



CONFIDENTIAL

From the Secretary of State

Michael Scholar Esq  
 Private Secretary to the Prime Minister  
 10 Downing Street  
 London, SW1

Dear Michael,

UNITED STATES GRAND JURY INVESTIGATION OF NORTH ATLANTIC AIR TRANSPORTATION

1 Colin Walters copied to you his letter to me of 1 March referring to a meeting at which Sir Adam Thomson had expressed his concern to the Home Secretary about recent developments in the United States affecting British Caledonian.

2 You may like to know that the talks last week between the United States Justice Department and Department of Trade and FCO officials referred to by Sir Adam resulted in agreement to hold a further round of consultations in Washington on 15 March and that in the meantime no subpoena will be issued. In view of Sir Adam's concern, the Prime Minister will also be reassured to know that had the talks failed, contingency arrangements had been made for Lord Cockfield, who is taking a close interest in this matter, the Foreign Secretary and our Ambassador in Washington to intercede with the United States government.

3 The Attorney General will have noted that the note by British Caledonian which Sir Adam Thomson handed to the Home Secretary sought an intervention by the Government in the civil litigation in the High Court in which BCal have sought an order restraining Laker from proceeding with the prosecution of his civil antitrust suit in the United States. There is to be a hearing on 21 March. Such an intervention could, of course, only be by the Attorney General, who did intervene a few years ago in the antitrust litigation by Westinghouse against RTZ (the uranium case). However, since Sir Adam spoke to the Home Secretary, British Airways and BCal have obtained some further interim relief from the courts and for the moment they are not pressing the question of an intervention. The airlines have not so far established grounds on which the Attorney General could be asked to consider an intervention - this is not like the uranium case, a straightforward extraterritoriality matter. We shall, however, keep this aspect under review.

4 Although the United States Department of Justice have been headed off for the moment, the issue is indeed potentially serious, both as regards the implications for our airlines and United States/United Kingdom government relations, and it is too soon to predict the outcome.

Pne Murtter:

You may like to be aware of this. The Department of Justice is proposing a Grand Jury investigation of North Atlantic Airline operations,

following allegations by Laker of collusion amongst its 8 March 1983 competitors;

in particular British

Caledonian. This letter describes steps being taken to head the

Americans off.

Jf  
 8/3

CONFIDENTIAL



CONFIDENTIAL



*From the Secretary of State*

..... 5 I enclose a background note, primarily for the Attorney General's use, but which you, Roger Bone and Colin Walters, to all of whom I am copying this, may also like to see - though I do not suggest you should trouble the Prime Minister with it at this stage. I am copying this also to James Nursaw (Attorney General's Office)

*Yours sincerely,*  
*J Rhodes*

JOHN RHODES  
Private Secretary

CONFIDENTIAL



## GRAND JURY INVESTIGATION OF NORTH ATLANTIC AIRLINE OPERATIONS

The projected US Grand Jury investigation of North Atlantic airline operations has to be seen against the background of the private one billion dollar treble damage anti-trust suit launched a few months ago in the United States courts by the Laker liquidator, undoubtedly prompted by a US law firm which previously handled Laker's affairs in the US. The allegations in this suit are (a) conspiracy by Pan Am, Trans World Airways and British Airways to adopt pricing policies designed to drive Laker out of business and (b) collusive pressure by international airlines including British Caledonian, on McDonnell Douglas to withdraw from a financial rescue package and thereby precipitate Laker's downfall. Since this suit was launched there has been something of a tug of war between the US District Court of Washington DC and the English court as to jurisdiction. The Midland Bank, who were threatened by the liquidator with being joined in the US case, have obtained an interim injunction preventing this pending trial of the issue in the UK; Mr Justice Parker in granting the injunction commented in scathing terms on the allegations in relation to the Midland Bank. The two British airlines have succeeded in obtaining temporary injunctions preventing the liquidator from proceeding further in the US Court: a hearing on whether these injunctions should be continued pending trial of the issue in the UK is set for 21 March. The airlines' case on the issue of jurisdiction is that the claim of the English court is superior and that pursuit of the claim in the English court would avoid offensive elements of US law, including the contingency fee system, the treble damages aspect, the discovery process and the inability of a successful defendant to recover his costs from an unsuccessful plaintiff. When the Midland Bank injunction



was obtained the Bank of England supported the case with an affidavit setting out certain public policy arguments; rather different public policy arguments may be valid in support of the airlines' case on the allegations relating to fares.

2 The decision of the US Department of Justice (DoJ) to launch a Grand Jury criminal antitrust investigation, appears to derive from the private suit. There is one new alleged mischief - namely a conspiracy by BA, Pan Am, TWA and Laker to fix fares in the period when Laker was successfully operating. Despite probing, the DoJ have been reserved about the nature of their information about these allegations and we have reached no view about their validity as regards the facts. (Note: We have agreed with the Department of Justice that the content (as distinct from the fact) of their consultations with us will be treated in the strictest confidence: any leakage, especially of the allegations, to the airlines would seriously damage our ability to influence the course of US action).

3 None of these allegations entails extraterritoriality: broadly speaking, the US has a claim to territorial jurisdiction. However, in our view airline pricing arrangements are governed by a bilateral treaty (the Bermuda 2 Air Services Agreement) and against that background there are strong arguments against the unilateral action, entailing possible criminal sanctions, proposed by the US Government. There are also wider arguments, which apply equally to the non-pricing allegation, relating to the appropriateness of the US Government narrowly pursuing



anti-trust cases, especially on the basis of criminal sanctions, without proper regard for international considerations.

4 There are therefore treaty and other grounds why the DOJ should not proceed in this way; two of the three allegations are in any event being pursued in private litigation. The implications for our airlines are wide ranging and grave not only in the Federal antitrust proceedings but also because of the way in which these could encourage further private treble damage suits; and in the political context (pipeline etc) there could be another serious case of US antitrust enforcement harming UK/US relations.

5 It has been made clear to the US that HMG is fully prepared to consider valid US concerns constructively on a bilateral inter-governmental basis. The further discussion will be pursued firmly, but the Department of Justice enjoys considerable independence on matters of antitrust enforcement and the outcome cannot be predicted at this early stage.

Department of Trade