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Prime Minister

Agree a negotiated settlement and withdrawal of the case from Court?

Or would you like a discussion?

MCS 12/7

PRIME MINISTER

STOCK EXCHANGE AND THE RESTRICTIVE PRACTICES COURT

You will recall that I mentioned to you discussions that I proposed to have with the Chancellor of the Exchequer and the Governor of the Bank of England about how to deal with the restrictive practices in the Stock Exchange which are currently being challenged in the Restrictive Practices Court by the Director-General of Fair Trading. I understand that before the Election Arthur Cockfield and Geoffrey Howe discussed the prospect of negotiating an agreement with the Stock Exchange which would allow the case to be withdrawn from the Court. I took the matter up again with Nigel Lawson and first the old, then the new, Governor. I have now had preliminary discussions with both Sir Gordon Borrie and Sir Nicholas Goodison. This minute will explain to you more fully how we might proceed.

2 You will recall that the Director-General brought to the Court some while ago a challenge on (a) minimum commissions; (b) "single capacity" - the prohibition of brokers (agents) acting as jobbers (principals) and vice versa - and (c) barriers to entry. The Court hearing is now scheduled for the turn of the year.

3 The Stock Exchange have hitherto been determined to defend the

status quo. The Government's position, determined essentially by John Nott in 1979 (and reflected in his statement to the Commons on 23 October 1979 - Hansard extract attached) has been that, while they have the power to intervene, they were not persuaded of the need to do so. There has nonetheless been widespread recognition that the Court is not an ideal place to deal with these issues.

4 New factors have now appeared. One is that Sir Nicholas Goodison has come to accept the necessity of some changes, and is prepared to negotiate. Preliminary discussions with him suggest the possibility of a settlement with the following elements:

a minimum commissions would be abolished, over a transitional period of time to be negotiated;

b single capacity would stay; but - and this has become Sir Nicholas Goodison's major concern - would not be frozen in its present form;

c an independent appeals procedure for admissions cases, plus some other relaxation of barriers to entry.

5 Before the Election Geoffrey Howe, Arthur Cockfield and the Governor had all agreed that the right course would be to pursue a negotiated commitment from the Stock Exchange to changes on these lines. If a satisfactory commitment can be obtained, then

- and only then - we would take action to remove the case from the Court.

6 Having now been over the ground thoroughly, Nigel Lawson, the new Governor and I believe that - in principle - this is the right course. It is our view that a negotiated solution will be welcomed not only by the Stock Exchange, but by the City generally. We believe that it is the best way to bring about constructive changes of the kind desired, while minimising risks to the structure of our central Stock market. Sir Gordon Borrie, Director of Fair Trading, will not like it, but I think he will accept it as a decision which Ministers may legitimately take; and in a real sense the changes which the Stock Exchange will make can be presented as resulting from his initiative and action.

7 Before reaching any decision, however, we need to look at this approach alongside the letters (copies attached) which you wrote to Sir Nicholas Goodison on 20 November 1979 and to Sir Harold Wilson on 10 November 1980, defending the decision taken at that time that the case should proceed. Other Ministers have written publicly in a similar vein, including most recently Gerry Vaughan's letter of 26 April 1983 to Ian Wrigglesworth (copy attached).

8 Your letters raise two important issues.

i you suggested that the case could not be withdrawn from the Court unless there were developments in the rules and practices of the Stock Exchange. There is a case for saying that there is now the prospect of securing the desired changes by negotiation.

ii You pointed to the question of propriety of action to remove the case from the Court. This is a more difficult point to answer. Essentially the answer would have to be that circumstances have changed since the case was brought, and since this Government's previous decision to let it run. The main factors are, first, that Stock Exchange leaders now accept the need for change, not only because of the pressures of competition policy, but because they recognise that commercial pressures are urging them in the same direction. Second, we have to implement EC Directives dealing with the listing of securities on the Stock Exchange and the duties of listed companies; recent decisions by the European Court oblige us to give effect in law to much that we had originally looked to achieve by less formal means. This will involve legislating on matters hitherto within the discretion of the Stock Exchange, and a major transfer of sovereignty from the Exchange to Government, to an extent which in other areas (for example, professions) has been deemed ample to exclude them from Restrictive Trade Practices legislation.

