



FCS/83/230

SECRETARY OF STATE FOR TRADE AND INDUSTRY

British Telecommunications Articles of Association

1. Thank you for your letter of 9 November.
2. I understand the political pressures that persuaded Kenneth Baker to include the two-thirds provision in the BT draft Articles of Association. I can also understand Kenneth Baker's fears about consulting the European Commission. However, I am not sure I would agree with you that the provisions in the draft Articles are 'essentially uncontroversial'. There is a prima facie case that they contravene Article 52 of the EEC Treaty; and the Commission may choose to see them as a possibly dangerous precedent. Nor does it seem to me that they are 'obscure'. As you say, the possibility of foreign control has received considerable publicity, and the provisions in the draft Articles have been included precisely because of this. It seems to us very likely that at some stage, perhaps fairly soon, the inconsistency between the draft Articles and the Treaty will come to the Commission's notice.
3. You may be right in feeling that the Commission will understand our basic requirements. If so, our best course might be at some stage to take them into our confidence, explain the purpose of the provisions and plead special circumstances. At the very least, we would thus be able to avoid a row at a time not of our choosing (for example, when the share flotation is under way); and perhaps bargain to retain the important provision that the Chairman/Chief Executive should be British.
4. Since we may face a possible case at the European Court of Justice, I hope you will feel able to alert the Law Officers at an early stage. In any event, I hope your officials will be able to let us have a considered statement of the case on



national security grounds which we could deploy in Brussels if challenged. We need this urgently if we are to be ready to meet any accusation from the Commission or others that the provisions in the draft Articles are in breach of the Treaty.

5. I do hope that, once the Committee Stage is over, you will feel able to look at this whole question again.

6. I am copying this letter to the recipients of yours, and to Sir Robert Armstrong.

A handwritten signature in dark ink, appearing to read 'G. Howe', written in a cursive style.

GEOFFREY HOWE

Foreign and Commonwealth Office

14 November, 1983

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Secretary of State for Trade and Industry

CONFIDENTIAL

NBPM  
AT 22/11

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21 November 1983

The Rt Hon Sir Geoffrey Howe QC MP  
Secretary of State for Foreign and  
Commonwealth Affairs  
Foreign and Commonwealth office  
Downing Street  
LONDON  
SW1

*D. Geoffrey*

BRITISH TELECOMMUNICATIONS ARTICLES OF ASSOCIATION

Thank you for your minute of 14 November on this subject. As you realise the Memorandum and Articles of Association have now been laid in the Committee and Kenneth Baker will, as I said in my letter, seek to avoid high-lighting the two thirds provision when they come up to discussion.

2 I quite agree that once the Committee stage is over Kenneth and I should look at this whole question again and in doing so we shall give weight to the points you make.

3 I am copying this minute to the recipients of yours.

NORMAN TEBBIT

Post a Telegram : Future A7.

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Secretary of State for Trade and Industry

9 November 1983

CONFIDENTIAL

The Rt Hon Sir Geoffrey Howe QC MP  
Secretary of State for Foreign  
& Commonwealth Affairs  
Foreign & Commonwealth Office  
Downing Street  
London SW1

Prime Minutes ②  
To note that Mr Baker will  
be announcing that a  
majority of the BT board  
should be British. FCO  
wanted only chairman / chief  
Executive to reduce risk  
of EC challenge.

*MS*

Dear Foreign Secretary,

AT 9/11

BRITISH TELECOMMUNICATIONS ARTICLES OF ASSOCIATION

Thank you for your minute of 4 November, which was discussed at a meeting of officials on 8 November at which the Home Office, Treasury and Cabinet Office were present.

2 I think all concerned agree that, despite the many similarities between Cable and Wireless (C&W) and British Telecom (BT), there are substantial differences between the two companies: C&W's activities are mainly overseas whilst BT's are nearly all in this country; BT's operations are far more important to the conduct of HMG's business than are C&W's; C&W has had Articles of Association for over half a century, while BT as yet has a blank sheet of paper on which we can make a clean start; and the flotation of BT is a matter of great political controversy while the sale of further shares in C&W is not. In the circumstances the Articles of Association of one company need not form an exact precedent for the other.

3 The controversy about the flotation has caused Kenneth Baker to look closely at the draft BT Articles of Association. As you will have seen, there has been an extensive campaign of press advertisements which has drawn attention to BT's importance to national defence etc and to the dangers to national security if foreigners gain control of the company. This campaign has seemed to be exploiting a sense of genuine unease and our backbenchers have been affected. Kenneth Baker, who is facing a difficult task with the Telecommunications Bill in Committee, judges that to allay concern the BT Articles must include provisions which will demonstrate to the man in the street that facilities essential to both national economic and social well being as well as security should not pass under the control of foreigners. He would prefer all the BT Board to be UK nationals but is prepared



to accept a requirement that only a clear majority (7 out of 10 or 10 out of 15) should be UK nationals.

4 Kenneth has noted your officials' concern about the risk of challenge in the European Court and their belief that the only risk-free path is either to drop the provision about the nationality of the Directors or to require the majority to be EEC nationals. He also understands that a challenge to the Article about the Directors could lead to the provision about the Chairman or Chief Executive also being lost. He considers, nevertheless, that the political pressures are so great that we should take the risk. He also sees no merit in the idea that we should consult the Commission before the Articles are finalised, since it would draw the attention of those who could challenge us to an obscure and essentially uncontroversial provision in circumstances which would invite them to make difficulties. I agree with him. Kenneth therefore intends to make public the draft Articles of Association, with the two-thirds provision, at around 10.30 on Thursday 10 November.

5 Kenneth will not highlight the two-thirds provision. If there is discussion he will take the line that the provision is not intended to preserve the "Britishness" of BT plc (which is clear - although he will not say so - from the fact that there is no provision to stop a majority of the shares passing into foreign ownership), but rather to secure, as is done in all other states within the EEC, that the day-to-day management of a company which runs facilities of vital importance to national defence, civil defence and public administration both in peace and war remains in the hands of UK nationals. Foreigners will be able to join the Board but at all times there will be a majority of Board members ready to protect UK national security interests. We feel the Commission understand these basic requirements and in view of the public value of other PTTs in the Community and their consequent exemption from the Treaty provision it seems unlikely that other Member States will challenge this.

6 I am sending copies of this letter to the recipients of yours.

*Yours sincerely*  
*Norman Tebbit*

NORMAN TEBBIT

(approved by the Secretary of State  
and signed in his absence)