



and the section 11 Order could only be effective if combined with a determination of the existing registered Agreement. Without this he was under an obligation to invite the Court to consider the issue and make a declaration. With it he considered he still had a discretion. His understanding was that the same conclusion could be reached in relation to single capacity even if an Order were made under the European Communities Act. The views of the Court could be useful. Whilst he accepted the right of Ministers to form a view on single capacity in the context of the Directives that view should not be reached after insufficient enquiry and consideration. On the issues generally, the Stock Exchange had always hitherto argued that the Court was not the appropriate forum; he feared that the proposed settlement lent encouragement to that view.

In discussion Simon Brown advised that the DG's duty was to put the Case before the Court; he would not be in breach of duty in letting the Court adjourn it sine die. The Stock Exchange could argue that as it was possible for them to enter into a new Agreement which would be outside the scope of the Act it would be futile to spend time and money on the Case. There was a point of propriety as to whether the Court should be invited to embark upon an expensive foray if the Stock Exchange had prospectively been taken out of the control of the Act.

In further discussion of the detailed stages which would take place if a section 11 Order were made after the summer recess, consideration was given to what the DG's attitude should be to an application by the Stock Exchange for a temporary stay pending this event. The Attorney General suggested that the Court could require the parties to return within 7 days of the operative date for further directions. He thought it common sense that the Judge could not be invited in the interim to require the parties to spend a lot of money on the Case whilst the effect of the orders, and indeed whether the Case would ultimately proceed at all, remained unclear. The DG was

concerned at the effect of a temporary stay on the Case. It may be that he could instruct Counsel to say he was not opposing the temporary stay (he would wish to discuss this with Counsel) but he could not give any indication of what his attitude would be when the Case returned to the Court in November. The attitude of the Judge was in his view a relevant factor.

LAURENCE OATES

22 July 1983

JUL 1983

