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FM WASHINGTON 070100Z APR 83

TO IMMEDIATE FCO

TELEGRAM NUMBER 886 OF 6 APRIL 1983

YOUR TELEGRAM 571: ANTITRUST INVESTIGATION INTO AIRLINE PRICE
FIXING: PRESIDENT REAGAN'S MESSAGE

THE PRESIDENT'S MESSAGE TO THE PRIME MINISTER IS DISAPPOINTING BUT NOT, GIVEN AMERICAN PASSION FOR ANTI-TRUST AND THE STRENGTH OF THE CASE THEY BELIEVE THEY HAVE AGAINST THE AIRLINES, SURPRISING REAGAN HAS HAD THE CHOICE OF APPEARING TO INTERFERE WITH THE COURSE OF JUSTICE OR LETTING THE LAW TAKE ITS COURSE, COME WHAT MAY, AND HAS CHOSEN THE LATTER. BUT THESE THINGS TAKE TIME SO WE CAN NOW THINK THROUGH THE VARIOUS COURSES OF ACTION OPEN TO US TO MINIMISE THE INEVITABLE DAMAGE.

2. THE NEXT AND IMMEDIATE STEP IS FOR THE DEPARTMENT OF JUSTICE TO ISSUE SUBPOENAS. THE BRITISH AIRWAYS AND BRITISH CALEDONIAN LAWYERS TELL US THAT THE JUSTICE DEPARTMENT TOLD THEM LATE THIS AFTERNOON THAT THE SUBPOENAS WOULD BE ISSUED ON THE AFTERNOON OF 7 APRIL (IE AT ABOUT 2100Z), UNLESS THE AIRLINES FIRST SIGNIFIED THEIR WILLINGNESS TO PROVIDE THE REQUIRED INFORMATION VOLUNTARILY. THE STATE DEPARTMENT ASSURE US THAT (AS WE HAD BEEN PREVIOUSLY NOTIFIED) THE SUBPOENAS WILL REFER TO DOCUMENTS LOCATED IN THE UNITED STATES ONLY.

3. SUBSEQUENTLY AND IN SLOWER TIME THE STATE DEPARTMENT WILL SUBMIT A REPLY FROM SHULTZ TO YOUR OWN MESSAGE, TOGETHER WITH A RESPONSE TO THE NOTE I PUT IN ON 29 MARCH REQUESTING CONSULTATIONS UNDER THE AIR SERVICES AGREEMENT. SINCE THE THIRD PARAGRAPH OF THE PRESIDENT'S MESSAGE WAS SOMEWHAT AMBIGUOUS, WE EMPHASIZED TO THE STATE DEPARTMENT THAT THE CONSULTATIONS FOR WHICH WE HAD ASKED WERE THOSE FORMALLY PROVIDED FOR UNDER THE AGREEMENT, NOT SOME OTHER AD HOC ARRANGEMENT: AND THAT WE THEREFORE ASSUMED THAT THE STATE DEPARTMENT (NOT THE JUSTICE DEPARTMENT) WOULD BE IN THE LEAD.

4. ASSUMING THAT THE AMERICANS ARE INDEED INTENDING TO GO ONLY FOR DOCUMENTS LOCATED IN THE UNITED STATES AT THIS STAGE, IT IS DIFFICULT TO SEE WHAT PREVENTIVE ACTION WE COULD TAKE AGAINST THE ISSUE OF SUBPOENAS TOMORROW. THE BRITISH CALEDONIAN LAWYER, HOWEVER, SEEMED INTERESTED IN ANY GUIDANCE WE MIGHT HAVE ON THE JUSTICE DEPARTMENT'S SUGGESTION THAT HIS CLIENT SHOULD PRODUCE THE DOCUMENTS VOLUNTARILY. YOU MAY WISH TO GIVE BOTH AIRLINES RAPID ADVICE. WE UNDERSTAND THAT THE WEST GERMAN AND SWISS AUTHORITIES HAVE TOLD THE AMERICANS THAT LUFTHANSA AND SWISSAIR ARE PREPARED TO COOPERATE, ALTHOUGH, OF COURSE, THE CASE AGAINST THEM IS LESS THAN AGAINST PANAM, TWA AND OUR TWO AIRLINES.

5. I WILL TELEGRAPH FURTHER ABOUT WHAT THE OPTIONS, AS SEEN FROM WASHINGTON, SEEM TO BE. NONE OF THEM LOOK VERY ATTRACTIVE. BUT WE ARE NOT PLAYING A LOVE HAND. THE POTENTIAL CONSEQUENCES FOR PANAM AND TWA ARE NO LESS SERIOUS THAN FOR OUR AIRLINES AND THIS SHOULD BE A SOMEWHAT MODERATING FACTOR.

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