9 To summarise, the Chancellor, the Governor and I are all agreed that a negotiated settlement would be better. It would avoid the risk of decisions by the Court which might be so disruptive of the Stock Exchange that it might be necessary to intervene at that stage by means of legislation, which would be still more politically difficult than the action we are proposing now. But you may feel that the difficulty of departing from the position adopted in your letter of 1980 - particularly on the question of propriety - is decisive. If so, we would call off the current negotiations and let the case proceed. You may want to discuss this with me. You may also want to seek the Law Officers' views on the legal aspects of the propriety point.

10 If you decide that we should go on with the negotiations, it still remains to be seen whether Sir Nicholas can produce an offer which we judge is adequate to justify removing the case from the Court. I hope this week to get a sufficiently definitive response from him, which I would discuss at once with the Chancellor of the Exchequer and the Governor. In these circumstances, you may want to bring some or all of our colleagues into the picture. It would then be desirable, to avoid the risk of leaks, to make an early, highly provisional statement of our intentions (contingent on endorsement by the

Stock Exchange as a whole) before the House rises and before the end of the Law Term.

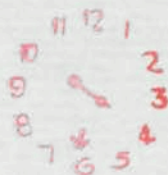
C P

C P

12 July 1983

Department of Trade and Industry

2 JUL 1983



ke six months and could possibly l to nine months, could have been taken by a different body.

considered the possibility of creat- new body for this purpose. We lered asking the Exchequer and Department to carry out this work e came back to the Monopolies and ers Commission as being the most le body in a new form to conduct ind of efficiency audit. The Com- on already has experience of investi- g large monopolies and in its new we thought it would be the best to build up experience in this very ult and important field.

am anxious not to overburden the opolies and Mergers Commission diately with a great weight of new tigation. It must have time to op its practice and build up rience.

. Hugh Dykes (Harrow, East): May e my right hon. Friend from the ic sector back to the industries to h he was referring when the hon. ber for Norwood (Mr. Fraser) inter- d earlier—that is, those which prac- self-regulation. This is a very im- ant matter because there is a pos- ity of amending the existing Act to a finding from having immediate t in the court. I welcome that pos- ity and the Secretary of State's pro- to draft an appropriate amendment. example, if it appears in due course adequate regulation is put at risk e the Stock Exchange's practices are g investigated, as they are now, will reconsider the stance he has adopted to lay an exemption order? The k Exchange has already officially re- sted that this should be done.

Ir. Nott: I realise that this is an ortant question. I shall come to the k Exchange in a moment and answer hon. Friend's point then. I under- d his concern.

Ir. Stephen Dorrell (Loughborough): ld my right hon. Friend deal with point that I raised in the debate in y when I asked him why the Govern- nt want to limit the section 11 powers the public sector? Are there not also vate sector monopolies in which the ion has just as much at stake? Will Government consider extending that

power to cover some parts of the private sector as well?

Mr. Nott: I noted my hon. Friend's remarks in that debate and I have re-read them. However, if there is a monopoly operating in the private sector it is subject to the existing legislation embodied in the Fair Trading Act. If a particular firm indulges in an anti-competitive practice, it will be subject to investigation under the clauses in this Bill if the Director General of Fair Trading considers that such a situation exists.

In this Bill we are treating the public sector and the private sector exactly alike. I have been asked why we have gone further and instituted what I might call an efficiency audit for the public sector but not for the private sector. The answer to that is exactly as I have just given it. There is a fundamental difference between a statutory monopoly which under legislation normally has been given a right—such as the Post Office, whose monopoly we would like to reduce—and a private sector firm. A statutory monopoly does not have the same sanctions of bankruptcy and it is unlikely to be taken over by a large private firm. Because of the fundamentally different nature of these activities we believe that the additional procedure is required which is not relevant in that sense to the private sector where monopolies do not exist, or if they do, we have procedures for undoing them.

I shall refer briefly to the way in which we hope to strengthen the Monopolies and Mergers Commission. I am trying to develop this speech a little because I was criticised for being brief last time. Therefore, I am anxious now to make a reasonable but not long contribution. I have had a number of talks with the chairman of the Monopolies and Mergers Commission and with his full agreement I hope to appoint one, or, if possible, two deputy chairmen on more of a full-time basis than hitherto. The chairman is also anxious to co-ordinate more closely the several groups working on reports. He is setting up a co-ordinating committee of senior members for this purpose. The Commission has recently recruited a small nucleus of highly qualified senior staff to conduct the new investigations and recently we have appointed a new secretary as the official head of the Commission.

