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PRIME MINISTER

Prime Minister  
To note what is  
proposed.  
MS 5/5

UNITED STATES AIRLINE ANTI-TRUST INVESTIGATION

You sent a message to President Reagan on 29 March emphasising our concern at the then imminent Department of Justice anti-trust investigation, involving British airlines, following the Laker collapse. Following the President's unforthcoming reply of 6 April, it was decided to pursue our case by consultations under our bilateral aviation agreement, Bermuda 2. The following reports on these consultations, and my conclusion - shared by the Foreign Secretary and Attorney General - that we should be prepared to exercise our right under the agreement to international arbitration. We could well reach this point towards the end of this month.

Consultations under Bermuda 2 took place on 26/27 April in Washington. They were unsatisfactory. The US Administration would not accept our contention that its anti-trust laws could not be unilaterally applied within the field bilaterally regulated under the Bermuda 2 agreement which governs our air services. Nor would they accept that our oral presentation of the case was sufficient to demonstrate that a dispute existed which could not be resolved by consultation.

The consultation fully confirmed our view, based on the two previous rounds of consultations in March, that the issue is one which must be resolved as quickly as possible. First because of the quite unacceptable Grand Jury investigation which has already been launched. Secondly, if the United States position is allowed to stand, it will always be open to the US Department of Justice to infer from what our airlines do, eg to match competitively the fares of others, that there has been some agreement among them which merits anti-trust investigation. We have strenuously to resist both aspects.





As foreshadowed in the letter which my Private Secretary sent to yours on 7 April, it looks increasingly as if we shall have to go to international arbitration to get the matter resolved. Both the Foreign Secretary and the Attorney General have agreed that we should do so.

It is possible that the Americans will never agree that the consultative process has been exhausted. They are probably very reluctant indeed to expose any aspect of the extra-territorial operation of their anti-trust laws to an international tribunal which might well prove hostile to such pretensions. We would not wish to expose ourselves at arbitration to the argument that we have not first made reasonable efforts to resolve the disputes through consultation. But once we are satisfied that we would not be exposed to this risk, we do not have to wait for American agreement.

We have a right to take a dispute to arbitration and we shall not hesitate to use it. We are therefore preparing a brief summary of the dispute which we shall send to them under cover of a Diplomatic Note offering them a chance to resume discussions within a short time, or if they fail to do so, leaving us free to proceed to arbitration. Forcing the Americans to arbitration will not necessarily stop them from continuing with the Grand Jury investigation; but we think that the signs are that it may well force them to reconsider their position.

I am copying this minute to the Foreign Secretary and the Attorney General.

A.C.

LORD COCKFIELD

DEPARTMENT OF TRADE

5 MAY 1983



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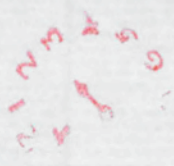


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bc: Nick Owen

10 DOWNING STREET

*From the Private Secretary*

6 May 1983

The United States Airline  
anti-trust investigation

The Prime Minister has noted without comment your Secretary of State's minute of 5 May about the United States Airline anti-trust investigation.

I am sending copies of this letter to Brian Fall (Foreign and Commonwealth Office) and Henry Steel (Attorney General's Office).

M. C. SCHOLAR

John Rhodes, Esq.,  
Department of Trade

NO