



Prime Minister

In the light of this advice, especially the last paragraph, do you wish to send the attached reply to President Reagan's message?

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From the Secretary of State

Willie Rickett Esq  
Private Secretary to the Prime Minister  
10 Downing Street  
London  
SW1

Thank you  
We will NOT  
reply to the President -  
yet

7 April 1983

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7/4

Dear Willie,

UNITED STATES AIRLINE ANTITRUST INVESTIGATION

The Prime Minister asked for urgent advice on the situation following President Reagan's message refusing to halt the Department of Justice (DoJ) antitrust investigation into allegations of airline fare fixing etc.

President Reagan's message means that we face a longer tussle in this matter, which can be expected to develop in several overlapping ways.

First, the DoJ investigation can be expected to take broadly the following course. There will be wide-ranging requests to the airlines (in our case British Caledonian and British Airways) for disclosure of documents under several heads. These will relate to the allegations of collusive fare fixing to the detriment of Laker and of collusive pressure on McDonnell Douglas not to take part in the Laker rescue package; and also more widely to allegations of fare fixing in earlier periods by North Atlantic airlines, including Laker himself. The DoJ are asking the airlines whether they will produce voluntarily the documents in the United States; if the airlines refuse (as they seem minded to do) subpoenas will be issued. We expect that these will comprehend documents located outside the United States as well as those inside, but that in respect of documents outside the United States the subpoenas will be stayed and will not be activated without further notice to us. We believe that there will be parallel demands to United States airlines (Pan Am and TWA and possibly others) and to third country airlines (Lufthansa and Swissair at least, though we have heard that they propose to provide documents within the United States voluntarily).

Later, in the light of what the DoJ consider they have uncovered with this fact-finding, but before they make a final decision on whether to seek indictments, we can expect a further opportunity for consultation. This stage, which is unlikely to be reached for some months, can be of some importance, because United States law provides in certain circumstances for the interests of other

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*From the Secretary of State*

countries to weigh on the questions of liability under United States law and of remedies; the DoJ will listen to our representations on these matters and we are starting to consider the points which might be made. At that stage there may be a case for a message by the Prime Minister to give political weight to our representations.

The second sphere of action will develop from our request for formal consultations under the Bermuda Agreement. This covers in principle the allegations against all our airlines of fare fixing (though not the allegation, against British Caledonian, of collusive pressure on McDonnell Douglas). The issue here will be whether the United States have the right to apply their antitrust law unilaterally to fare fixing allegations. We are pressing for consultations as soon as possible - though the third and fourth paragraphs of President Reagan's message suggest a possible United States intent to evade such consultations. We can foresee that consultations will result in disagreement on the legal issue. Subject to the view of the Attorney General, after the issues have been more fully exposed and referred to him, we contemplate proceeding to arbitration. Our present assessment is that strictly on the legal considerations our chances at arbitration are not better than 50:50. However, in practice United States unilateral action in matters of this kind is sufficiently disliked around the world for us to have a useful chance. Moreover, the United States will be very reluctant to see the issue of applicability of their antitrust laws put to arbitration in this context, and we may hope that our determination to press ahead with this will itself introduce a disturbing element into their calculations.

The third sphere of action is the civil suit in the United Kingdom. Here I need only recall that Mr Justice Parker has said he will hear the Attorney General before he gives substantive judgement, which is likely to be in a few weeks time.

Against this background, the questions arise of the use of the PTI Act and whether the Prime Minister should be advised to reply to President Reagan.

As regards the PTI Act, it would be feasible to give a Direction now that documents and commercial information should not be produced from the United Kingdom (such Directions could extend to United States airlines and also to Laker). The argument in favour of such an early use of the Act would be that it would demonstrate our disagreement with the way the United States are acting in advance of the further consultations we are requesting. There would however be no immediate effect, given that the DoJ subpoenas will not in the first instance apply to documents in the United Kingdom. The alternative argument, however, is that,

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*From the Secretary of State*

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while we should make all preparations for use of the Act, and convey to the United States government that we shall use it against discovery attempts on documents in the United Kingdom, we should deliberately show the restraint we are urging on the United States by acting (firmly) in response to United States actions, rather than in anticipation of them. The matter was discussed with Lord Cockfield in a contingent way before he went abroad and he felt that the second course was preferable.

The advice of officials following the latest developments, with which Mr Sproat and the Attorney General agree, is that Directions should not be given now, but that we should review the matter when the subpoenas have issued. And I understand from you that the Prime Minister has accepted this advice.

We understand that the Prime Minister would like advice on whether a reply to President Reagan could be helpful. We do not believe that there is any prospect of such a message changing the President's decision not to halt the DoJ investigation. At the later stage before indictments are considered, there could, as noted above, be a case for a further message, and the Prime Minister will wish to consider whether a further message now would use up too much political capital. Subject to this, some useful points could be made now, especially to convey our clear intention to pursue formal consultations under the Bermuda Agreement. A draft is attached which has been agreed with officials in other Departments, but which has not yet been seen by the Foreign Secretary.

Copies go to Roger Bone (FCO) and to Henry Steel (Attorney General's Office).

*Yours sincerely*

*John Whitlock*

JOHN WHITLOCK  
Private Secretary

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legal proceeding

10 DOWNING STREET

From the Private Secretary

8 April 1983

United States Airline Antitrust Investigation

Thank you for your letter of 7 April.

The Prime Minister was very grateful for this advice, and appreciates the efforts made to get it to her as quickly as possible.

She has decided not to reply to President Reagan's message at this stage. She notes that there may be a case for a message from her to the President after the Department of Justice have completed their fact-finding, but before they make a final decision on whether to seek indictments.

I am copying this to Roger Bone (FCO) and to Henry Steel (Law Officers' Department).

W. F. S. RICKETT

John Whitlock, Esq.,  
Department of Trade.

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DRAFT MESSAGE FOR SIGNATURE BY THE PRIME MINISTER  
ADDRESSED TO PRESIDENT REAGAN

Thank you for your message of 6 April about the antitrust investigation of alleged airline price fixing. You will not be surprised that it came as a considerable disappointment to me that you do not feel able to defer the investigation. As I pointed out in my message, this investigation prejudices the very question on which we are in disagreement.

It is clear to me that the formal consultations between our Governments under the Bermuda 2 Treaty need to be pressed forward all the more urgently, in a genuine effort to resolve this disagreement, [REDACTED]

[REDACTED] (In passing, I might say that I do not understand your comment that it is alleged that the airlines fixed and raised airfares without the approval of our aeronautical authorities: all the fares operated by our airlines over the North Atlantic, however arrived at, are required to be approved by the authorities of both Governments under Bermuda 2 and were in fact approved).

Meanwhile, you will understand that since your Department of Justice are continuing with their investigation, we shall have to use our powers as necessary to protect our interests.

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/Like you

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Like you, I shall be keeping in close touch with developments in this case and I must repeat the concern I expressed in my earlier message about the harm which could ensue from it.

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