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Prime Minister ②
This isn't going well;
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SECRETARY OF STATE FOR TRANSPORT

US GRAND JURY INVESTIGATION AND LAKER CASE:
ATTORNEY GENERAL'S LUNCH WITH US AMBASSADOR ON 1 OCTOBER

1. I had lunch yesterday with Ambassador Price and Mr Deal of the US Embassy to discuss the possibility of indictments against British Airways and Laker Airways for alleged illegal fare fixing (see Washington telegrams Nos. 2870 and 2871 attached). Mr Ayling also was present.

2. I made the following points : -

- i) we were surprised and disappointed that the Department of Justice thought it necessary even to consider indicting two British airlines for discussing fares questions in London prior to CAA fare filings;
- ii) the overwhelming British interest should lead the Department of Justice to exercise its discretion not to indict;
- iii) the decision called in question the value of British airlines route rights under Bermuda 2 and emphasised the need to resolve the dispute as a whole to avoid a similar controversy in the future;
- iv) there was sufficient common interest between the two Governments to be able to reach an agreement;

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- v) the forthcoming discussions with the Department of Justice provided an opportunity to discuss the broader implications;
- vi) it was important for the wider US/UK relationship that the matter was resolved. It was politically an important matter here and Ministers would react strongly against a decision to proceed with indictments;
- vii) the discussions with the Department of Justice must therefore be a genuine consultation.

3. Ambassador Price listened sympathetically to these points and undertook to report back the serious concern felt by the British Government. He said that similar points had already been made to him by the Secretary of State for Trade and Industry and he was in no doubt of the Government's attitude.

4. I am copying this minute to the Prime Minister, the Secretary of State for Foreign and Commonwealth Affairs and the Secretary of State for Trade and Industry.

MH
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Attorney General's Chambers
Law Officers' Department
Royal Courts of Justice
Strand
London WC2

2 October 1984.

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FM WASHINGTON 270350Z SEP 84
TO IMMEDIATE F C O
TELEGRAM NUMBER 2870 OF 26 SEPTEMBER.

LAKER: GRAND JURY

SUMMARY

1. JUSTICE DEPARTMENT HAS INVITED H.M.G. FOR CONSULTATIONS UNDER THE NON-PAPER ARRANGEMENTS ON 15-16 OCTOBER. THE D.O.J.S PRELIMINARY CONCLUSION IS THAT B.A. AND POSSIBLY LAKER SHOULD BE INDICTED FOR PER SE PRICE FIXING AND B.A. AND PANAM FOR FIXING SCHEDULES.

DETAIL

2. SEIDEN (JUSTICE DEPARTMENT) FLANKED BY THE DEPARTMENTS TEAM OF LAWYERS WHO HAVE STAFFED THE GRAND JURY INVESTIGATION INFORMED COUNSELLOR (CAS) ON 26 SEPTEMBER THAT UNDER THE NON-PAPER ARRANGEMENTS THE D.O.J. WISHED TO INVITE H.M.G. TO CONSULTATIONS IN WASHINGTON ON OCTOBER 15 AND 16. SEIDEN HANDED MAYNARD A STATEMENT OF THE D.O.J.S PRELIMINARY CONCLUSIONS OF THE GRAND JURY INVESTIGATION WHICH WOULD FORM THE BASIS OF THE CONSULTATIONS (TEXT IN M.I.F.T.).

3. SEIDEN EMPHASISED THAT THE D.O.J. STATEMENT SHOULD BE REGARDED AS A GOVERNMENT TO GOVERNMENT COMMUNICATION AND, CONSISTENT WITH THE NATURE OF THE NON-PAPER, CONSIDERED CONFIDENTIAL. IT SHOULD NOT BE SHOWN TO THE AIRLINES OR IN ANY OTHER WAY MADE PUBLIC. IT SHOULD ALSO BE REGARDED AS A FORMAL NOTIFICATION ENCOMPASSING US INTERNATIONAL OBLIGATIONS SUCH AS THOSE COVERED BY THE O.E.C.D.

4. SEIDEN INDICATED THAT WHILE THE CONSULTATIONS COULD BE DELAYED IF THE PRECISE DATES OFFERED WERE INCONVENIENT IT WAS MCGRATH'S (ASSISTANT ATTORNEY-GENERAL) INTENTION TO CHAIR THE U.S. DELEGATION AND THE 15 AND 16 OCTOBER WERE THE ONLY TWO POSSIBILITIES IN THAT WEEK.

