

PS
PS/LADY YOUNG

PS/PUS

SIR C THICKELL

~~MR [unclear]~~ OWELL J. THOMAS

MR AUST, Legal Advisers

MR FREELAND, Legal Advisers

ED/MAED (2)

ED/NAD

RESIDENT CLERK

PS/S of S

MR LAZARUS, PUS

MR KNIGHTON

MR STEVENS

MR ~~[unclear]~~ FORTNAD ~~[unclear]~~

DEPT OF
TRANSPORT

FRAYLING

MR ROBERTS

MR HUTTON

MR ~~[unclear]~~

MR HEALEY

MR BECKETT (Solicitors)

DTI

POWELL

MR COLES 10 DOWNING ST

MR GARDINER, ATTORNEY
GENERAL'S OFFICE

IMMEDIATE

CONFIDENTIAL

DESKBY 190900Z

FM WASHINGTON 182305Z SEP 84

TO IMMEDIATE FCO

TELEGRAM NUMBER 2776 OF 18 SEPTEMBER

YOUR TELNO 1605: LAKER: ATTORNEY-GENERAL'S VISIT.

SUMMARY.

1. THE ATTORNEY-GENERAL CALLED, AS PLANNED, ON BOTH THE PRESIDENT'S COUNSEL, FIELDING, AND THE ASSISTANT ATTORNEY GENERAL FOR ANTI-TRUST AFFAIRS, MCGRATH. TO BOTH HIS INTERLOCUTORS HE UNDERLINED THE CONSIDERABLE POLITICAL IMPORTANCE OF THE LAKER CASE TO BRITISH MINISTERS, AND THE PRIME MINISTER'S OWN PERSONAL INTEREST. HE EMPHASISED THAT THERE WERE SERIOUS LEGAL ISSUES OF PRINCIPLE AT STAKE. MOREOVER WE EXPECTED THE JUSTICE DEPARTMENT TO USE THEIR DISCRETION OVER THE CRIMINAL INVESTIGATION INTO ACTIVITIES OF BRITISH AIRLINES, TO USE THEIR IMAGINATION IN FINDING WAYS OF MITIGATING THE DAMAGE WHICH OUR AIRLINES MIGHT SUFFER IN THE CIVIL CASES, AND TO NEGOTIATE CONSTRUCTIVELY OVER FUTURE ARRANGEMENTS DESIGNED TO PREVENT THESE THINGS OCCURRING AGAIN. HE MADE IT QUITE CLEAR THAT, WHATEVER THE OUTCOME OF THE JUSTICE DEPARTMENT'S CONSIDERATION OF THE GRAND JURY CASE, WE RETAINED THE RIGHT TO GO TO ARBITRATION UNDER THE BERMUDA 2 AGREEMENT IF NECESSARY. BUT HE EMPHASISED THAT, IN OUR VIEW, BOTH GOVERNMENTS HAD A RESPONSIBILITY TO SEEK A SENSIBLE OUTCOME TO THE CURRENT PROBLEMS, WHATEVER THEIR VIEWS ON THE LEGAL ISSUES INVOLVED. THE ATTORNEY GENERAL SUCCESSFULLY DEFUSED ANY BAD FEELING THAT MAY HAVE REMAINED ABOUT LAST WEEK'S LEAK IN THE LONDON TIMES.

DETAIL

DETAIL

2. FIELDING WAS EVIDENTLY VERY WELL AWARE OF THE POLITICAL IMPORTANCE OF THE LAKER CASE TO HER MAJESTY'S GOVERNMENT. HE ASSURED THE ATTORNEY-GENERAL THAT HE WOULD CONTINUE TO TAKE A CLOSE INTEREST IN IT. HE SAID THAT THE LEAK IN THE BRITISH PRESS HAD OF COURSE COMPLICATED MATTERS. MCGRATH HAD SAID TO HIM THAT HE COULD NOT NOW AFFORD TO GIVE THE APPEARANCE THAT HIS EVENTUAL DECISION ON AN INDICTMENT HAD BEEN AFFECTED BY BRITISH POLITICAL PRESSURE, AND THAT THE CONSULTATIONS WITH THE BRITISH UNDER THE NON-PAPER WOULD HAVE TO BE POSTPONED UNTIL THE THIRD OR FOURTH WEEK OF OCTOBER. FIELDING THOUGHT THAT THIS MIGHT BE CONVENIENT POLITICALLY, SINCE IT WOULD GIVE TIME FOR ANY PRESS INTEREST TO ABATE SOMEWHAT.

