADE PRACTICES ACT 1976

The 1976 Act provides for registration with the Director General of Fair Trading of agreements under which two or more parties, being in business in the UK to produce or supply goods, accept restrictions in respect of matters such as pricing, terms or conditions of supply, and the persons to or from whom goods are supplied. The Restrictive Trade Practices (Services) Order 1976 extends broadly similar provisions in respect of services.

Registrability depends on whether an agreement contains restrictions of a specified form or kind and not on whether the agreement has the effect of reducing competition.

Certain types of agreement are exempt from registration, including agreements authorised by the European Coal and Steel Community Treaty, agreements relating to know-how, trademarks and patents, and agreements authorised by statute. Moreover, Schedule 4 to the Fair Trading Act 1973 (which is replaced by Schedule 1 to the 1976 Act) excluded from the provisions of the legislation agreements relating to certain professional services, including legal, medical and dental services, architects, accountants and engineers.

The Stock Exchange did not press for similar exemption when the 1973 Act was being prepared. In connection with the 1976 Act they made representations for exemption but did not press their request.

THE REFERENCE TO THE RESTRICTIVE PRACTICES COURT

The Stock Exchange agreement was placed on the public register in October 1977. The major restrictions identified by the Director General of Fair Trading as needing to be judged by the Court were the Stock Exchange's minimum rates of commission for broking services and the so-called "single capacity system" which prevents jobbers acting as brokers and vice versa.



The Director General is under a duty to refer every registered agreement to the Restrictive Practices Court for a decision as to whether the restrictions are contrary to the public interest except where they are not of sufficient significance to warrant Court proceedings or where the agreement has been terminated.

The Stock Exchange agreement was so referred on 9 February 1979. The Court proceedings have therefore already commenced.

Given the importance attached to the independence from Government of the OFT and the Court, interference in this judicial process could only be contemplated by Ministers in most exceptional circumstances.

THE REQUEST FOR EXEMPTION

The Stock Exchange approached the last Administration only in 1978 to seek exemption from the legislation. Their application was refused. Following the election the Stock Exchange renewed their request for exemption.

Apart from a considerable amount of correspondence and Memoranda from the Stock Exchange since the election, the Chairman met the Minister of State for Consumer Affairs (Sally Oppenheim) on 22 May. Some of the views of the Stock Exchange have also been reflected in the Government's deliberations by the Governor of the Bank of England and the Treasury.

The Stock Exchange's request rests primarily on two grounds:

(a) the Restrictive Practices Court is allegedly not an appropriate forum for examining the Stock Exchange's workings because it is unable to take a wide enough view of the benefits to the public that arise indirectly through its contribution to the efficient working of the economy;

The Stock Exchange is able to prepare its pleadings to the Court as widely as it thinks necessary. There is no reason to believe that the Court is incapable of reaching a proper decision on the public interest.



(b) upon a declaration of the Court that certain restrictions are against the public interest, those restrictions immediately become void. Because the Court does not recommend alternatives this could lead to an awkward period when the Stock Exchange lacked certain rules during which new rules were being made. The new rules may also be caught by the legislation. As a result, instability would be introduced to the financial market and there would be unforeseen consequences for the economy.

On 23 October the Secretary of State for Trade announced that he would introduce amendments to the Restrictive Trade Practices Act which should allow bodies involved in proceedings under the Act (at the discretion of the Court) time in which to revise their rules to take account of any finding that certain restrictions are contrary to the public interest. This amendment will obviously benefit the Stock Exchange.

In the light of the above, the Government concluded that exemption was not appropriate. The Secretary of State for Trade has indicated that this would not preclude later use of the powers if changed circumstances warranted a reconsideration of the decision.

The statements by the Secretary of State for Trade referred to above were made during the Second Reading Debate of the Competition Bill in which the Government's commitment to competition as an essential contribution to its economic policy and its disengagement of controls on industry.

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1 November 1979

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Mr Sanders

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cc Mr Lushan

MSM

From the Secretary of State

Richard Prescott Esq
Paymaster General's Office
Whitehall
London, SW1

30 October 1979

RM/10

Dear Richard

THE STOCK EXCHANGE

I understand that a number of Ministers have been approached by City contacts about my Secretary of State's decision not to exempt the Stock Exchange from the scope of the Restrictive Practices Act 1976. I attach a note on this point which can be drawn on freely in answer to any enquiries.

I am sending copies of this letter and enclosure to Tim Lankester (Number 10), the Private Secretaries to other members of the Cabinet and to Martin Vile (Cabinet Office).

Yours sincerely,

Stuart Hampson

S HAMPSON
Private Secretary



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