

CONFIDENTIAL

605 - 1

ZZ WASHINGTON

GRS 513

CONFIDENTIAL

FM FCO 241400Z JUN 83

TO FLASH WASHINGTON

TELEGRAM NUMBER 1038 OF 24 JUNE 1983

PLEASE DELIVER AT THE LEVEL YOU THINK APPROPRIATE THE  
FOLLOWING MESSAGE FROM ME TO SHULTZ:

1. OLIVER WRIGHT HAS TOLD ME OF YOUR OFFICIALS' REACTION TO THE NEWS THAT WE INTENDED TO MAKE AN ORDER AND DIRECTIONS UNDER THE PTI ACT YESTERDAY. I HAVE ALSO SEEN A REPORT OF AMBASSADOR LOUIS' CALL ON OFFICIALS IN OUR DEPARTMENT OF TRANSPORT YESTERDAY.
2. AS I TOLD GEORGE BUSH WHEN WE MET THIS MORNING, THE ORDER AND DIRECTIONS WERE SIGNED EARLY ON 23 JUNE AND THEY MUST BE LAID BEFORE PARLIAMENT AND PUBLISHED MORE GENERALLY BEFORE THEY COME INTO EFFECT ON 27 JUNE. THE DOCUMENTS ARE BEING LAID IN PARLIAMENT THIS AFTERNOON, FRIDAY, AND TEXTS WILL BE DISTRIBUTED LATER TODAY.
3. AS FOR THE SUBSTANCE OF THE MATTER, YOU WILL, I AM SURE, ACCEPT THAT WE ARE BOUND TO DEFEND OUR BROAD INTERESTS AND THOSE OF OUR AIRLINES WHEN WE THINK THEY ARE SUBJECT TO UNFAIR ATTACK. THERE IS A DISPUTE BETWEEN US ON THE RELATIONSHIP BETWEEN OUR BILATERAL AIR SERVICES AGREEMENT (BERMUDA 2) AND DOMESTIC LAW, INCLUDING YOUR ANTI-TRUST LAW. ONE ASPECT OF THAT DISPUTE IS THE LAKER LIQUIDATOR'S CIVIL SUIT IN THE US COURTS. IN ORDER TO PROTECT OUR AIRLINES FROM THE POSSIBLY CRIPPLING EFFECTS OF THAT SUIT, OUR LAWYERS ADVISED US THAT IT WAS NECESSARY TO RESPOND TO THE UNILATERAL APPLICATION OF US LAW TO MATTERS COVERED BY BERMUDA 2 BY REFLECTING HMG'S POSITION IN INSTRUMENTS MADE UNDER THE PTI ACT. NOT TO HAVE TAKEN THIS STEP NOW WOULD HAVE LEFT US OPEN TO DOMESTIC CRITICISM THAT WE HAD NOT TAKEN THE NEXT LOGICAL STEP IN DEFENCE OF OUR INTERESTS AND THOSE OF OUR AIRLINES.
4. BUT OUR OBJECTIVE STILL REMAINS WHAT IT ALWAYS HAS BEEN - THE ACHIEVEMENT, IF AT ALL POSSIBLE, OF AN AMICABLE

1

CONFIDENTIAL



CONFIDENTIAL

605 - 1

SETTLEMENT OF THE DISPUTE BETWEEN US. WE SEE THE INFORMAL AGREEMENT (THE NON-PAPER) REACHED IN LONDON LAST MONTH AS A VALUABLE PROCEDURAL FRAMEWORK FOR ACHIEVING THAT SETTLEMENT. IT HAS OUR COMPLETE SUPPORT. I CAN ASSURE YOU THAT THE ACTION WE PROPOSE UNDER THE PTI ACT IS NOT INTENDED TO RESTRICT THE PROCEDURES ENVISAGED IN THE NON-PAPER. IF DOCUMENTS AND EVIDENCE ARE NEEDED FOR THE EFFECTIVE IMPLEMENTATION OF OUR OBLIGATIONS UNDER THE NON-PAPER BOTH DIRECTIONS PROVIDE FOR MINISTERS TO GIVE CONSENT TO THEIR BEING MADE AVAILABLE. MOREOVER THE SUBPOENA ADDRESSED TO BRITISH AIRWAYS WITHIN THE TERMS OF THE NON-PAPER HAS ALREADY BEEN COMPLIED WITH. SO I HOPE WE SHALL BE ABLE TO CONTINUE DOWN THAT COOPERATIVE ROAD IN REACHING A SETTLEMENT.

5. IT IS, OF COURSE, UNDERSTANDABLE THAT BOTH SIDES SHOULD WISH TO DEFEND THEIR LAW AND THEIR POLICY. UNTIL WE CAN RESOLVE THE DIFFERENCES OF PRINCIPLE BETWEEN US, THE ONLY SENSIBLE COURSE IS FOR BOTH SIDES TO MANAGE THE DISPUTE WITH CARE TO PREVENT IT DEVELOPING IN UNFORESEEABLE DIRECTIONS WITH UNFORESEEABLE CONSEQUENCES. WITH MY ASSURANCE THAT WE ARE ACTING IN GOOD FAITH AND BELIEVE YOUR SIDE TO BE DOING SO TOO, I HOPE YOU WILL USE YOUR INFLUENCE AT THE PRESENT CRITICAL JUNCTURE, TO ENSURE CONTINUED COOPERATION BETWEEN US TO THIS DIFFICULT PROBLEM AND ANY JURISDICTIONAL ISSUES WHICH MAY ARISE.

HOWE

U S ANTI TRUST ACTION AGAINST BRITISH AIRLINES

LIMITED

MAED

NAD

ERD

LEGAL ADVISERS

PS

PS/LADY YOUNG

PS/MR WILKINSON

PS/PUS

MR EVANS

MR GIFFARD

MR THOMAS

MR ADAMS

COPIES TO

MR J M HEALEY OT2)

MR AYLING

MR BECKETT

} DOT

MR GARDINER

ATTORNEY GENERAL'S OFFICE

IAT/DOT

MR STEVENS

MR FORTNAM

MR KNIGHTON

} D/TRANSPORT

A J COLES NO 10 DOWNING ST

2  
CONFIDENTIAL