3. IN HIS INTERVIEW WITH MCGRATH, THE ATTORNEY-GENERAL EMPHASISED THAT INTERNATIONAL TRANSPORT, AND IN PARTICULAR INTERNATIONAL AVIATION, COULD NOT BE SUBJECTED TO THE UNILATERAL APPLICATION OF THE LAW OF ONE OF THE PARTIES. THIS WAS OUR LEGAL POSITION; BUT IT ALSO FLOWED FROM THE NATURE OF INTERNATIONAL TRANSPORTATION ITSELF. THE AIRLINES IN THE LAKER CASE HAD COMMUNICATED THEIR PROPOSED TARIFFS TO THE AVIATION AUTHORITIES OF BOTH GOVERNMENTS, WHICH HAD APPROVED THEM. BOTH GOVERNMENTS HAD AN EVIDENT RESPONSIBILITY TO STAND BY THE APPROVALS THEY HAD GIVEN. WE KNEW THAT THE JUSTICE DEPARTMENT HAD DISCRETION IN THESE CASES, AND THAT THE CONSIDERATIONS THEY NORMALLY TOOK INTO ACCOUNT INCLUDED THE INTERESTS OF FOREIGN GOVERNMENTS AND THE CLARITY OR OTHERWISE OF THE LEGAL SITUATION. IN THE PRESENT CASE THE BRITISH GOVERNMENT'S INTEREST WAS CLEAR, AND THE LEGAL DISPUTE BETWEEN THE TWO GOVERNMENTS SHOWED THAT THE LAW WAS OBSCURE. IN ALL THESE CIRCUMSTANCES WE WOULD FIND IT VERY DIFFICULT TO UNDERSTAND A DECISION BY THE JUSTICE DEPARTMENT TO INDICT; AND, BY THE SAME TOKEN, WE BELIEVED THAT A DECISION NOT TO INDICT OUGHT TO BE DEFENSIBLE TO AMERICAN PUBLIC OPINION, AS WELL AS BEING NATURALLY MOST WELCOME TO THE BRITISH GOVERNMENT. ALTHOUGH THE JUSTICE DEPARTMENT INVESTIGATION RAISED MAJOR QUESTIONS OF PRINCIPLE FOR US, THE CIVIL CASES WERE LIKELY IN PRACTICE TO BE MUCH MORE DAMAGING TO OUR AIRLINES. WE THEREFORE LOOKED TO THE JUSTICE DEPARTMENT TO HANDLE MATTERS IN SUCH A WAY AS TO LIMIT THE DAMAGE THAT COULD BE CAUSED IN THE CIVIL CASES. AND WE LOOKED EQUALLY TO THEM, AND TO THE REST OF THE ADMINISTRATION, TO NEGOTIATE WITH US CONSTRUCTIVELY ABOUT ARRANGEMENTS TO PREVENT THESE DIFFICULTIES RECURRING IN THE FUTURE. THOUGH WE UNDERSTOOD THE REASONS OF AMERICAN LAW AND POLITICS WHICH MADE THIS DIFFICULT, WE LOOKED TO THE ADMINISTRATION FOR AN IMAGINATIVE APPROACH APPROPRIATE TO RELATIONS BETWEEN TWO CLOSE ALLIES.

4. MCGRATH SAID THAT NO DECISION HAD YET BEEN TAKEN IN THE JUSTICE DEPARTMENT ABOUT WHETHER THE EVIDENCE MIGHT JUSTIFY

JUSTICE DEPARTMENT ABOUT WHETHER THE EVIDENCE MIGHT JUSTIFY AN INDICTMENT. THE AMERICANS WOULD OF COURSE CONSULT WITH US BEFORE PROCEEDING TO AN INDICTMENT, AND WOULD INDEED HAVE DONE SO EVEN IF THE NON-PAPER HAD NOT EXISTED. BUT THE ISSUES WERE COMPLEX, AND THE RESPONSIBLE OFFICIALS HAD OTHER PRESSING TASKS: FOR EXAMPLE ELLIOTT SEIDEN HAD TO PREPARE FOR AND PARTICIPATE IN THE COMING MEETING OF ECAC. FOR THESE REASONS MCGRATH DID NOT THINK CONSULTATIONS COULD TAKE PLACE BEFORE MID-OCTOBER. AS FOR THE PRESS LEAK, THAT WAS NOW SPILT MILK: IT WOULD NOT AFFECT HIS APPROACH ONE WAY OR THE OTHER.