I accept and agree that the new procedures require, in some parts of the Commission's activities, a rather different kind of approach and I believe that the chairman is now moving in that direction.

There is a further point relating to the comments made by my hon. Friend the Member for Harrow, East (Mr. Dykes) about the Stock Exchange agreement, which has been referred to the Restrictive Practices Court under the Restrictive Trade Practices Act. Several months ago the Stock Exchange requested that its agreement should be removed from the scope of the legislation on the ground that the Restrictive Practices Court is not an appropriate body to investigate its activities. There has been a considerable amount of correspondence between Ministers and the Stock Exchange and a great weight of evidence has passed between us.

I regret to tell the House that I cannot meet the request of the Stock Exchange. However, I am concerned that adequate regulation of the security markets should be preserved. I recognise the value of self-regulation in which the Council of the Stock Exchange has a central role to play. I believe that the amendment to the Act to which I referred earlier, and which will give this breathing space following the announcement of the finding by the court, may be of help to the Stock Exchange should the court make certain findings at the end of its investigation. However, the small amendments I am making to the court's arrangements will apply across the board.

We must not assume that the Restrictive Practices Court is not as capable as other bodies of making a sensible finding in the public interest. There has been a feeling that this court will not consider the public interest. We must see what happens. I do not think those fears are justified.

Mr. Dykes: If the principle of adequate regulation to which the Minister has already paid tribute were put at risk by these processes in the months ahead, would he reconsider his decision not to lay an exemption order?

Mr. Nott: The power to lay exemption orders is part of the law. Any Minister is always open to considering anything. I do not intend to lay an exemption order

[Mr. Nott.]

and I have made that clear. I have said that I cannot meet the request of the Stock Exchange. However, clearly I am always prepared to receive representations about exemption orders, and if some dramatic situation arises I shall be willing to see my hon. Friend at any time.

Mr. Jay: As the right hon. Gentleman has referred to the Stock Exchange, will he make clear how the legislation will affect the professional services generally? Will restrictive practices in the legal or medical professions be covered? If not, how does the Bill exclude them?

Mr. Nott: In the last resort it will not be the judgment of Ministers—they are not excluded. The Director General of Fair Trading will normally consider it more appropriate that professional services such as those referred to by the right hon. Gentleman should be subject to investigations through the existing procedures under the Fair Trading Act and the Monopolies and Mergers Commission investigation. The Director General has the power to use the new procedures, but I believe that he is more likely to use the existing arrangements under which some of the learned professions and others have already been looked into by the Monopolies and Mergers Commission.

Mr. D. N. Campbell-Savours (Workington): With reference to clause 11, will the right hon. Gentleman tell me in which subsection I will find a reference to the legal profession?

Mr. Nott: With respect to the hon. Gentleman, I believe that he has the wrong clause. Clause 11 is concerned with what I have described as the efficiency audit of the public sector bodies. I fear that the hon. Gentleman will have to look at the Fair Trading Act, which lists all the bodies. In this measure all we have done is to add the water and bus undertakings and the agricultural marketing boards to a list which is already included in the Fair Trading Act.

I turn to the abolition of the Price Commission. I should tell the hon. Member for Norwood that it is no use searching in our policy for a modified system of price control; it does not exist. Nor does the pre-notification of prices and the associated paraphernalia of a great bureaucracy which employed over 500 persons and which would have cost nearly £8 million this year and led to countless burdens on British industry and commerce. For what purpose did it exist in the past? The right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley) assured us that the Price Commission was not an agency for holding down the RPI. Indeed, its powers were limited to deferring price increases and it performed that role successfully and visibly—not for political purposes—in the period leading up to the election.

The previous Government's counter-inflation policy rested not on price control but on voluntary pay controls negotiated with the TUC. The TUC wrote the Government a letter and that letter was incorporated in a White Paper. Through that White Paper the letter from the TUC became the law.

Mr. John Smith: If it is a bad idea to attempt to investigate price increases, will the right hon. Gentleman explain why in clause 13 such a power is included to refer to the Director General an increase in prices? Will he explain to the House what is the point of the Secretary of State having the power to refer a price increase for investigation when it is clear from the face of the Bill that he has no powers to act upon that reference, even if it is discovered to be against the public interest?

