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10 DOWNING STREET

THE PRIME MINISTER

10 November, 1980

Dear Sir Harold

Thank you for your letter of 17 October about the Stock Exchange's request for exemption from the restrictive trade practices legislation.

The Stock Exchange's Rules involve significant restrictions on competition of a kind which have been scrutinised in the past by the Restrictive Practices Court. You may recall that when the previous administration decided to extend the restrictive practices legislation to virtually all services in 1976, they did not include the Stock Exchange's Rules in the list of exemption agreements. In the circumstances, the Director General of Fair Trading was under a legal obligation to refer the restrictions to the Court and this he did in February 1979. When we assumed office, we re-examined the Stock Exchange's request for exemption. We decided on balance, however, that such action would not be justified. Other City institutions of a similar self-regulatory nature who are caught by the legislation and who, I understand, are discussing their agreements effectively with the Director General, have not sought exemption. Moreover, for the Stock Exchange to be granted exemption would in no way absolve them from the requirements of EC competition rules. Indeed, we have reason to believe that the European Commission would start investigations fairly promptly if the Restrictive Practices Court ceased to have jurisdiction in this field.

A further factor in our decision is the difficulty - and the propriety - of removing a case from the Court once it has begun.

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However, in recognition of the problems which might arise before the Court for bodies like the Stock Exchange, we have made two major amendments to the legislation which will enable the Stock Exchange to plead their case fully and provide a period of grace for alternative proposals to be considered.

We considered whether your Committee's report provided any new justification for reversing our previous decision. We did not interpret paragraph 366 as a specific recommendation that the Stock Exchange's request for exemption be granted, but rather as a suggestion that the CSI should consider how the present rules might be modified, given your Committee's view that they could not survive in their present form. Be that as it may, our overall conclusion was that the Committee's observations did not add to the arguments for exempting the Stock Exchange from the Court which had already been put to us.

I realise, of course, that as a result of the case now pending, the Stock Exchange have argued that they feel inhibited from considering changes in their rules, particularly in those restrictions which are currently under scrutiny. I must point out that it was the decision of the Stock Exchange to defend their present practices before the Court and not to modify them, as others have done, in discussion with the Director General. However, we have made it clear to them that they are at liberty to discuss any changes in their rules at any time with the Office of Fair Trading on a without-prejudice basis. Leaving aside the restrictions actually before the Court, there is no evidence that the present proceedings are affecting the Stock Exchange's self-regulatory activity, and indeed a number of major changes have been introduced this year.

In your letter, you suggest a small ad hoc committee to consider the matters before the Court. I do not think that this would be a good idea. It would prolong uncertainty in the City and lead to further delay with no additional prospects of quick effective action. I know how strongly the Stock Exchange feel on

/ this matter.

this matter. I can assure you that their case has been considered very carefully, but so far no arguments have been advanced to justify the substantial erosion of the principles of competition - supported by both main parties since the war - that the exemption of a body very much in the public eye would cause.

Yours sincerely
Margaret Thatcher

The Rt. Hon. Sir Harold Wilson, K.G., O.B.E., F.R.S., M.P.



From the Secretary of State

N Sanders Esq
10 Downing Street
London SW1

5 November 1980

Dear Nick,

STOCK EXCHANGE: RTP LEGISLATION

I enclose a draft reply for the Prime Minister to send to Sir Harold Wilson in reply to his letter of 17 October about the Stock Exchange and the Restrictive Practices Court.

Sir Harold's letter has doubtless been prompted by the Stock Exchange, who have claimed that the Wilson Report endorsed their long-standing demand for exemption from the RTP legislation. However, whether because of differing opinions in the Committee or because the case was sub judice, the relevant section of the Report was obscurely worded. It concluded (paragraph 366) that despite the amendments to the RTP legislation made by the Competition Bill, the Restrictive Practices Court was not well designed to consider alternatives to the restrictions currently under scrutiny. It also doubted whether the present system could continue without substantial change, regardless of the Court's decision. Because of the Stock Exchange's unwillingness to do anything which might weaken their legal position, it suggested that the Council for the Securities Industry should undertake consideration of alternatives to the current restrictions. However, it did not in turn recommend that the Stock Exchange's request for exemption should be granted, and the implication in Sir Harold's letter that it did so recommend is not necessarily supported by a reading of the text. We have reason to believe that the Committee would not have been unanimously in favour of exemption for the Stock Exchange.

Sir Harold, as a suggestion of his own, puts forward the idea of a small ad hoc committee to look at the Stock Exchange's restrictions. While this would undoubtedly be attractive to the Stock Exchange, such a body's recommendations could have no legal force, and if they were to be rejected by the Stock Exchange the Government would have no power to enforce them short of primary legislation. My Secretary of State informed the Stock



From the Secretary of State

Exchange in August that, while he had not ruled out completely the possibility of exemption, he did not consider that the Wilson Report justified transferring the case to the Monopolies and Mergers Commission or to any other forum. He also warned the Stock Exchange that the EC Commission would be likely to investigate them fairly promptly if their case was withdrawn from the Restrictive Practices Court. He encouraged them to discuss possible changes to their rules with the Office of Fair Trading on a "without prejudice" basis, but they have resolutely declined to pursue this course so far.