COMMENT

5. MCGRATH'S EXPLANATION OF THE REASONS FOR SUBSTANTIAL AND FURTHER DELAY BEFORE CONSULTATIONS TAKE PLACE WAS THIN. THE REASONS MAY BE POLITICAL: THE ADMINISTRATION MAY NOT WISH TO TAKE A FINAL DECISION UNTIL AFTER THE ELECTION. THIS CUTS BOTH WAYS AS FAR AS WE ARE CONCERNED. A COOLING OFF PERIOD AFTER THE PRESS LEAK IS PROBABLY NECESSARY. AND, IN THE PRE-ELECTION PERIOD THE JUSTICE DEPARTMENT WOULD HAVE TO BE PARTICULARLY CAREFUL ABOUT NOT SEEMING TO TRUCKLE TO FOREIGNERS. MOREOVER, THIS IS PROBABLY A NETTLE WHICH THE PRESIDENT (WHO WILL NOW ALMOST CERTAINLY HAVE TO BE INVOLVED) WOULD PREFER NOT TO HAVE TO GRASP WHILE HE IS CAMPAIGNING. ON THE OTHER HAND, THE JUSTICE DEPARTMENT MAY CALCULATE THAT DELAY IS TO THEIR TACTICAL ADVANTAGE. WE WILL PROBE THEIR MOTIVES FURTHER.

6. THE PRESS LEAK HAS CERTAINLY LEFT SOME SORE FEELINGS, THOUGH WE DOUBT IF THE AMERICANS NOW THINK THAT WE DELIBERATELY SET THEM UP. WE HAVE TOLD THEM THAT WE INTEND TO TAKE THE LINE IN THE SOLICITOR GENERAL'S LETTER (YOUR TELNO 1599) IF WE ARE APPROACHED BY THE PRESS. WE SHALL DRAW ON THE ADDITIONAL PRESS MATERIAL YOU HAVE SENT US AS NECESSARY.

FCO PLEASE ADVANCE TO:
KNIGHTON STEVENS FORTNAM DTP
AYLING HEALEY DTI
GRAY MAED FCO
AUST FCO LEGAL ADVISORS
GARDINER L.O.D.

WRIGHT

NNNN

UNCLASSIFIED

3237 - 2

DD 171200Z WASHINGTON
GRS 946
UNCLASSIFIED
DESKBY 171200Z
FM FCO 170930Z SEPT 84
IMMEDIATE WASHINGTON
TELEGRAM NUMBER 1599 OF 17 SEPTEMBER
YOUR TEL 2737 AND TELECON CHASE/MAYNARD
LAKER BRITISH PRESS
FOLLOWING IS TEXT OF WHITAKER'S LETTER IN 'TIMES' OF
14 SEPTEMBER AND OF SOLICITOR GENERAL'S LETTER IN 'TIMES'
OF 17 SEPTEMBER IN REPLY.

TEXT OF WHITAKER'S LETTER BEGINS

1. SIR, NEXT WEEK'S VISIT BY THE ATTORNEY GENERAL, SIR MICHAEL HAVERS, TO WASHINGTON TO PRESS THE US JUSTICE DEPARTMENT TO DROP ITS LAKER ENQUIRY INTO THE ALLEGED CRIMINAL CONSPIRACY BY, INTER ALIA, BRITISH AIRWAYS TO DRIVE SIR FREDDIE LAKER OUT OF BUSINESS, LEAVES ONE IN OPEN-MOURED ASTONISHMENT AND DISGUST.
2. FIRST, IT IS A BARE-FACED ATTEMPT BY THE CRIMINAL LAW-ENFORCEMENT AUTHORITIES OF ONE COUNTRY TO INTERFERE WITH THOSE OF ITS NEIGHBOUR, AND FOR THE EVIDENT PURPOSE OF SECURING A COMMERCIAL ADVANTAGE. IF SIR MICHAEL SUCCEEDS, IT WILL GO A LONG WAY TOWARDS UNDERMINING THE US DOLLARS 100M 'ANTI-TRUST' CLAIM BY THE LAKER LIQUIDATORS AGAINST A NUMBER OF AIRLINES, INCLUDING BRITISH AIRWAYS IN THE UNITED STATES. SELF-EVIDENTLY, THE PROPOSED FLOTATION OF BRITISH AIRWAYS AS A PRIVATE COMPANY NEXT MARCH WITH THAT POTENTIAL LIABILITY ON ITS PRICE-TAG WILL BE A GOOD DEAL LESS ATTRACTIVE THAN IT WOULD BE WITHOUT IT.
3. MIGHT ONE ASK SIR MICHAEL TO LOOK FOR A MOMENT IN HIS OWN BACK YARD? WHILE THE LAW OF CONTEMPT MAY BE DIFFERENT IN THE UNITED STATES FROM WHAT IT IS HERE, HE MAY REMEMBER HOW HIS PREDECESSOR, THE PRESENT LORD RAWLINSON, WAS AT PAINS IN 1973 TO STOP THE SUNDAY TIMES PUTTING PRESSURE OF ANY SORT ON DISTILLERS TO INCREASE THEIR OFFER TO THE

