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QRS 570  
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DESKBY 171700Z  
FM WASHINGTON 171545Z  
TO IMMEDIATE F C O  
TELNO 664 OF 17 MARCH 1983.

YOUR TELNO 413

BRITISH AIRLINES: US ANTI-TRUST ACTION

1. IT IS CLEAR TO ME, FROM THE ACCOUNTS I HAVE HEARD FROM OUR PEOPLE WHO TOOK PART IN THIS WEEK'S TALKS, THAT THE JUSTICE DEPARTMENT OFFICIALS THINK THEY ARE ON TO A WINNER AND THAT THE OFFICIAL IN CHARGE SEES AN OPPORTUNITY TO MAKE HIS REPUTATION. I MAY BE DOING SEIDEN AN INJUSTICE, BUT AMBITION WOULD SEEM TO COMBINE WITH DUTY IN ENCOURAGING HIM TO LET THE LAW TAKE ITS COURSE THOUGH THE HEAVENS FALL. DESPITE YOUR INTERVENTION WITH SHULTZ ON THE WEST COAST AND MINE WITH WALLIS EARLIER THIS WEEK, THE STATE DEPARTMENT HAS BEEN UNABLE OR PERHAPS UNWILLING TO CONVINCE THE JUSTICE DEPARTMENT THAT THE ISSUE SHOULD BE SORTED OUT UNDER THE BILATERAL AVIATION AGREEMENT.
2. KNIGHTON WILL HAVE A BETTER FEEL FOR THE NEGOTIATING SITUATION THAN I HAVE, BUT IT SEEMS TO ME THAT, IF ANYTHING, ATTITUDES HERE HAVE HARDENED. WE HAVE BEEN LISTENED TO WITH COURTESY BUT WE HAVE NOT CARRIED CONVICTION. IF THAT IS SO, THE GRAND JURY INVESTIGATION IS LIKELY TO BE LAUNCHED QUITE SOON. WE HAVE BEEN GIVEN A WEEK'S NOTICE. THE INVESTIGATION COULD THEREFORE BE SET IN TRAIN AS EARLY AS THE WEEK BEGINNING 29 MARCH.
3. THE QUESTION IS WHAT, IF ANYTHING, WE CAN DO ABOUT IT. AS I SEE IT, WE HAVE TWO DIFFICULTIES: ONE IS THAT WE HAVE A POOR CASE IN AMERICAN LAW: THE SECOND IS THERE IS LITTLE WE CAN OFFER THE AMERICANS IN EXCHANGE FOR THE ABANDONING THEIR ANTI-TRUST CASE, EXCEPT THE PROSPECT OF NOT ADDING ONE MORE ROW TO THOSE ALREADY IN PROSPECT (FARM SURPLUSES, EXPORT CONTROLS ETC). FURTHERMORE, ALTHOUGH WE CANNOT BE CERTAIN OF THE EVIDENCE THAT WILL BE ADDUCED TO THE JURY OR OF THE JURY'S REACTION, THE WORST CASE SCENARIO LOOKS PRETTY HORRIFIC. ANTI-TRUST IS AN AMERICAN RELIGION AND SHULTZ (AND EVEN THE PRESIDENT) MAY BE UNWILLING TO SEEM TO BE TRYING TO DIVERT THE CAUSE OF AMERICAN JUSTICE. THE FACT THAT WHAT THE BRITISH COMPANIES ARE ACCUSED OF DOING IS NOT A CRIMINAL OFFENCE UNDER BRITISH LAW CUTS NO ICE : BA AND BCAL ARE EXPECTED TO OBSERVE US LAW ON US TERRITORY.
4. I HAVE OF COURSE CONSIDERED WHETHER TO ADVISE CONSULTATION WITH THE OTHER US AIRLINES INVOLVED: BUT ON THE WHOLE I THINK THAT MIGHT BE COUNTER-PRODUCTIVE.

