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PRIME MINISTER

BA Privatisation and US Anti-trust Suits

*FLAG A* The purpose of your meeting is to discuss the Secretary of State for Transport's minute of 10 December proposing that the privatisation of British Airways (BA) should be delayed, that this should be explained by uncertainties about the US anti-trust law and that the possibility should be pursued of a settlement with the Laker liquidator. The background was set out more fully in Mr Ridley's earlier minute of *FLAG B* 4 December which was discussed at a meeting under the chairmanship of the Foreign and Commonwealth Secretary on 6 December. Mr Ridley is seeing Lord King tonight and he may wish to modify the assessment and proposals in his minute of 10 December in the light of that discussion.


2. You may also want to take the opportunity to have a word with those present about the handling of US/UK relations on civil aviation (on which you sent a message to President Reagan at the beginning of this week) in preparation for your forthcoming meeting with the President.

MAIN ISSUES

3. The main issues are as follows:

- i. should a firm decision now be taken to delay the privatisation of BA beyond the mid-February date originally planned?
- ii. how should this delay be presented publicly?
- iii. how should the US civil anti-trust cases be handled?

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Timetable for privatisation

4. It is now common ground that, whatever course of action is pursued over the US civil anti-trust case, the timetable is already too tight for a successful flotation of BA in February. This was the unanimous view at the Foreign and Commonwealth Secretary's meeting last Thursday and (subject to tonight's meeting with Lord King) there is no sign that the situation has improved since then. You will be aware that Treasury Ministers are considering a possible alternative sale of assets within the current financial year.

5. It is not possible to judge how long the postponement might have to be. The earliest next available slot for BA might be April. Whether or not that date (or indeed any date in 1985) will be feasible must depend on the chosen course of action in respect of the anti-trust cases, and its likely prospects.

Presentation of the delay

6. The absence of any active steps to prepare for a February flotation of BA will soon become apparent in the City. The necessary preparations for an alternative asset sale will have the same effect. It would probably be desirable for the Government to volunteer some announcement about the postponement before Christmas, rather than let a City story develop. Mr Ridley was originally reluctant to refer to the anti-trust suits as a cause for delay on the grounds that this might weaken our case in the courts and in negotiations to achieve a settlement. He suggested last week that it might be preferable to cite the difficulty of agreeing with the Board of BA on the capital reconstruction, but the Treasury objected to this. Mr Ridley now proposes that the public explanation should be "the delay in clearing up the uncertainties about the application of anti-trust law". The Attorney General gave the impression at last Thursday's meeting that he would see no difficulty about a formula on those lines.

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Mr Ridley may have more to say about presentation following his talk with Lord King. It will be necessary both to minimise the political damage domestically and to avoid weakening our position vis a vis the Laker liquidator and the US administration.

Options for handling the anti-trust cases

7. There are three main options for handling the anti-trust cases:

- i. a comprehensive indemnity by the Government;
- ii. a global settlement (ie involving not just BA but all the airlines concerned) with the Laker liquidator, leaving the remaining cases to be dealt with by insurance or in some other way;
- iii. fighting the cases through the US courts, combined with a much tougher stand with the US administration.

8. The disadvantages of Option i. are obvious. A comprehensive indemnity would weaken BA's incentive to secure a tolerable outcome and would whet the appetite of the litigants. It would of itself increase the likely cost of resolving the suits. That cost could well be in excess of the proceeds of privatisation. This would have to be admitted at the time of privatisation and would expose the Government to severe public and Parliamentary criticism.

9. The problem about Option iii. is that it could delay privatisation for two years or more. To the extent that we chose not only to fight the cases but also to try and pressurise the US administration into legislative action on our behalf it could sour and disrupt the overall UK/US relationship. The Foreign and Commonwealth Secretary is seriously concerned about that risk.

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10. Option ii. seems therefore to be the most promising but there are the following major snags:

- a. It is not known how long it would take to achieve a global settlement. There may be a clearer estimate of this by the time of the meeting.
- b. The cost for BA of a global settlement may be too high. The present estimate of at least £75 million is not attractive to the Treasury bearing in mind that the proceeds of privatisation against which it would have to be offset are likely to be in the range of £600-£900 million and there would remain the liabilities under the other anti-trust suits. The likely cost may also be better assessed by the time of your meeting.
- c. Lord King asserted last Friday that, even if a settlement was reached with the liquidator, there would have to be an indemnity to cover the remaining suits. This view will need to be challenged. We shall in particular need to know whether there could be insurance against some at least of the liabilities and BA is exploring this.

11. Unless some new information is available by the time of your meeting which suggests that the global settlement option is not feasible, there seems no alternative but to continue to explore it, and to review the position again when we know where we stand.

#### US/UK relations on civil aviation

12. The letter from Mr Ridley's Private Secretary dated 10 December explains that the US Ambassador has now been told of our decision on low winter fares and our readiness to begin early talks on next summer's schedules. Mr Price appears to have given little encouragement that there will be further US moves to mitigate the anti-trust suits, claiming, on the basis of contacts with Lord King, that the financial effects on BA will be modest.

It is important to clear up the confusing signals to the Americans, with HMG expressing concern about triple damage suits, and Lord King playing down their significance.

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You will wish to take account of any further developments arising from the Foreign and Commonwealth Secretary's talk with Mr Schultz and you will no doubt be receiving an up-to-date brief before your meeting with President Reagan. Mr Ridley, who is becoming increasingly exasperated with the Americans on this matter, may press you to take a tough line with the President but you will wish to consider how best to proceed in the context of overall UK/US relations.

#### HANDLING

13. You will wish to ask the Secretary of State for Transport to speak about his proposals relating to the BA privatisation and the immediate handling of the US anti-trust suits. The Chancellor of the Exchequer and Financial Secretary, Treasury will have comments from the point of view of the privatisation programme generally. The Attorney General should be asked for advice on the legal aspects.

14. If there is discussion about relations with the US administration on civil aviation matters, you will wish to invite views both from the Secretary of State for Transport and the Minister of State, Foreign and Commonwealth Office (Baroness Young).

#### CONCLUSIONS

15. You will wish to reach conclusions on:

- i. whether the privatisation of BA should now be delayed beyond mid-February;
- ii. whether this should be announced before Christmas and explained publicly by reference to uncertainties about the application of US anti-trust law;

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iii. whether the possibility of a global settlement with the Laker liquidator should be pursued further, before final decisions are taken on the best way of handling the US anti-trust suits;

iv. (if appropriate) what line should be taken with President Reagan in Washington on civil aviation matters.

*PLG*

P L GREGSON

12 December 1984

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