1

UNCLASSIFIED

UNCLASSIFIED

3237 - 2

INJURED THALIDOMIDE CHILDREN.

4. FORTUNATELY, IN THE END, HE DID NOT SUCCEED UNFORTUNATELY, DESPITE THE JUDGEMENT OF THE EUROPEAN COURT, THE CONTEMPT OF COURT ACT 1981 CONTAINS NO ENDORSEMENT OF A NEWSPAPER'S RIGHT TO PUT PRESSURE ON LITIGANTS, AS IT SHOULD HAVE DONE. DOES SIR MICHAEL FEEL NO UNEASE, SEE NO PARADOX, IN THIS SITUATION?

5. BUT THE SECOND POINT IS EVEN MORE OFFENSIVE TO ONE'S SENSE OF FAIRNESS. IF THE LAKER LIQUIDATOR'S CLAIM IS SOUND, AN AWARD OF AROUND US DOLLARS 100M WOULD PROBABLY BE ENOUGH NOT MERELY TO PAY OFF SIR FREDDIE'S CREDITORS, BUT ALSO TO PUT HIM BACK IN BUSINESS.

6. IT IS NOW SOME EIGHT YEARS SINCE SKYTRAIN - THE 'LOW COST, NO FRILLS' TRANSATLANTIC SERVICE - BEGAN FLYING IN 1977. IT WAS LAKER'S BABY, AND A VERY CONSIDERABLE ACHIEVEMENT. A SIX-YEAR BATTLE HAD PRECEDED THE GRANT OF THE SKYTRAIN LICENCE, WHICH HIS BEATEN ADVERSARY, THE LABOUR GOVERNMENT RECOGNIZED BY KNIGHTING HIM THE FOLLOWING YEAR.

7. YOUR CORRESPONDENT, DAVID WOOD, COMMENTED AT THE TIME FREDDIE LAKER ... IS THE ANTITHESIS OF WHAT MR CALLAGHAN AND HIS GOVERNMENT ARE SUPPOSED TO STAND FOR, AND THE EXEMPLAR OF WHAT MRS THATCHER AND HER BRAND OF CONSERVATISM STAND FOR ...

8. DOES MRS THATCHER STILL STAND FOR BRINGING TRANSATLANTIC TRAVEL, AS LAKER DID, WITHIN THE ORDINARY MAN'S POCKET? OR HAS SHE SENT SIR MICHAEL ON A MISSION TO ENSURE THAT BRITISH AIRWAYS' SHARE FLOTATION LIFTS OFF THE RUNWAY NEXT MARCH INTO A CLOUDLESS, UNCLUTTERED SKY, FREE FROM CUT-PRICE COMPETITION?

9. WHEN THE US JUSTICE DEPARTMENT OFFICIALS MEET SIR MICHAEL NEXT WEEK, THEY SHOULD TELL HIM, RATHER POINTEDLY, TO MIND HIS OWN BUSINESS AND LEAVE THEM TO MIND THEIRS. AND REGARDLESS OF THE OUTCOME OF THE CONSPIRACY INVESTIGATION AND THE ANTI-TRUST CLAIM, WHEN THE FLOTATION DOES OCCUR, I HOPE YOU WILL REMIND THOSE OF YOUR READERS WHO MIGHT BE

UNCLASSIFIED

3237 - 2

TEMPTED TO APPLY FOR IT - THEY WILL NOT INCLUDE ME - OF
THE LONG LAKER SHADOW THAT LIES BEHIND IT.

