



PRIME MINISTER

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See paragraph 4: there is now a
← real chance of avoiding the
anti-trust proceedings which
could be so damaging to
British Airlines.
A.J.C. 26/5.

UNITED STATES AIRLINE ANTI-TRUST INVESTIGATION

1 Although you wrote to President Reagan on 29 March emphasising our concern at the then imminent Department of Justice anti-trust investigation, you got an unhelpful reply on 6 April and the investigation was launched immediately afterwards. We responded by calling for consultations under our Bermuda 2 aviation agreement and when a first round of talks within that framework had no more effect on the progress of the investigation than the two previous rounds (not under Bermuda 2) before it started, we decided with the Attorney General's consent to make clear to the Americans our intention of taking the dispute to international arbitration, as we are entitled to do under Bermuda 2. I told you of this decision in my minute of 5 May.

2 The proposed investigation is highly objectionable. This is not essentially on account of extraterritorial implications (the air services concerned do after all enter the United States) but because the matters to be investigated are largely covered by our bilateral air services agreement. They should not therefore be regulated by the unilateral application of United States law, especially since the anti-trust law concerned is a highly contentious instrument. Any anti-trust indictment could provide fertile ground for civil damage suits in the United States courts on a scale which could be sufficient to put British Caledonian out of business and, at the least, delay the privatisation of British Airways. Representations were made to the Americans at every level to bring home to them how serious our objections were, on both legal and political grounds.

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3 Matters were brought to a head at consultations in London this week because the subpoenas requiring the production of documents for the Grand Jury investigation were falling due. Sir Adam Thomson came to see me about it on Monday 23 May. He then said - in contrast to his earlier attitude - that he was ready to co-operate with the United States authorities as this was a safer bet for him than continuing to resist. We understand that both Swissair and Lufthansa have also agreed to co-operate with the United States authorities.

4 I am pleased to be able to report now that the representations you made and the threat of arbitration have at last induced some real flexibility in the American position. They cannot abandon their claim to use the anti-trust laws but they have proved willing to work out with our officials arrangements for handling the cases now on hand. This would very substantially reduce the risk of serious damage to our airlines and lead to a serious discussion of future arrangements designed to prevent a recurrence. The United States Department of Justice has immediately extended the subpoenas to 3 June. Further extensions will be arranged if the package negotiated this week looks acceptable on closer examination both here and in Washington. Meanwhile, it is clearly understood that if a negotiated settlement breaks down either now or later we can still resort to arbitration. Equally, the Americans could re-engage their full legal processes.

5 In parallel with these negotiations, which have been mainly concerned with the actions of the United States Federal Government in the Grand Jury investigation, I shall also be considering with the Attorney General and Foreign Secretary the question of significantly improving the prospects of our airlines in securing from the Court of Appeal a permanent injunction preventing the Laker liquidator from proceeding with the private

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treble damage suits in the United States courts. This could result in an order under the Protection of Trading Interests Act (PTI Act). Mr Justice Parker, in rejecting the case of our airlines, clearly implied that a different view of the case could well be taken by the courts if the PTI Act powers were used. I would not however do this before Williamsburg, to avoid the risk of the subject being raised then.

6 If the matter is raised with you by President Reagan - and it is not now something you would wish to raise yourself - you could impress upon him the importance of avoiding conflicts of this sort, welcome the progress which has been made towards resolving this one, and invite him to ensure that the progress is maintained.

7 I am copying this minute to the Chancellor of the Exchequer, the Foreign Secretary, the Attorney General and to Sir Robert Armstrong.

Department of Trade
1 Victoria Street
London, SW1H 0ET

A.C.
LORD COCKFIELD

26 May 1983

Walter Proctor & Grand Jury Investigate

Mark PB



26 MAY 1983



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10 DOWNING STREET

From the Private Secretary

27 May 1983

United States Airline Anti-Trust
Investigation

The Prime Minister has noted the contents of Lord Cockfield's minute of 26 May in which he reports, inter alia, that there is now some real flexibility in the American position on this matter.

A. J. COLES

John Rhodes, Esq.,
Department of Trade.

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