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MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

BANK TAKEOVERS AND MERGERS

Memorandum by the Secretary of State for Trade

I am not convinced we need powers as broad as those proposed by the Chancellor of the Exchequer for the control of bank mergers. Furthermore I question whether they would be used in the way apparently contemplated. I believe the Government could achieve its objectives by a less controversial route.

Evenso on many aspects of his proposals the Chancellor and I are in agreement. I accept that, in its present form, the Banking Act is a blunt and inadequate instrument for responding to a bank takeover. I therefore accept the need for legislation. The Chancellor and I are also fully agreed on another element of his proposals, namely that our competition legislation must continue to apply to the financial sector.

Where I differ from the Chancellor is on the nature and extent of the powers to be sought. There is no difficulty in justifying, in the international or the domestic community, powers to prevent bank mergers on prudential grounds, and perhaps other grounds relating to the peculiarities of banking compared with other economic activities. My own powers in relation to takeovers of insurance companies are a case in point. They are "prudential" powers and are limited to considerations of competence, probity, and financial standing. They are uncontroversial, so long of course as I exercise them reasonably, consider representations made to me, and disclose to the parties my grounds for preventing an assumption of control.

By contrast, the Chancellor seeks far wider powers, based on undefined grounds of public interest. Domestically, they amount to a virtually unfettered power of veto. Internationally, they would be aimed at enabling the Chancellor to prevent the takeover of the United Kingdom bank by a non-EC organisation of utmost propriety, financial solidity and general standing in international financial circles, solely on grounds of nationality. (I note that it is accepted that we cannot act towards an EC organisation in that way, and that of course includes EC subsidiaries of American and other banks.)

I am doubtful whether the powers could effectively be used in this way. To my mind it is imprudent to seek them. The Chancellor acknowledges that reasons for preventing a merger will have to be stated. To state simply that it would be contrary to the public interest would not be adequate. It follows that he would have to be ready to explain to the parties and indeed to Parliament why - on the basis of foreign ownership - he had prevented the takeover of

a United Kingdom bank by (say) an American bank that was in every banking respect unobjectionable. Faced with the need for such a statement I believe the consequences for our inward investment policy in general and for relations with the United States Administration in particular could be profoundly damaging. Indeed I question whether we would feel able to take the decision. There is, furthermore, even the possibility of a decision being challenged in the courts on grounds of reasonableness. If we cannot contemplate actually using the power, there is of course no case for provoking controversy by seeking it.

An alternative is moreover already available to us, in the Monopolies and Mergers Commission. Although we cannot (and would never wish) to direct the Commission to reach a particular conclusion in making merger references we can point up particular aspects we want examined. It might well find that the takeover of a major United Kingdom clearing bank by a foreign bank would be contrary to the public interest. I could then use my existing powers to prevent it at less cost to our wider interests.

My conclusion remains that the Chancellor should do no more than the minimum necessary. Any proposed legislation should be kept to a minimum and be as uncontroversial as possible. The Chancellor should seek an acceptable power to prevent bank mergers and takeovers on defined prudential grounds. Such "banking" grounds would be largely technical. A general "public interest" criterion, designed to enable nationality to be a ground for refusing a merger, would be seen for what it was, and could well provoke more retaliatory harm than national benefit.

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