

## RESTRICTED – POLICY

To Richard Caborn cc [REDACTED]  
From [REDACTED]  
File Ref [REDACTED]  
Date 7 July 2005

## TAKEOVER OF MANCHESTER UNITED

Issue

1. To update you on the takeover of Manchester United FC by Malcolm Glazer, the Office of Fair Trading's competition assessment of the deal and the Department for Trade and Industry's position on introducing a new public interest consideration for football mergers.

Timing

2. Routine.

Recommendation

3. That you:

(a) note the latest position regarding the takeover;

(b) note DTI's advice on the introduction of a new public interest consideration – the submission from DTI officials to Gerry Sutcliffe, Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs at Annex A refers.

Conclusion

4. Given that Malcolm Glazer's acquisition of Manchester United has only recently been completed, it is too early to rush to conclusions about the true intentions that he and his family have for the club.

The various meetings held this week between the Glazer brothers and the football authorities have generally reassured many. The Glazers have reinforced their commitment for the joint selling of TV rights, have indicated that ticket prices will not be raised and have demonstrated their commitment to the long term expansion of the club by stating that there will be significant funds available for player transfers.

However, there is still a great deal of work for the Glazers to do in terms of winning over the fans and we, along with the football authorities, must continue to encourage them to make this a priority.

DTI are firmly of the opinion that no action should be taken at the current time to introduce a new public interest consideration concerning football. Further to this, we should allow the merger to be considered by the competition authorities on competition grounds only.

On balance we think that we should support the DTI position, however, DCMS officials will keep a close eye on the situation and keep you informed of developments.

### Background

Malcolm Glazer, the American billionaire and American Football magnate, became the majority shareholder of Manchester United on 16 May following his £790m takeover, owning 98% of Manchester United shares. His company, Red Football Ltd, has now acquired enough shares to force the remaining investors to sell their stock to him. He has indicated that he will extend his £3-a-share offer for the time being so the shareholders who own the remaining 2% of the club can still sell at the same conditions as others. On 22 June, shares in Manchester United were delisted from the London Stock Exchange after 14 years on the market. This action had been widely predicted.

There has been widespread criticism aimed at Mr Glazer from Manchester United supporters groups, most notably from Shareholders United and the Independent Manchester United Supporters' Association (IMUSA). In the last couple of weeks, a breakaway club has been set up by Manchester United fans, led by Andy Walsh of IMUSA. Formed under the name FC United of Manchester, they have been accepted into the North West Counties League for the 2005-06 season.

As you know, Manchester United and other Premiership clubs currently have a joint selling agreement over negotiating TV screening rights to matches, and while it was thought Mr Glazer had ambitions to break away from the agreement under free market legislation rules, during meetings held between Mr Glazer's sons and The FA, FA Premier League and yourself last week, I understand that the Glazers' commitment to the joint selling agreement was reinforced. The European Commission have stated that they would not support a legal challenge by him over TV rights for Man United games.

The Glazers also took the opportunity to offer reassurances that they have the best interests of the club in mind, that ticket prices will not automatically rise and that they are looking to expand the club by raising its profile around the world.

### Department of Trade & Industry's position

At present, the Government has no powers to intervene in takeovers of football clubs. Is it for shareholders to decide on the merits of takeover proposals and the Office of Fair Trading (OFT), as the independent competition authority, is currently looking at the effect of that the takeover will have on competition.

DTI's Enterprise Act 2002 removed Ministers from the decision making process in all merger cases except those that raise narrowly defined "public interest considerations". Only two public interest considerations currently exist and these relate to national security and media.

OFT recently sought comments on the completed acquisition by Red Football Ltd of Manchester United FC, specifically about whether the acquisition has any unfair impact in terms of competition. Over 1500 responses were received, mainly from Manchester United supporters opposing the takeover.

Under the Enterprise Act and in light of the OFT's consultation exercise, officials at the Department for Trade and Industry has recently put advice up to Gerry Sutcliffe, Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs, in which they recommended that no action should be taken to introduce a new public interest consideration concerning football and leave the merger to be considered by the competition authorities on competition grounds only.

The reasons for this recommendation are that:

- DTI Ministers have previously considered calls to create a new public interest consideration concerning football and concluded firmly they would not do so.
- DTI officials having consulted their Corporate Law and Governance team, do not think there is a case for introducing a new public interest consideration related to mergers funded by a significant level of debt – one of the key concerns raised in this case. Many mergers are funded in this way.
- Attempting to introduce a new public interest consideration in time to have effect in respect of this merger raises real practical difficulties given an affirmative statutory instrument is required.
- Any new public interest consideration relating to this merger would raise issues of consistency with EU law.

#### Football Authorities

While the obvious place for action is with the football authorities, they themselves see this as normal procedure. The recently introduced 'Fit and Proper Persons Test' by the FA Premier League does not include owners but only directors and shadow directors. In any event, if such a test did exist for owners, it is likely that Malcolm Glazer would pass it. The Football authorities have no plans to introduce any new tests in such cases seeing as they believe them to be unworkable if based on motives or intentions. While Manchester United fans are concerned about the future of the club, their position is not necessarily shared by the rest of football.

Furthermore, the Manchester United case is similar to the Roman Abramovich's takeover at Chelsea in 2003. Fans there were also very worried about Abramovich's intentions for the club, however, to date all have proved unfounded and any such test would have been proved wrong. While the fans may have some legitimate concerns about Glazer, after he bought the Tampa Bay Buccaneers in America, for

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example he increased ticket prices, the team also went on to win the Super Bowl in 2003 and is a successful commercial business. The key point is that it is very difficult to legislate against what he might do or might do with the club.

