



Aeroplane Club
C. I. Gow

10 DOWNING STREET

From the Private Secretary

21 May 1982

The Prime Minister was grateful for your Secretary of State's minute of 18 May about the Decision by the Civil Aviation Authority not to licence British Midland Airways to operate scheduled services between London (Heathrow) - Glasgow and London (Heathrow) - Edinburgh.

The Prime Minister has noted the course which your Secretary of State is pursuing. She will be grateful to know in due course his decision on the basis of the further representations which the parties concerned have been invited to make.

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M. C. SCHOLAR

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Jonathan Rees, Esq.,
Department of Trade.

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CONFIDENTIAL

Prime Minister (2) E/C I.G.
To note.
Much more satisfactory ✓
MUS 18/5

MW

PRIME MINISTER

My Private Secretary wrote to yours on 2 April about two appeals from British Midland Airways against a Decision by the Civil Aviation Authority not to licence BMA to operate scheduled services between London (Heathrow) - Glasgow and London (Heathrow) - Edinburgh.

I regard the "Decision" handed down by the CAA as a most unsatisfactory document. It runs to 42 pages but nowhere is there a clear statement of the Authority's findings on questions of fact: nor is there set down the process of reasoning which led the Authority from the facts established - if they were established - to the conclusion they reached.

In these circumstances one is tempted to refer the case back for rehearing. But there has already been considerable delay - it is more than twelve months since the original application was lodged. To order a rehearing would not only involve further and inordinate delay but would inevitably give rise to charges of indecision. But I believe that the law does provide a way of dealing with the matter without the need for a full rehearing.

There is, in my view, a serious flaw in the way that the Authority - and indeed all the airlines concerned - have approached the matter. There are in fact, and in law, two quite distinct applications, one in respect of a service from Heathrow to Glasgow and another in respect of a service from Heathrow to Edinburgh. Nevertheless the matter has largely been dealt with, and mainly argued, as if there were a single application. This in my view is wrong. The CAA, while recognising a degree, possibly an important



degree, of interrelationship as between one service and another, ought nevertheless to have established the facts and delivered a decision in respect of each application on its individual as well as its joint merits.

The user interest is clear, namely that both applications should be allowed. It is in respect of the airline interest that the problem principally arises. Here there are inadequate facts and inadequate argument to arrive at a satisfactory conclusion whether both applications should be refused: whether both should be allowed: whether one should be allowed but not the other: and if so which. And equally therefore how the airline interest should be balanced against the user interest.

There is a further point. As a matter of commercial judgement it may not be wise for BMA to try and take on both new routes simultaneously: they did themselves refer to it as a "quantum jump" in the size of their operations. In the light of what happened to Laker, the CAA might well have been justified in feeling that the BMA should take a more prudent line.

The right decision in the light of all these considerations might well be to license BMA in respect of one route leaving them to reapply in respect of the second route when they had satisfactorily demonstrated their ability to operate the first route and where the facts - as opposed to speculation - about the impact on the other airlines would be known.

Rather than order a rehearing to determine these matters, I have in mind adopting an alternative route which is available under the Civil Aviation Regulations namely to call for "amplification or explanation" from the parties. I attach a copy of the letter my officials will be sending to the parties concerned.

In responding to questions, in Parliament and from the Press, we must, because of the nature of my appellate role, make it clear that the appeal is still under consideration, that the parties are being asked to amplify and explain their submissions and that asking them



questions does not indicate the likely outcome of the appeal.

When I have taken a view on the basis of these further representations I shall, of course, let you know my decision.

Arthur Cockfield

LORD COCKFIELD

Department of Trade

18 May 1982