We understand that the Stock Exchange are discussing with the Bank of England the various changes recommended in the Wilson Report and it is conceivable that the outcome of such discussions (if reflected in changes to the Stock Exchange's rules) might produce a new situation in which the need for Court proceedings could be reconsidered. However, this is a matter which can only be considered in the light of any specific proposals from the Stock Exchange. In the meantime, while the need to defend their case before the Court is clearly a nuisance to the Stock Exchange, we have no evidence that the current proceedings are seriously inhibiting their self-regulatory activities.

I am copying this letter and enclosure to Richard Tolkien.

Yours ever,

Nicholas McInnes

N McINNES
Private Secretary

DRAFT

Addressed to:

Rt Hon Sir Harold Wilson KG, OBE
House of Commons
London SW1A 0AA

File No.

Copies to:

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for PMP!
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Originated by:
(Initials and date)

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(Initials and date)

Enclosures:

(and please
attach the
Trade covering
letter)
MS

Type for signature of

PRIME MINISTER
.....
(Initials and date)

DEPARTMENT OF TRADE

STOCK EXCHANGE: RTP LEGISLATION

Thank you for your letter of 17 October about the Stock Exchange's request for exemption from the restrictive trade practices legislation.

The Stock Exchange's Rules involve significant restrictions on competition of a kind which have been scrutinised in the past by the Restrictive Practices Court. You may recall that when the previous administration decided to extend the restrictive practices legislation to virtually all services in 1976, they did not include the Stock Exchange's Rules in the list of exemption agreements. In the circumstances, the Director General of Fair Trading was under a legal obligation to refer the restrictions to the Court and this he did in February 1979. When we assumed office, we re-examined

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A further factor in our decision is the difficulty - and the propriety - of removing a case from the Court once it has begun. However, in recognition of the problems which might arise before the Court for bodies like the Stock Exchange, we have made two major amendments to the legislation which will enable the Stock Exchange to plead their case fully and provide a period of grace for alternative proposals to be considered.

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VMS



Sir H. WILSON

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

22 October 1980

S. Hampson, Esq.,
Private Secretary,
Department of Trade

Chase IT?

Dear Stuart,

Yespl
MS
LH

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I attach a copy of a letter the Prime Minister has received from Sir Harold Wilson about references of the Stock Exchange to the Restrictive Practices Court, which, as you will see, Nick Sanders sent to me for a draft reply.

I think this is a matter for you rather than us.

I am sending a copy of this letter to Nick Sanders.

Yours sincerely,

Richard Tolkien.

R.I. TOLKIEN
Private Secretary

Sir H. WILSON

(Stock Exchange)

20 October, 1980

checked
✓ 7/11copy SENT 5/11, via D/T
Additional copy coming
immediate today (H 7/11)

I attach a copy of a letter the Prime Minister has today received from Sir Harold Wilson about references of the Stock Exchange to the Restrictive Practices Court.

I should be grateful if you could suggest a draft reply for the Prime Minister to send to Sir Harold, to reach us here by Wednesday, 5 November.

N J SANDERS

R I Tolkien, Esq
HM Treasury

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20 October, 1980

I am writing on behalf of the Prime Minister to thank you for your letter of 17 October about the Stock Exchange and the Restrictive Practices Court. I will place your letter before the Prime Minister at once and you will be sent a reply as soon as possible.

N J SANDERS

The Rt Hon Sir Harold Wilson KG OBE FRS MP



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10 DOWNING STREET

PRIME MINISTER

A letter from Sir Harold
Wilson (whose health seems to have
improved) about references of the
Stock Exchange to the Restrictive
Practices Court. We will let you
have a draft reply. _____

MS

20 October, 1980

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From: The Rt. Hon. Sir Harold Wilson, KG, OBE, FRS, MP.

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HOUSE OF COMMONS
LONDON SW1A 0AA

17th October 1980.

18/10

Dear Prime Minister,

I trust this letter is not out of order, but in view of recent public comment, I should like to revert to an important issue raised in the Report of the Committee to Review the Functioning of Financial Institutions, Cmnd. 7937.

This relates to the references of the Stock Exchange to the Restrictive Practices Court. I had thought of raising this matter if I catch Mr. Speaker's eye in the economic debate on the Gracious Speech when Parliament resumes. Undoubtedly the appointment of the Committee concentrated the minds of people and institutions within the Stock Exchange and indeed has led to some changes, not least in the area of unquoted companies. The decision to refer them to the Court has, however, put a stop to a lot of new thinking on their part and almost everything they do as a financial institution has now got to be transacted under the eye of solicitors and barristers.

The Committee was a little inhibited by the Government's decision, but did go so far on page 106 to suggest that the machinery of the R.P.C. is not well designed for considering alternative proposals and as an alternative considered by the Council for the Securities Industry.

I do not know whether the Government have turned this suggestion down, though it has much to commend it - including the unanimous view of the 17-member Committee.

A further problem is caused by the general understanding that the Court will not get round to its investigation until 1982 or thereabouts. An alternative might well be the appointment of a small Committee on the lines of our own to look at this idea and to make clear recommendations to the Government and the relevant City institutions.

Yours very sincerely,
Harold Wilson.

The Rt. Hon. Mrs. Margaret Thatcher, M.P.