YOURS FAITHFULLY

ANTHONY WHITAKER

14 BELMONT ROAD

TWICKENHAM, MIDDLESEX.

SEPTEMBER 13.

TEXT ENDS.

TEXT OF SOLICITOR GENERAL'S LETTER

SIR, YOU CARRIED A REPORT ON SEPTEMBER 13 THAT THE ATTORNEY
GENERAL WOULD BE FLYING TO WASHINGTON TO PRESS THE UNITED
STATES TO DROP ITS INVESTIGATIONS INTO ALLEGED PRICE-FIXING
AGREEMENTS BY AIRLINES BEFORE THE LAKER COLLAPSE. IT
INFERRED THAT HIS PURPOSE WOULD BE TO AVOID ANY ADVERSE
EFFECT OF THE INVESTIGATION ON THE BA FLOTATION. IN HIS
LETTER OF SEPTEMBER 14, PERHAPS IN RELIANCE ON YOUR REPORT,
MR WHITAKER SUGGESTS THAT FOR THE ATTORNEY GENERAL TO DO SO
WOULD BE IMPROPER.

2. I AM WRITING TO CORRECT THE FALSE IMPRESSION THAT HAS
BEEN GIVEN. SIR MICHAEL FLEW TO THE USA ON SEPTEMBER 9 ON
A VISIT FIXED SOME TIME AGO, INVOLVING SPEAKING ENGAGEMENTS
IN NEW ORLEANS FOLLOWED BY A PRIVATE VISIT TO PHILADELPHIA.
HE WILL BREAK HIS PHILADELPHIA VISIT TO SPEND ONE DAY IN
WASHINGTON TAKING UP AN INVITATION FROM A LEGAL COLLEAGUE
IN THE US ADMINISTRATION WITH WHOM HE HAS ON SEVERAL
OCCASIONS DISCUSSED LEGAL PROBLEMS ARISING BETWEEN THE UK
AND THE USA.

3. IN WASHINGTON SIR MICHAEL WILL DISCUSS A NUMBER OF
MATTERS, EACH OF THEM LEGAL IN NATURE AND THE SUBJECT OF
PREVIOUS CONTACTS BETWEEN SIR MICHAEL AND HIS US LEGAL
COUNTERPARTS. AMONG THEM IS THE DISPUTED CLAIM OF JURIS-
DICTION BY THE USA IN A NUMBER OF AREAS, INCLUDING THE CLAIM
TO APPLY ANTI-TRUST LAWS TO ACTIVITIES OF AIRLINES
REGULATED UNDER THE INTERNATIONAL AGREEMENT BETWEEN THE UK
AND THE USA ('BERMUDA 2').

4. THERE HAS FOR SOME TIME BEEN A SERIOUS DISPUTE ON THE

UNCLASSIFIED

3237 - 2

INTERPRETATION OF BERMUDA 2. ONE ISSUE IS WHETHER THE USA HAS A RIGHT TO APPLY ITS OWN LAWS TO INVESTIGATE AND REGULATE THE CONSEQUENCES OF AIRLINES CHARGING FARES ESTABLISHED PURSUANT TO BERMUDA 2, APPROVED BY BOTH GOVERNMENTS AND THEREAFTER REQUIRED BY THE LAWS OF BOTH COUNTRIES TO BE CHARGED.

5. THESE MATTERS RAISE IMPORTANT QUESTIONS OF LAW FOR THE UNITED KINGDOM ON WHICH IT IS THE FUNCTION AND DUTY OF THE ATTORNEY GENERAL TO REPRESENT THE UNITED KINGDOM'S VIEWS REGARDLESS OF THE POLICY OF THE GOVERNMENT TO PRIVATISE ANY PARTICULAR UNDERTAKING.

PATRICK MAYHEW
SOLICITOR GENERAL
ROYAL COURTS OF JUSTICE, WC2
SEPTEMBER 14.
HOWE

LIMITED
MAED
NAD
NEWS D
ERD
LEGAL ADVS
PS
PS/LADY YOUNG
PS/MR WHITNEY
PS/PUS
SIR C TICKELL
MR J THOMAS
MR O'NEILL

ADDITIONAL DISTN:
US ANTI-TRUST ACTION
AGAINST BRIRISH AIRLINES

COPY TO.
MR CARTLEDGE, CABINET OFFICE.

