10 DOWNING STREET

Prime Minister (2)

Sir Oliver Wright sought advice on whether another message from you to President Reagan would be appropriate at this time (you sent a message in March 1983 and spoke to him during this year's Summit).

Departments have concluded that a message from you now would be premature. The next move will be when the Foreign Secretary sees Mr Schultz next week.

But to note that you may be asked to intervene later

AT
17/9

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

Len Appleyard Esq
Private Secretary to
Foreign Secretary
Foreign and Commonwealth Office
Whitehall
LONDON
SW1

14th September 1984

Dear Len,

LAKER: ATTORNEY GENERAL'S VISIT

Our officials have, in the absence of my Secretary of State, been considering Sir Oliver Wright's suggestion that the Attorney General might be armed with a personal message from the Prime Minister in his discussions with Fielding next Tuesday.

Our view, which is I think shared by your officials, is that we should keep a possible Prime Ministerial message in reserve for the time being, but that it would be right for the Attorney General to be briefed to reflect the high political concern over this issue. The attached draft telegram to Washington sets out our thinking in more detail.

We may want to come back to Sir Oliver's suggestion, as matters develop in the days ahead, and when we are satisfied that the US Government at the highest levels has taken in that we are looking for a response on all aspects of the dispute ie. the civil suits and the issue of future arrangements as well as the possible Department of Justice indictments. It could be damaging to our overall objectives and give the US a false signal if we were to use up Prime Ministerial currency simply to head off the Department of Justice.

I understand that you wish to see the revised draft telegram tonight so that the Foreign Secretary has an opportunity to consider it before he goes abroad. I will let you know my Secretary of State's views on Monday morning in time for you to despatch revised instructions to Washington before the Attorney General's meeting.

I am copying this to Andrew Turnbull at No.10, Callum McCarthy (PS/Secretary of State for Trade and Industry) and Richard Gardiner (Attorney General's office).

Yours,

Dinah

MISS D A NICHOLS
Private Secretary

2F

IMMEDIATE CONFIDENTIAL

TO WASHINGTON

LAKER: ATTORNEY GENERAL'S VISIT

Your telnos 2712 and 2713

1 The deferment of the official consultations and the inaccurate leak about the objective of the Attorney General's visit (which the US may nonetheless suspect we inspired) seems to us likely from the point of view of the US side to heighten the significance of the Attorney's encounter with Fielding.

But we are still unsighted about the position which the US intend to take both in substance and in detail. Because of this, we do not think we should ask the Prime Minister to send a further message now, since we feel we should keep this scarce currency in reserve. But the Attorney General should be briefed to reflect the high political concern over this issue, by reference back to earlier messages. Moreover, if the US are reviewing policy at a high level we think that we should point up still more clearly, as we had in mind to do in the opening remarks in the official level

consultation, that we have always been looking for a resolution of this dispute which provides an acceptable outcome on three issues: not only the Department of Justice enforcement, but also on future arrangements and the civil suits. This is already incorporated in the line to take for the Attorney General but, in the light of the above analysis we propose the amendments set out in MIFT.

2 With regard to point 6 in the draft in our telno 1581 we agree that Fielding might ask us for our proposals in relation to the private suits. We think it essential to register that something helpful to the private suits is part of what we expect from the US, otherwise their policy review may be inadequate. We see no problem for the Attorney in dealing with any question about what we propose: he is entitled to say that the problem has been created by the fact that US general antitrust law has been left untrammelled in relation to aviation competition issues, despite the fact that competition is regulated by Bermuda II. It is for the US side to consider what can be done about this. We do not accept as final the fact that people at staff level have been unable to think of any solution. This case has already produced precedents on both sides of the Atlantic. The ingenuity of senior legal figures in the US needs to be deployed on the problem - as it has been on other serious international problems faced by the United States in the past.

DRAFT TELEGRAM

CONFIDENTIAL TO IMMEDIATE WASHINGTON

MIPT

Following is revised Laker brief for Attorney General's meetings with Fielding and McGrath, taking into account postponement of consultations and your telno 2713 of 13 September.

TEXT BEGINS

POINTS TO MAKE

1 Our position has been fully explained in earlier bilateral discussions and there has since been extensive co-operation from HMG under the non-paper. We would now be extremely disappointed if the Department of Justice should think it necessary to consider the possibility of indicting British Airways for discussing Bermuda 2 approved fares with other airlines.

2 The consequences of a decision to indict by the Department of Justice would be regarded as extremely serious by the United Kingdom. Charges against British Airways for fare discussions would in effect be an attack on fare decisions of the British Government. If there was any discussion of fares with Laker this was essentially a British, not American concern.

3 A decision to indict would be legally objectionable and

could only be interpreted as a challenge to HMG's stated interpretation of Bermuda 2. HMG continues to reserve all its rights to arbitrate the question of anti trust enforcement under the arbitration provisions of Bermuda 2.

4 Apart from any possible action by the Department of Justice we are also very concerned about the private actions. For us these are equally objectionable. They threaten British airlines with huge penalties for operating services on fares approved by our two governments. These consequences of American law are not acceptable and call in question the basis on which air services operate between our two countries.

5 An acceptable outcome on future arrangements is of equal importance to us. We must avoid recurrances and formulate between us a sensible and practicable regulatory system. The US response so far on this aspect has been extremely disappointing.

6 Since indictments would be objectionable to us on legal grounds we also feel entitled to draw attention to their adverse practical and political consequences for the Government's policy of selling British Airways, though the emphasis given by the Press to this point has been exaggerated

7 We believe this dispute can be resolved both for the past and the future. We strongly encourage the United States to consider its policy objectives both in the field of civil aviation

and more widely. There is an impression in London (no doubt misguided) that American anti trust law is being enforced for its own sake without regard for the consequences.

8 The seriousness of this whole issue for the UK was made clear at the outset when the Prime Minister sent a personal message to the President and more recently restated our concern in the margins of the Economic Summit. This concern has if anything increased and all my Ministerial colleagues wish me to leave you in no doubt as to the importance of resolving this bilateral issue.

BACKGROUND

After the Attorney General left London for the United States McGrath informed Braithwaite that although the Department of Justice had not reached a final decision, they were ready for consultations under the non-paper on Legs 1 and 2 (price fixing and discussions on scheduling). These consultations were then arranged to be held in Washington on 19-20 September following the Attorney General's meeting with McGrath. But late last week the Department of Justice told us that they would not be ready and the consultation meeting was postponed with no new date being fixed.

2 It is safe to infer from the original message to Braithwaite that McGrath thinks there is sufficient evidence on which to proceed. This in itself is a disappointment because while BA's Washington lawyers accept there is evidence of price discussions between Laker and BA, the evidence of any involvement by Pan Am and TWA is thin. However the postponement of consultations suggests that political factors are now being taken into account in Washington before the Department of Justice decides whether to proceed further.

3 It is difficult for us to argue on evidential grounds. Only the Department of Justice know what evidence was given to the Grand Jury and only British Airways know exactly what happened at the time. But political and international law points can be underlined at this stage of the American deliberations.

4 Our case is partly political and partly legal. The political side is that if any fare discussions occurred they arose out of the operation of a British carrier and attempts to accommodate that carrier on the route. The fares charged by the British and the American airlines were all approved by the British and US Governments, who were satisfied that they were economically justified. Anti trust enforcement by the Department of Justice is in effect a challenge to these actions of the British Government.

5 The legal side is that under the Air Services Agreement the enforcement of American anti trust is displaced by the provisions of the agreement.