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Secretary of State for Trade and Industry

5 November 1984

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Alan Davis Esq.
Private Secretary to the
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
London SW1

Dear Alan,
BT SHARE ISSUE

Thank you for enquiry concerning whether there was any difficulty in Ministers acquiring BT shares in the course of the forthcoming share issue. In view of the applicability of this question more widely, I am copying this reply to the Private Secretaries to all Cabinet Ministers, with the request that they should copy it to Ministers within their Departments as appropriate. In preparing this reply, we have consulted Sir Robert Armstrong's office, to whom this is also copied.

The question essentially concerns two points: whether it is proper for Ministers to purchase shares in the BT issue, and, secondly, what are the constraints, either legal or of propriety, in respect of the holding of BT shares.

On the first question, we take the view that it would be ill-advised for Ministers in this Department to purchase shares in the forthcoming BT issue. This is because otherwise we risk a potential conflict of interest where Ministers are both shareholders themselves and are responsible for, or associated directly with, decisions which will affect the circumstances of share holders immediately following the flotation, either through the share price, or matters affecting the regulation of BT or its competitors and suppliers. For this reason, we believe that the same advice should apply in respect of Treasury Ministers who are concerned with the privatisation programme, and to the Prime Minister.

The position is less clear cut in the case of Ministers not directly concerned with the privatisation of BT. The guiding principle is that laid down in Questions of Procedure for Ministers that Ministers "must so order their affairs that no

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conflict arises, or appears to arise, between their private interests and public duties" and specific guidance in share-holdings is contained in paragraphs 72 and 73.

Paragraph 73 says that Ministers should "scrupulously avoid speculative investments in securities about which they have, or may be thought to have, early or confidential information likely to affect the price of those securities". The decision to privatise British Telecom, has, of course, been the subject of Cabinet and Cabinet Committee discussion and this has inevitably involved consideration of BT's prospects. Although many Ministers will not have had access to detailed financial information there is a danger that Ministers might be thought to have had access to inside knowledge. There is therefore some risk of embarrassment and the safest course would be for Ministers not to purchase shares, at least during the initial flotation.

I should now turn to the second question, concerning the subsequent holding of BT shares. Here, of course, the issues are very like those which would apply to the holding of any securities, but particularly shares held in any company where the Government continued to be a substantial minority share-holder, and to have substantial contractual and regulatory dealings. The legal issues are quite straightforward in broad outline;

i it is a criminal offence ("insider dealing") for a Crown servant (i.e a Minister or a civil servant) who has, because of his position, price sensitive information about a company's securities, to deal in them on the Stock Exchange (here or abroad) unless he can prove he did not intend to take advantage of the information. Actually applying for BT shares does not fall within this (because, in the view of our solicitors, it is not done on the Stock Exchange - it is, rather, a straight contract with the Secretary of State). However, it is most unlikely that a Minister (or civil servant) other than one concerned with the regulation of or contacts with BT or its competitors, will have such information because of his position per se.

ii If Ministers (or civil servants) are regulating BT or one of its competitors, or suppliers, or (conceivably), customers, a share holding in BT may well be evidence of bias. Bias invalidates administrative acts and may well found an action in damages against the Crown.

Here again, I should draw your attention to the advice contained in Questions of Procedure, and particularly to the paragraphs referred to above.



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I hope you will understand that, in sum, the advice which we have to give is not categorical; whether or not Ministers think it would be appropriate in their circumstances for them to consider purchasing BT shares must be a matter for them. In deciding, Ministers will wish to take account of the advice contained in Questions of Procedure for Ministers, the considerations that I have mentioned above, and the involvement or lack of it which they may have with matters currently or prospectively affecting British Telecom. It should, however, be borne in mind that it is as important to avoid the appearance of conflict of interest as to avoid actual conflict and if in doubt it is usually better to err on the side of safety.

Yours etc.
A. Lansley

ANDREW LANSLEY
Private Secretary

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