*[This is obviously garbled]*      /5  
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5. THE BEST SUGGESTION I CAN MAKE IS THAT YOU SHOULD CONSIDER ADDING A WRITTEN MESSAGE TO YOUR ORAL WARNINGS TO SHULTZ. PERHAPS LORD COCKFIELD SHOULD REINFORCE IT WITH ONE TO DOLE. AT THIS DISTANCE, I AM NOT SURE WHAT VIEW YOU AND YOUR COLLEAGUES TAKE OF THE PROSPECTS FOR THE CASE AND THEIR POLITICAL REPERCUSSIONS BOTH DOMESTICALLY AND ON THE ANGLO/AMERICAN RELATIONSHIP. QUITE CLEARLY WE ARE GOING TO GET NOWHERE ON THE OFFICIAL LEVEL. THE ONLY HOPE IS TO APPLY POLITICAL PRESSURE ON POLITICAL GROUNDS. IN THE BELIEF THAT AN OUNCE OF HELP IS WORTH A TON OF ADVICE, I HAVE TRIED MY HAND AT A COCKSHY DRAFT IN MY IFT. ON THE TIMING, THE QUICKER THE BETTER, IF POSSIBLE BEFORE THE DOT TAKE THEIR DECISION TO PROCEED. THIS MEANS A MESSAGE ON MONDAY 21 MARCH. IN ADDITION, MR PETER REES WILL BE IN WASHINGTON AT THE END OF NEXT WEEK ON OTHER BUSINESS AND WILL BE ABLE TO REINFORCE ANY MESSAGE YOU AND LORD COCKFIELD CHOOSE TO SEND.

FCO PLEASE ADVANCE TO KNIGHTON (DOT).

WRIGHT

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MR ADAMS  
SIR IAN SINCLAIR  
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DESKBY 171700Z  
FM WASHINGTON 171547Z  
TO IMMEDIATE FCO  
TELEGRAM NUMBER 665 OF 17 MARCH 1983

MIPT  
BRITISH AIRLINES: US ANTITRUST ACTION: DRAFT MESSAGE TO  
MR SHULTZ

MESSAGE BEGINS

WHEN WE MET IN CALIFORNIA I MENTIONED MY CONCERN ABOUT THE INVESTIGATION WHICH THE US DEPARTMENT OF JUSTICE WERE PROPOSING TO LAUNCH INTO THE ACTIVITIES OF BRITISH AND OTHER AIRLINES WHICH ALLEGEDLY HELPED BRING ABOUT THE BANKRUPTCY OF LAKER AIRWAYS.

WINCE THEN OUR OFFICIALS HAVE HAD TWO ROUNDS OF TALKS, AT WHICH OUR PEOPLE ARGUED STRONGLY THAT THE RIGHT WAY TO SORT OUT ANY PROBLEMS WAS THROUGH THE MACHINERY OF OUR BILATERAL AVIATION AGREEMENT (QUOTE BERMUDA II UNQUOTE).

I WAS DISAPPOINTED TO LEARN THAT OUR ARGUMENTS HAVE NOT YET BEEN ACCEPTED.

I DO NOT WANT TO GO OVER THEM AGAIN. BUT I FEEL BOUND TO SAY THAT I SEE A REAL RISK OF UNDERMINING THE BASIS OF TRUST WHICH HAS HITHERTO ENABLED US TO MANAGE OUR AVIATION RELATIONSHIP SUCCESSFULLY DESPITE OUR PHILOSOPHIC DIFFERENCES. MOREOVER, THE LEGAL PROCEEDINGS COULD - IN THE WORST CASE AND IF HMG DO NOT TAKE REMEDIAL ACTION - LEAD TO THE BANKRUPTCY OF OUR MAJOR PRIVATE AIRLINE AND DAMAGE TO OUR STATE AIRLINE WHICH MIGHT EFFECTIVELY PREVENT ITS PRIVATISATION AN OBJECTIVE TO WHICH HMG IS PUBLICLY COMMITTED. I DO NOT NEED TO UNDERLINE THE POLITICAL IMPACT THIS WOULD HAVE IN BRITAIN AND IN CONSEQUENCE ON ANGLO AMERICAN RELATIONS. IT IS BECAUSE SEE POTENTIALLY VERY SERIOUS TROUBLES AHEAD IF THE JUSTICE DEPARTMENT PROCEED WITH THE ACTION, THAT I AM ASKING YOU TO SEE IF YOU CAN INTERVENE BEFORE IT IS TOO LATE.

FCO PASS ADVANCE TO KNIGHTON (DOT)

(ADVANCED AS REQUESTED)

WRIGHT

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MAE  
NAI  
MR THOMAS  
MR ADAMS  
SIR I. SINCLAIR  
MR EVANS

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