Mr. Nott: The right hon. Gentleman asks the question at precisely the right moment. Clearly it is a good question. Clause 13 enables the Government to ask the Director General of Fair Trading to produce a report where, as defined in clause 13, there is a matter of "major public concern" and the Secretary of State considers it to be of general economic importance or special significance to consumers. We do not intend to use that power in any but the most exceptional circumstances. If that power did not rest in the Bill, the power to conduct an investigation of that sort—as the right hon. Gentleman says, there are no sanctions attached to it—would probably be given by any Government to an ad hoc board. If the Government wish to investigate a particular case they will do so. However, I do not want the Government to be in the business of setting up ad hoc boards to investigate matters of this sort. I prefer to keep such investigations

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RECEIVED IN
21 NOV 1979
SECRETARY OF STATE FOR TRADE'S OFFICE

10 DOWNING STREET

THE PRIME MINISTER

20 November 1979

Dear Nicholas,

Thank you for your letter of 6 November about the decision not to remove the Stock Exchange from the scope of the Restrictive Trade Practices legislation.

I am sorry that you are so disappointed about this decision. But I can assure you that it was taken only after the most careful consideration. The legislation does of course include the power to lay an exemption order; and as John Nott made clear in the House, we would be prepared to consider granting exemption to the Stock Exchange if circumstances radically changed. Moreover, we are very much concerned that adequate regulation of the securities market should be preserved and we recognise that the Council of the Stock Exchange has a central role to play in this. It is for this reason that we intend to amend the Restrictive Trade Practices Act to permit the Court to suspend the effects of an adverse judgement so that the parties to a case can be given time to revise their agreement in the light of the Court's findings. The necessary amendments, which I understand have now been shown to you in draft, should reduce the possibility of any disruption to the securities market which might result if an adverse judgement entered into effect immediately.

/With regard

With regard to your second point about consultation, I gather that you discussed your request for exemption with Sally Oppenheim on 22 May. An extensive exchange of views between departments and the Bank of England followed, based on the memorandum which accompanied your request and on the discussions which you had with Sally. The matter was subsequently considered at length by Ministers. Finally, I gather that John Nott gave you prior notice of the proposed announcement when he saw you on 16 October. In all fairness, I do not think it can be argued that Ministers failed to consult you.

Yours ever

N.P. Goodison, Esq.

DEPARTMENT OF TRADE
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From the
Minister of State for Trade
Minister for Consumer Affairs

Ian Wrigglesworth Esq MP

26th April 1983

Dear Ian

You wrote to Arthur Cockfield on 18 March on behalf of Mr Ronald Frake of Spencer Thornton and Co concerning the action in the Restrictive Practices Court against the Stock Exchange.

As you may know, these proceedings are being brought under the Restrictive Trade Practices Act 1976. This Act places a duty on the Director General of Fair Trading to refer agreements registered under the Act to the Court. The Court then considers whether or not the restrictions in the agreements are contrary to the public interest in accordance with criteria (termed 'gateways') specified in the Act. Since the rule-book of the Stock Exchange contains restrictions to which the Act applies, the Director General was under a statutory duty to refer it to the Court.

The Exchange requested an exemption from the Act but, as John Nott (then Secretary of State for Trade) explained in the House on 23 October 1979, the Government could not agree to this. We fully recognise the value of self-regulation and the role of the Council of the Stock Exchange in regulating the security market. But this in itself does not justify exempting the Exchange from the normal procedures under the Act for assessing restrictive agreements. I am sure that the Exchange will deploy before the Court the arguments put by Mr Frake about single capacity and investor protection, and I see no reason to think that the Court, which consists of a Judge assisted by lay members selected for their expert knowledge, is not as capable as any other body of making a sensible finding on the public interest.

Should there be any new developments, we will, of course, be prepared to reconsider the question of exemption. But at present I see no reason to change the view taken by John Nott in 1979.

Yours
[signature]

Gerard Vaughan

Copies to:

Mr Mantle (on file)
Mr Louth CL

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FILE

10 DOWNING STREET

From the Private Secretary 13 July, 1983

STOCK EXCHANGE AND THE RESTRICTIVE PRACTICES COURT

Your Secretary of State minuted the Prime Minister on 12 July about the Stock Exchange and the Restrictive Practices Court.

The Prime Minister would be grateful if your Secretary of State would let her know what the Law Officers' views are on the legal aspects of the question of the propriety of action to remove the case from the Court.

M. C. SCHOLAR

J. Spencer, Esq.,
Department of Trade and Industry

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