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 PS/LADY YOUNG  
 PS/PUS  
 SIR C TICKELL  
 MR ~~MAED~~ O'NEILL  
 MR AUST, Legal Advisers  
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 RESIDENT CLERK

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*File*

PS/S of S  
 MR LAZARUS, PUS  
 MR STEVENS  
 MR KNIGHTON } DEPT OF TRANSPORT  
 MR ~~FORNATH~~ }  
 MR ~~FORNATH~~  
 MR ~~ROBERTS~~ } DTI  
 MR ROBERTS  
 MR ~~SUNDBRAND~~ }  
 MR HUTTON  
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 POWELL  
 MR ~~COLES~~ 10 DOWNING ST  
 MR GARDINER, ATTORNEY GENERAL'S OFFICE

CONFIDENTIAL

DESKBY 080900Z

FM WASHINGTON 052236Z OCT 84  
 TO IMMEDIATE FCO  
 TELNO 2996 OF 5 OCT 84.  
 MIPT: LAKER CONSULTATIONS.

IMMEDIATE

ADVANCE COPY

1. THE FOLLOWING ARE OUR COMMENTS ON PARTICULAR ISSUES THAT MAY COME UP IN THE CONSULTATIONS.  
 BERMUDA 2 AND DOMESTIC LAW.

2. SINCE THERE IS NO POSSIBILITY OF SHIFTING THE AMERICANS ON THE ISSUE OF PRINCIPLE, WE SHOULD (SUBJECT TO THE NEED TO PREPARE THE GROUND FOR AN EVENTUAL ARBITRATION IF NECESSARY) AIM FOR A RECOGNITION BY BOTH SIDES THAT THERE IS A FUNDAMENTAL DISAGREEMENT BETWEEN THE TWO GOVERNMENTS ON A CENTRAL ISSUE OF INTERNATIONAL LAW. THIS CAN THEN BE PLAYED BY THE AMERICANS INTO THE CIVIL CASES (SEE PARA 6 BELOW).

THE JUSTICE DEPARTMENT INVESTIGATIONS.

3. IN CONNECTION WITH THE LAKER BANKRUPTCY, THE JUSTICE DEPARTMENT HAVE BEEN INVESTIGATING ALLEGATIONS OF PRICE FIXING, PREDATORY PRICES AND FINANCIAL CONSPIRACY (LEGS 1, 2 AND 3). THEY HAVE INDICATED TO US THAT THEY HAVE INSUFFICIENT EVIDENCE TO PURSUE LEGS 2 AND 3. IN RELATION TO LEG 1 THEY CLAIM TO HAVE EVIDENCE AGAINST BRITISH AIRWAYS AND PERHAPS AGAINST LAKER. BUT THEY SEEM TO BE SAYING THAT THEY DO NOT HAVE SUFFICIENT EVIDENCE TO INVOLVE ANY AMERICAN AIRLINE. WE MIGHT DEPLOY THREE ARGUMENTS:

A) THE JUSTICE DEPARTMENT SHOULD NOT SEEK AN INDICTMENT AT ALL; THEY SHOULD INSTEAD USE THEIR DISCRETION, AS THEIR OWN INTERNAL PROCEDURES PERMIT, TO TAKE ACCOUNT OF THE INTERESTS OF THE BRITISH GOVERNMENT AND THE CONFUSION IN THE LAW, BOTH OF WHICH ARE UNDOUBTEDLY PRESENT IN THIS CASE.

B) IF THEY GO FOR AN INDICTMENT, IT SHOULD ALSO COVER LAKER SINCE THAT WILL PLAY WELL IN THE LAKER CIVIL CASE.

C) IN ANY CASE WE CANNOT BELIEVE THAT THE ALLEGED CONSPIRACY (IF IT EXISTED) DID NOT INVOLVE AMERICAN AIRLINES. ANY IMPRESSION THAT THE AMERICANS ARE DISCRIMINATING AGAINST BRITISH AIRLINES WOULD PRODUCE A DEPLORABLE EFFECT ON BRITISH PUBLIC OPINION.

BRITISH OFFICIAL INVOLVEMENT.