CONFIDENTIAL

3264 - 1

OO WASHINGTON
GRS 120
CONFIDENTIAL
FM FCO 171205Z SEPT 84
TO IMMEDIATE WASHINGTON
TELEGRAM NUMBER 1602 OF 17 SEPTEMBER
YOUR TELNO 2737.

LAKER: PRESS LINE FOR ATTORNEY-GENERAL'S VISIT

1. WE AGREE YOUR PRESS LINE SUBJECT TO FOLLOWING AMENDMENT TO PARA 3 OF TUR.
2. DELETE LAST TWO SENTENCES: 'WE THINK.....HMG'S VIEWS ON THIS DISPUTE' AND INSERT 'WE THINK THAT US ANTI-TRUST LAWS ARE INCOMPATIBLE WITH THE UK-US BILATERAL AGREEMENT AND THAT IT IS QUITE INAPPROPRIATE FOR THE AMERICAN GOVERNMENT TO BE PURSUING A CRIMINAL INVESTIGATION AGAINST BRITISH AIRLINES IN THESE CIRCUMSTANCES. THIS HAS BEEN MADE CLEAR TO THE AMERICAN GOVERNMENT ON A NUMBER OF OCCASIONS. THE ATTORNEY-GENERAL HAS TODAY REITERATED HMG'S STRONGLY-HELD VIEWS ON THIS MATTER'.

HOWE

LIMITED

MAED
NAD
NEWS D
ERD
LEGAL ADVS
PS
PS/LADY YOUNG
PS/MR RENTON
PS/PUS
SIR C TICKELL
MR J THOMAS
MR O'NEILL

ADDITIONAL DISTN:
US ANTI-TRUST ACTION
AGAINST BRIRISH AIRLINES

COPY TO.
MR CARTLEDGE, CABINET OFFICE .

CONFIDENTIAL

File

CONFIDENTIAL

3320 - 2

GRS 420

CONFIDENTIAL
DESKBY 171700Z
FM FCO 171100Z SEPTEMBER 1984
TO IMMEDIATE WASHINGTON
TELEGRAM NUMBER 1605 OF 17 SEPTEMBER

YOUR TELNOS 2712, 2713 AND MIFT : LAKER : ATTORNEY GENERAL'S
VISIT

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

1

CONFIDENTIAL

CONFIDENTIAL

3320 - 2

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.

HOWE

LIMITED
MAED
NAD
NEWS D
ERD
LEGAL ADVS
PS
PS/LADY YOUNG
PS/MR WHITNEY
PS/PUS
SIR C TICKELL
MR J THOMAS
MR O'NEILL

ADDITIONAL DISTN:
US ANTI-TRUST ACTION
AGAINST BRIRISH AIRLINES

COPY TO.
MR CARTLEDGE, CABINET OFFICE .

CONFIDENTIAL



01-405 7641 Extn

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

14 September, 1984

Sir,

You carried a report on 13 September that the Attorney General would be flying to Washington to press the United States to drop its investigations into alleged price-fixing agreements by airlines before the Laker collapse. It inferred that his purpose would be to avoid any adverse effect of the investigation on the BA flotation. In his letter of 14 September, perhaps in reliance on your report, Mr. Whitaker suggests that for the Attorney General to do so would be improper.

I am writing to correct the false impression that has been given. Sir Michael flew to the USA on 9 September on a visit fixed some time ago, involving speaking engagements in New Orleans followed by a private visit to Philadelphia. He will break his Philadelphia visit to spend one day in Washington taking up an invitation from a legal colleague in the US administration with whom he has on several occasions discussed legal problems arising between the UK and the USA.

In Washington Sir Michael will discuss a number of matters, each of them legal in nature and the subject of previous contacts between Sir Michael and his US legal counterparts. Among them is the disputed claim of jurisdiction by the USA in a number of areas, including the claim to apply anti-trust laws to activities of airlines regulated under the international Agreement between the UK and the USA ("Bermuda 2"). There has for some time been a serious dispute on the interpretation of Bermuda 2. One issue is whether the USA has a right to apply its own laws to investigate and regulate the consequences of airlines charging fares established pursuant to Bermuda 2, approved by both Governments and thereafter required by the laws of both countries to be charged.

/These



-2-

These matters raise important questions of law for the United Kingdom on which it is the function and duty of the Attorney General to represent the United Kingdom's views regardless of the policy of the Government to privatise any particular undertaking.

*Yours faithfully,
Richard Mayhew*

The Editor
The Times
New Printing House Square
Gray's Inn Road
London WC1