[REDACTED]

[REDACTED]

ANNEX A

Ref.

To:

Gerry Sutcliffe

ci:

From:

[REDACTED]

CCP

[REDACTED]

[REDACTED]

[REDACTED]

Date: 24 June 2005

## Takeover of Manchester United

### Issue

1. The Office of Fair Trading (OFT) is currently undertaking its competition assessment of Mr Malcolm Glazer's takeover of Manchester United. It has invited representations from any interested parties and has received over 1500 responses, mainly from Manchester United supporters opposing the takeover. The opponents of the takeover claim it is against the public interest. This raises the question of whether the Government should create a new public interest consideration to enable Ministers to intervene in the case on public interest grounds.

### Recommendation

2. That you take no action to introduce a new public interest consideration, and leave the merger to be considered by the competition authorities on competition grounds only. The reasons for this recommendation are:

- **Ministers have previously considered calls to create a new public interest consideration concerning football and concluded firmly they would not do so.**
- Having consulted colleagues in Corporate Law and Governance, we do not think there is a case for introducing a new public interest consideration related to mergers funded by a significant level of debt – one of the key concerns raised in this case. Many mergers are funded in this way.

- Attempting to introduce a new public interest consideration in time to have effect in respect of this merger raises real practical difficulties given an affirmative statutory instrument is required.
- Any new public interest consideration relating to this merger would raise issues of consistency with EU law.

### **Timing**

3. Urgent. OFT is intending to announce by 5 August whether to refer the case to the Competition Commission for consideration on competition grounds. If Ministers did wish to intervene on public interest grounds, we would need to issue an intervention notice before OFT make any announcement; and we would need to make a statutory instrument amending the Act to introduce a suitable new public interest consideration as soon as practicable after intervening, if not earlier. The instrument would be subject to the affirmative procedure so would need to be debated.

### **Argument**

4. Arguments that Mr Glazer's takeover of Manchester United is against the public interest focus on the following points:

- the apparent injustice of the club being subject to a highly leveraged takeover;
- the possibility of the team being moved or priced out of the local community;
- excessive increases in ticket and TV prices;
- the loss of revenue if Man United pulls out of the collective media agreement having a knock on impact on the competitiveness of other Premier League teams.

5. On the first of these points, mergers funded by a significant level of debt are not unique to sport. We could make a new public interest consideration covering such mergers only where they relate to football clubs, but this would raise consistency issues. Extending the public interest consideration to all mergers funded by significant debt would probably have the effect of giving Ministers the potential to intervene in a large number of cases and could depress the market for mergers. It would also raise real practical problems: for example, what is an acceptable level of debt?

6. The other points raised relate primarily to the good of football and of football supporters. DCMS officials have considered these issues but have not reached the view that public interest intervention is appropriate. We understand that this view is likely to be reflected in advice which they will be putting very shortly to their Ministers. Even if there was some support in principle within Government to the introduction of the test, it would raise a number of difficult questions: what sort of person should be considered not to be a fit and proper person to be a Director / shareholder of a football club; what if "unfit" people already own clubs;

why should football be treated differently from, say, rugby; and why is sport special compared to other industries. Any intervention might also need to rely on speculation regarding Mr Glazer's intentions on increasing ticket prices or withdrawing from the Premier League's collective selling of television rights.

7. In addition, there is a need to consider the operation of the merger system as a whole. Adding an additional public interest consideration for takeovers of football clubs risks pressure being applied in the future to introduce a range of other considerations making the system more interventionist and complex to operate and less focused on competition considerations. It would also create a discrepancy between the public interest considerations applying under domestic law and those applying under EU law. If we looked to apply the new public interest consideration in a merger case qualifying under the EC Merger Regulations, we would need to notify the consideration to the EC as a new "legitimate interest" for them to approve it as consistent with the general principles and other provisions of Community law. It is not clear what view they would take but we are far from confident they would approve it without at least careful scrutiny e.g. of whether they thought it was discriminatory.

8. Finally, it can be noted that this is now a completed merger. Unwinding it could be hard work, particularly with the Glazers not being resident in the jurisdiction. In theory it should be possible, but it would be a long protracted process with lots of difficulties about the process of divestment to ensure the shares were sold on at a fair value that did not breach the ECHR. During all this process the uncertainty for the club would be great and presumably, the Glazers could hold back investment money.

#### *Background*

#### *Legislative position*

9. The Enterprise Act moved the regulation of mergers from a broad "public interest" test to a specific competition-focussed test with Ministers taken out of the decision-making process for the vast majority of cases and only retaining an ability to intervene in cases raising tightly-defined public interest issues. At present these public interest considerations relate to national security and newspaper/media mergers.

10. Section 58 of the Enterprise Act allows for additional public interest considerations to be added to the Act (by affirmative resolution statutory instrument). Government policy during the passage of the Enterprise Bill was that there were no plans to use this provision to introduce additional public interest considerations.

#### *Takeover of Manchester United*

11. Malcolm Glazer became majority shareholder of Manchester United on 16 May, with shares de-listed from the Stock Exchange on 22 June. He currently owns 97.3% of shares, but this is expected to rise past 97.6% - a level which would allow him to buy the remaining shares compulsorily. The transaction appears to have been conducted in accordance with company law.