4. IF THE AMERICANS RAISE, EVEN FOR THE RECORD, THE ISSUE OF BRITISH OFFICIALS' INVOLVEMENT IN THE ALLEGED PRICE FIXING (LEG 4) WE SHOULD RESPOND SHARPLY. WE HAVE MAINTAINED THROUGHOUT THAT IT IS NOT FOR THE AMERICAN JUSTICE DEPARTMENT TO HAVE ANY VIEWS ON THE WAY IN WHICH BRITISH OFFICIALS CARRY OUT BRITISH POLICY IN RELATION TO BRITISH AIRLINES. WE SHOULD THEREFORE REFUSE TO ACCEPT ANY EXPRESSION OF OPINION ON THEIR PART.

CAPACITY FIXING.

5. THE JUSTICE DEPARTMENT'S INVESTIGATION, THOUGH NOT RULED OUT BY THE WORDING OF THE NON-PAPER, IS HARDLY IN ACCORDANCE WITH ITS SPIRIT. BUT THE ALLEGED TALKS BETWEEN BRITISH AND AMERICAN AIRLINES ON CAPACITY ILLUSTRATE OUR BASIC CONTENTION THAT SOME MANAGEMENT OF THE NORTH ATLANTIC ROUTES IS NECESSARY. WHATEVER THEIR THEORETICAL POSITION, AMERICAN OFFICIALS REGULARLY CONTACT US (AND PERHAPS THEIR OWN AIRLINES) ON THESE MATTERS. THAT SIMPLY SHOWS THAT WE NEED A FUTURE ARRANGEMENT

THE LAKER CIVIL CASES.

6. THE US GOVERNMENT CANNOT ORDER THESE NOT TO PROCEED. BUT, WITHOUT VIOLATING THEIR OWN PRINCIPLES, THEY COULD CONVEY TO THE COURT THAT THERE WAS INDEED A FUNDAMENTAL DISAGREEMENT BETWEEN THE TWO GOVERNMENTS ON LAW AND POLICY, WHICH THEY WERE SEEKING TO RESOLVE BY NEGOTIATION: THAT THE JUSTICE DEPARTMENT HAD FOUND NO EVIDENCE OF A CONSPIRACY TO PUT LAKER OUT OF BUSINESS: THAT THE ONLY PRICE FIXING OF WHICH THEY HAD FOUND EVIDENCE INVOLVED LAKER, AND WAS INTENDED TO KEEP HIM IN BUSINESS. SUCH A STATEMENT TO THE COURT WOULD MAKE IT MUCH HARDER FOR LAKER TO PURSUE HIS CASE THERE, AND PUT PRESSURE ON HIM TO SETTLE REASONABLY. WE SHOULD PRESS THE AMERICANS VERY HARD FOR SUCH A STATEMENT.

FUTURE ARRANGEMENTS.

7. WE WILL NOT HAVE TIME TO NEGOTIATE A FINISHED ARRANGEMENT AT THIS ROUND OF CONSULTATIONS. BUT WE SHOULD SEEK TO MOVE THE AMERICANS FROM THEIR PRESENT POSITION THAT IT IS ALL TOO DIFFICULT TOWARDS A POSITIVE COMMITMENT TO FIND PRACTICAL SOLUTIONS. WE SHOULD NOT ACCEPT THEIR USUAL ARGUMENT THAT A CHANGE IN THE EXISTING SYSTEM WOULD REQUIRE LEGISLATION WHICH CONGRESS WILL NOT GIVE: THEY HAVE SUCCESSFULLY SOUGHT LEGISLATION IN OTHER ANTITRUST AREAS WHERE US NATIONAL INTEREST SEEMED TO REQUIRE IT, AND THE CHIEF OF THE ANTITRUST DIVISION HAS ALREADY INDICATED PUBLICLY THAT THEY ARE BEGINNING TO THINK ABOUT THE PROBLEMS OF INTERNATIONAL TRANSPORT AS WELL. INDEED MCGRATH TOLD US IN THE SUMMER THAT HE WOULD HOPE TO COME UP WITH NEW IDEAS FOR DISCUSSION AFTER THE ELECTION: WE SHOULD ASK HIM WHEN HE NOW PROPOSES TO DELIVER.

ADVANCE COPIES TO:

O'NEILL, AUST, GRAY (MAED) FCO, KNIGHTON STEVENS FORTNAM DTP, AYLING DTI.

WRIGHT

SECRET  
22/10/52

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