



*cc No*

Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Norman Tebbit MP  
 Secretary of State for Trade and Industry  
 Department of Trade and Industry  
 1 Victoria Street  
 LONDON  
 SW1H 0ET

8 November 1983

*Dear Secretary of State*

COMPETITION POLICY AND TELECOMMUNICATIONS

Thank you for sending me a copy of your minute to the Prime Minister of 4 November with its attached draft statement. I have also seen the Prime Minister's comments of 7 November. I have previously discussed these matters with Nigel Lawson and in his absence I would wish to make the following points.

The draft statement is very important for two reasons:

- it will set the competitive framework for the privatisation of BT and influence the climate for privatisation in general;
- it will, as you say, be a material factor for the sale of Cable and Wireless shares which I plan to make.

Competitive framework

I am satisfied with the position on apparatus supply and the provision of specialised, "value-added", services. In relation to both of these we can plausibly claim success in opening up areas where market forces are genuinely free to operate.

However in privatising BT we are in large part denationalising the transmission network. Here, in spite of the action to licence Mercury and the local radio telephone and cable services, we can make no such claim of opening up a free market. On the policy outlined in the statement the provision of telecommunications networks is and will remain a highly controlled activity with little scope for the markets to decide the future shape of the business.

I understand and broadly accept the reasons for the policy of limiting the right to install and operate network capacity to Mercury and BT. But I am concerned that by seeking to extend this policy to control the uses to which such networks may be put, we are unnecessarily limiting the potential for free markets to develop and are exposing ourselves to justifiable criticism of perpetuating monopoly (or at best duopoly). It is one thing to retain governmental control over who may install and operate telephone lines and exchanges, it is quite another to seek to control how those capital investments may be commercially exploited.

In the short-term Mercury is likely to have considerable spare capacity, the more opportunities it has to exploit this the better its chances of earning a satisfactory return. Rather than damaging Mercury's prospects resale is likely to improve them. Why should the Government be in the business of preventing and limiting the commercial exploitation of existing and new investments in this way?

It is argued that if BT were allowed to lease its spare capacity to intermediary businesses this would generate competition to Mercury on a speed and scale which it could not match. But I think we should be very careful about being drawn into governmental intervention for reasons of this kind. If BT can earn an adequate return from leasing to intermediaries so presumably can Mercury. It is for the DG OFTEL to ensure that BT does not compete unfairly by charging excessively low leasing prices but in any case this seems unlikely to be in BT's interest.

Another argument for limiting the exploitability of telecommunications networks is that this will assist the Government's objectives for breaking the existing labour monopoly of the BT unions. However this is really just another way of saying that without such limitations Mercury will not survive and I have already argued that lack of resale opportunities is as likely to harm Mercury, as the existence of such opportunities.

#### Impact on Cable and Wireless sale

There are three features of the statement which are relevant to the forthcoming sale of Cable and Wireless shares:

- (i) the limitations on resale - already discussed above;
- (ii) the Government commitment to the duopoly on the provisions of national networks;
- (iii) the intention to oblige Mercury to instal a network on a national basis and to provide a universal service, coupled with the earlier references in the statement to the high costs and slow returns of such an investment.

As regards (ii) I would not press for an immediate or a very early relaxation on the restriction of network provision to Mercury and BT, provided that this is not associated with parallel restrictions on the ways in which these (or any other) networks may be exploited. I believe this gives Mercury's backers fully adequate assurance and should not have any significant impact on investors' perceptions of C&W's prospects.

The proposed obligations under (iii) however are in my view likely to be a seriously negative factor. The obligations are expressed vaguely and will I believe be very disquieting to C&W investors. It is not clear what additional investments Mercury's backers are likely to be asked to commit themselves to but the implication is that these could be very substantial and could result in even later positive returns than are currently expected. I do not think these obligations should be pursued.

My understanding is that the Chairman of C&W is himself extremely concerned about them and may not be willing to proceed with the Mercury licence on this basis. (On a related drafting point we would prefer to see deleted the unnecessarily dampening reference on page 4 of the draft to the large investment and slow returns involved in network installation).

### Conclusion

I believe that we should take the opportunity of this statement to stand firmly back from control over who may be permitted to exploit (as opposed to install) network investments. I believe this would help us to rebut the criticism that we are intending to perpetuate a public monopoly in the private sector, and that, by themselves, the measures of liberalisation already taken on apparatus and VANS will not be sufficient for this purpose.

Ideally I would prefer all forms of resale to be permitted by general licence now. However I would be prepared to concede to the infant industry considerations to the extent of announcing that this general licence will only be issued once Mercury has got its basic "figure of 8" inter-city network installed provided this was not later than 1987. This would then put Mercury into a position to take advantage of resale at exactly the same time as BT. I believe that investors would see this as expanding Mercury's opportunities to earn a return on its investment, and thus that it would have no adverse impact on the C&W sale.

The statements about new investment obligations to be imposed on Mercury are vague and disquieting. Nor do I think they will be acceptable to C&W. They should not in my view be pursued.

Subject to these comments (and to the drafting point at the end of paragraph 11 above) I would be content with the statement.

### Timing

Finally I must stress the urgency in regard to the Cable and Wireless sale. I know you appreciate this and with time to keep the discussions with BT and C&W as short as possible, so that the statement can be issued in time for the market to digest its implications. This means in practice that the statement ought to be made by the end of next week, 18 November, if at all possible.

I am copying this letter to the Prime Minister, Leon Brittain, Geoffrey Howe and Sir Robert Armstrong.

*yours sincerely*  
*FP Bogan*

*for* JOHN MOORE  
 (Seen by the Minister  
 and signed in his  
 absence).

Port + Telecom: Future

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