5. MAYNARD SAID THAT THE NEED FOR CONSULTATIONS WOULD BE A MAJOR DISAPPOINTMENT TO H.M.G. HE NOTED THE DESIRE FOR CONFIDENTIALITY (SEE PARA 3) WHICH WOULD OF COURSE BE RESPECTED BUT SINCE B.A. WERE AWARE OF THE D.O.J.'S VIEWS FROM THE DISCUSSIONS BETWEEN THEIR LAWYERS AND THE JUSTICE DEPARTMENT THE ESSENCE OF THE D.O.J. STATEMENT WAS ALREADY KNOWN OUTSIDE GOVERNMENT. SEIDEN RECOGNISED THIS BUT INDICATED THAT SOME ASPECTS OF THE D.O.J.'S CONCLUSIONS HAD CHANGED SINCE THE DISCUSSIONS WITH B.A. (ALTHOUGH SEIDEN DID

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NOT REFER TO LEG 4 IN THIS CONTEXT ITS OMISSION FROM THE STATEMENT IS A SIGNIFICANT CHANGE - SEE PARA BELOW). SEIDEN ACCEPTED ALSO THAT B.A.'S LAWYERS HAD BEEN PROMISED A FURTHER CHANCE TO ARGUE THEIR CASE WITH THE JUSTICE DEPARTMENT AT A HIGHER LEVEL (MCGRATH) BUT CONSIDERED THAT THIS SHOULD TAKE PLACE AFTER CONSULTATIONS WITH H.M.G. THE CONSULTATIONS WERE MEANT TO BE QUOTE GENUINE UNQUOTE AND QUOTE ANYTHING WAS POSSIBLE UNQUOTE AS A RESULT.

6. IN RESPONSE TO QUESTIONS AND FURTHER DISCUSSION CONCERNING MORE DETAILED INFORMATION TO SUPPORT THE D.O.J.'S PRELIMINARY CONCLUSIONS SEIDEN REITERATED THE PROBLEMS POSED BY GRAND JURY SECRECY REQUIREMENTS. IT WOULD NOT BE POSSIBLE TO PROVIDE INFORMATION ABOUT THE EVIDENCE SUCH AS THE STATEMENTS OF WITNESSES. H.M.G. WOULD HAVE TO RELY ON BRIEFING FROM B.A. WHO WERE AWARE OF THE EVIDENCE GIVEN TO THE GRAND JURY AND WERE NOT THEMSELVES BOUND BY THE SECRECY RULES. MAYNARD SAID THAT NEVERTHELESS H.M.G.'S ABILITY TO MAKE A CONSTRUCTIVE

CONTRIBUTION TO THE CONSULTATIONS WOULD BE HANDICAPPED IN THE ABSENCE OF SOME DETAIL. HE POINTED OUT THAT THE D.O.J. STATEMENT CONCERNING PER SE PRICE FIXING GAVE NO INDICATION OF THE DURATION OF THE ALLEGED CONSPIRACY. SEIDEN AGREED THAT THIS MIGHT BE AN AREA IN WHICH FURTHER CLARIFICATION COULD BE SOUGHT.

7. SEIDEN CONFIRMED THAT THE ABSENCE OF ANY REFERENCE TO U.S. CARRIERS IN THE D.O.J. STATEMENT MEANT THAT THE D.O.J. DID NOT HAVE SUFFICIENT EVIDENCE CONCERNING THEIR INVOLVEMENT TO CONSIDER AN INDICTMENT. HE ALSO CONFIRMED THAT THE D.O.J. DID NOT INTEND TO PROCEED FURTHER WITH THE LEG 2 (PREDATORY PRICING) ALLEGATION. MAYNARD SAID THAT HE WOULD EXPECT THAT H.M.G. WOULD WANT THE D.O.J.'S HANDLING OF ITS CONCLUSIONS ON LEG 2 TO BE PART OF THE CONSULTATIONS. SEIDEN SAID THAT THIS WAS UNDERSTOOD ALTHOUGH NO THOUGHT HAD YET BEEN GIVEN TO THIS BY THE JUSTICE DEPARTMENT.

8. CONCERNING THE ALLEGED CONSPIRACY ON CAPACITY SEIDEN WAS AT PAINS TO EMPHASISE THAT THE REFERENCE TO A THREE COUNT INDICTMENT (PARA 3 OF M.I.F.T.) DID NOT REPRESENT ANY UNWILLINGNESS TO FULFILL THE OBLIGATIONS SET OUT IN THE EXCHANGES IN MAY THIS YEAR (SEE MY TEL NOS 1472 AND 1473). IN DESCRIBING THE PROPOSED INDICTMENT THE JUSTICE DEPARTMENT HAD TO IDENTIFY THE QUOTE COGNISABLE UNQUOTE EFFECTS OF ANY CONSPIRACY AS WELL AS THE ALLEGED ILLEGAL COLLUSION. SINCE THE EFFECTS RELATED TO TWO SEPARATE ROUTES AND SEPARATE SEASONS THEIR WOULD HAVE TO BE A THREE COUNTS. THIS DOES NOT PRECLUDE THE JUSTICE DEPARTMENT ACCEPTING NOLO CONTENDERE PLEA TO ONE COUNT AS QUOTE THE TOTAL DISPOSITION UNQUOTE OF THE INDICTMENT. (PARA 4 OF MY TELNO 1473).

