

c Ian Gow



Prime Minister

(2)

I understand that Ian Gow has minuted you separately in this.

From the Secretary of State

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Michael Scholar Esq  
Private Secretary  
10 Downing Street  
London, SW1

The Secretary of State is, as

I see it, acting in a

2nd April 1982

(quasi-) judicially

Dear Michael, *This decision will be received with disappointment and amazement - both capacity of which I share you, Mrs 2/4*

1 There has been some press publicity about the appeal to my Secretary of State by British Midland Airways against the decision by the Civil Aviation Authority not to license BMA to operate scheduled services between London (Heathrow)-Glasgow and London (Heathrow)-Edinburgh. I am writing to let you know that my Secretary of State is minded to dismiss the appeal and to uphold the ruling by the Civil Aviation Authority. However in view of the considerable political interest in this case, and of the Prime Minister's own concern which Ian Gow reported to my Secretary of State, Mr Biffen thought it might be helpful to outline the reasons behind his thinking.

2 My Secretary of State recognises that whatever he decides on this appeal will be controversial. It involves important domestic trunk routes and is also the first major domestic case to be the subject of a hearing under the more liberal and less regulated regime established by the 1980 Civil Aviation Act. However, my Secretary of State believes that a policy of greater liberalisation must also be conditional on other factors. He would therefore not wish to sanction more carriers than the route can sustain - recent experience in and to North America has shown only too clearly the dangers of over-capacity in the present weakened state of all airline carriers, both in the public and private sector. In the present case, the CAA took the firm view that the BMA's traffic forecasts were unrealistically high. The Authority concluded that the introduction of a third carrier would gravely weaken all three airlines, and that British Midland Airways itself would probably lose money on the routes. The arguments advanced on appeal have not led the Secretary of State to doubt these conclusions.

3 On the other hand, my Secretary of State recognises that any decision to dismiss the appeal may well be criticised by some Government supporters and consumer groups as undermining our policy of increasing competition domestically, as well as making more difficult our negotiations for a more competitive regime in Europe. It could



*From the Secretary of State*

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also meet opposition from some Back Benchers as an attempt to protect from competition British Airways, who are making a profit on these routes.

4 My Secretary of State recognises that there is some force in these arguments, but believes that we should not pursue a liberal licensing policy at any cost, and in particular where it might do lasting damage to our airline industry, and possibly rebound to the disadvantage of our wider liberalisation objectives. Even so, my Secretary of State does not wish to rule out the possibility of licensing a third carrier on these routes in the future. The draft Decision Letter, which is attached, therefore leaves open the possibility that the licensing of a third carrier on these routes may be justified when the market can convincingly be shown to be adequate to support three competing services. This gives BMA the opening necessary to make a fresh application in future.

5 Finally, my Secretary of State has seen the comments by Mr Bishop, the Chairman of BMA, in his letter of 1 April to the Prime Minister. He will let the Prime Minister have a draft reply as soon as possible; clearly, though, this must await the publication of the Decision Letter since until then the appeal is "sub judice".

Yours Ever,

Jonathan Rees

J N REES  
Private Secretary

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The Secretary  
Civil Aviation Authority  
CAA House  
45/59 Kingsway  
London WC2B 6TE

Dear Madam

I refer to the appeal by British Midland Airways Ltd (the appellant) against the decision of the Civil Aviation Authority (the Authority) to refuse applications 1A/20325 and 1A/20326 for the appellant to operate scheduled services between London (Heathrow) - Glasgow and London (Heathrow) - Edinburgh.

The Secretary of State has considered the appeal and the submissions from the British Airways Board, British Caledonian Airways Ltd, the Air Transport Users Committee and the Authority made under Regulation 16 of the Civil Aviation Authority Regulations 1972, as amended.

In reach his conclusion, the Secretary of State had the following considerations principally in mind:-

1. He accepts that the Authority did take into account all the objectives in its Statement of Policies, and gave due weight to all relevant considerations in reaching its decision.
2. He is satisfied that the Authority gave sufficient weight, on the evidence before it at the Hearing, to the requirements of the Civil Aviation Act, particularly in regard to competition, the interests of users, and the effect on existing services provided by British airlines.

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3. He recognises that it is a very difficult task for the Authority to judge the size of the market for a route when presented with forecasts of traffic which, as in this case, differ very widely. Applicants who base their case on the argument that the service and fares they offer will stimulate substantial increases in demand must be expected to produce ~~some~~ convincing evidence to support their forecasts. He is satisfied that on the case submitted to it, the Authority made a reasonable judgment in assessing the market for the routes in question.

4. He is persuaded by the evidence at the Hearing that the Authority took full and proper account of the interests of Scottish consumers before reaching a decision and that such interests were not prejudiced by the holding of the Hearing in London.

The Secretary of State has therefore decided to dismiss the appeal. He has noted the Authority's comment that it by no means ruled out the licensing of British Midland at some future date when both it and its competitors were in a stronger position to compete. The Secretary of State broadly agrees with those remarks. He recognises that travellers would welcome a wider choice of service and he hopes that the licensing of a third carrier on these routes may be justified when the market can <sup>more</sup> convincingly be shown to be adequate to support three competing services.

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No order is made as to costs.

Copies of this letter have been sent to British Midland Airways Ltd, British Airways Board, British Caledonian Airways Ltd, the Air Transport Users Committee, the Scottish Consumer Council, Mr A Macleod and Knapp-Fishers.

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2 APR 1982



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