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9. SEIDEN AGREED THAT THERE WAS NO REFERENCE TO LEG 4 (HOLLYWOOD) IN THE STATEMENT. THIS REPRESENTED A TENTATIVE DECISION NOT TO BRING AN INDICTMENT FOR THE ACTIVITIES OF U.K. AIRLINES AT THE I.A.T.A. MEETING IN HOLLYWOOD IN EARLY 1982. IT DID NOT MEAN THAT THE GRAND JURY HAD INSUFFICIENT EVIDENCE. SEIDEN SAID THAT THE REASONS FOR THIS WOULD BE EXPLAINED TO H.M.G. DURING THE CONSULTATIONS: THE U.S. WOULD WANT HOLLYWOOD TO BE ON THE AGENDA.

F.C.O. PLEASE ADVANCE TO:
AYLING, HEALEY, D T I
KINGTON, STEVEN, FORTNAM, D T P
GRAY, M A E D, F C O
AUST, LEGAL ADVISERS, F C O
GARDINER, L O D

WRIGHT

[ADVANCED AS REQUESTED]

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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.
PLWS
ADVANCE ADDRESSEES

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DESKBY 270900Z
FM WASHINGTON 270351Z SEPTEMBER 84
TO IMMEDIATE FCO
TELEGRAM NUMBER 2871 OF 26 SEPT

MIPT: LAKER

TEXT OF JUSTICE DEPARTMENT STATEMENT OF PRELIMINARY CONCLUSIONS
AS FOLLOWS:

THE ANTITRUST DIVISION HAS BEEN CONDUCTING A GRAND JURY INVESTIGATION OF ANTICOMPETITIVE CONDUCT IN THE NORTH ATLANTIC AIR TRANSPORTATION MARKET. THE GRAND JURY INVESTIGATION HAS GATHERED SUBSTANTIAL EVIDENCE IMPLICATING BRITISH AIRWAYS (BA), LAKER AIRWAYS AND THREE FORMER SENIOR BA OFFICIALS IN A CONSPIRACY TO FIX THE PRICE OF AIR TRAVEL BETWEEN THE UNITED STATES AND THE UNITED KINGDOM. THE ANTITRUST DIVISION IS CONSIDERING A ONE COUNT INDICTMENT OF BA, THE THREE INDIVIDUALS, AND POSSIBLY LAKER AIRWAYS FOR THIS CONSPIRACY.

THE EVIDENCE SHOWS THAT ON AT LEAST TWO OCCASIONS IN 1981, SENIOR OFFICIALS OF BA AND LAKER AIRWAYS NEGOTIATED, AND THEN IMPLEMENTED, PRICE-FIXING AGREEMENTS. THE ESSENCE OF BOTH AGREEMENTS WAS THAT LAKER AIRWAYS WOULD GO ALONG WITH SUBSTANTIAL FARE INCREASES IN THE PROMOTIONAL FARE CATEGORIES (STANDBY AND SUPERAPEX) IF BA WOULD ACCORD LAKER AIRWAYS A NOMINAL PRICING DIFFERENTIAL AT THE NEW HIGHER FARES.

THE GRAND JURY INVESTIGATION HAS ALSO GATHERED SUBSTANTIAL EVIDENCE IMPLICATING BA AND PAN AM IN A CONSPIRACY TO REDUCE CAPACITY AND ALLOCATE DAYS OF SERVICE FOR CERTAIN U.S.-U.K. ROUTES FOR THE 1980-81 AND 1981-82 WINTER SEASONS. THE EVIDENCE SHOWS THAT FOR THE 1981-82 WINTER SEASON, BA AND PAN

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PAN AM AGREED JOINTLY TO REDUCE CAPACITY AND ALLOCATE DAYS OF SERVICE FOR THE LONDON/WASHINGTON AND LONDON/LOS ANGELES ROUTES. FOR THE 1980-81 WINTER SEASON, THE EVIDENCE SHOWS THAT PAN AM AND BA AGREED JOINTLY TO REDUCE CAPACITY AND ALLOCATE DAYS OF SERVICE FOR THE LONDON/WASHINGTON-DETROIT ROUTE. THE AGREEMENTS FOR THE 1980-81 AND 1981-82 WINTER SEASONS WERE IMPLEMENTED, AND FLIGHT SCHEDULES WERE FILED ACCORDINGLY. THE ANTI-TRUST DIVISION IS CONSIDERING A THREE COUNT INDICTMENT OF PAN AM AND BA FOR THIS CONSPIRACY.

FCO PLEASE ADVANCE:-

AYLING HEALEY DTI

KNIGHTON STEVENS FORTNAM DTP

GRAY MAED FCO

AUST. FCO LEGAL ADVISERS

GARDINER L.O.D.

WRIGHT

(ADVANCED AS REQUESTED)

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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 BRITISH AIRLINES

COPY TO.

MR CARTLEDGE, CABINET OFFICE.

PLUS

ADVANCE ADDRESSEES.