



DEPARTMENT OF TRANSPORT
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Prime Minister

Rt Hon Cecil Parkinson MP
Secretary of State for Trade and Industry
1-19 Victoria Street
LONDON
SW1H 0ET

We will be letting you
have a draft reply

16 June 1983

to Adam Thomson's letter

MS
which also sought the Attorney
General's involvement.

MS 16/5

Dear Cecil

US ANTI TRUST ACTION AGAINST BRITISH AIRLINES - USE OF THE PROTECTION OF TRADING INTERESTS (PTI) ACT

I am advised that an Order under Section 1 and Directions under Section 1(3) and Section 2 of the PTI Act are needed to assist our airlines against the application of US anti trust laws, and generally to preserve the position of HMG in relation to the application of such laws to matters covered by our Bermuda II bilateral air services agreement. Inter-connected disputes in this matter have been developing over recent months.

We now need to establish clearly the position in English law, reflecting the policy stance taken by the Government by legislating through the PTI Act. This will be relevant to our further conduct of the dispute with the Americans and to our efforts to negotiate satisfactory future arrangements to prevent such disputes recurring. We need clearly to establish that cases involving fare fixing under our air services agreement will not be exposed to unilateral legal action of this kind in the United States Courts. The immediate reasons for doing it now are that it has become necessary

1. in order to strengthen the position of British Airways and British Caledonian Airways in seeking a decision of the English Court to prevent the Laker liquidator pursuing anti trust remedies against them in the United States; Mr Justice Parker in the High Court has recently ruled in favour of the Laker liquidator and action under the PTI Act is necessary now if there is to be any chance of the Court of Appeal reversing his decision when they hear the appeal of the airlines on Monday 27 June.

*LESTER PRO. Mar 83
US CIVIL DIVISION*

- 2. in order to prevent documents located in the United States being made available to the United States Courts; the Laker liquidator is pressing for the release of certain documents from the Civil Aviation Authority.

Clearly there is some risk that the action I propose might excite criticism in the United States, where what may be seen as interference with the operation of their anti trust laws is bound to be controversial. We shall take all the steps we can to contain this risk by careful presentation, concentrating on the general principle involved rather than on the facts of the particular case. There can be no guarantee that the action I propose will be effective in leading the Court of Appeal to halt the liquidator's action in the United States; but the serious financial risks to which British Airways and British Caledonian are exposed confirm me in my view that we should take this course.

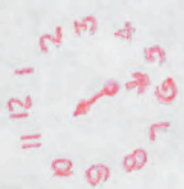
For reasons connected with the time-table for hearings in the Court of Appeal the Order and Directions should be made by 20 June, and I shall therefore be grateful to have confirmation by midday on Friday at the latest that my colleagues agree that I should make the Order and Directions.

I am sorry to have to ask you for a quick response on this matter, but I believe that your officials and those of the Foreign Secretary and Attorney General to whom I am copying this letter are familiar with the background.

I am also copying this to the Prime Minister in view of her interest in this matter.

TK

TOM KING





01-405 7641 Extn

CONFIDENTIAL

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

2 pms

Prime Minister ²

17 June, 1983

MUS 17/6

Dear Tom.

mt

17/6

US ANTI TRUST ACTION AGAINST BRITISH AIRLINES

with SSC

I agree with the proposal in your letter of 16 June to Cecil Parkinson that an Order under section 1 and Directions under section 1(3) and section 2 of the Protection of Trading Interests Act 1980 be made.

Although such an Order and Directions would not be free from risk of challenge, there are respectable arguments for saying that they are within the powers granted to the Secretary of State by the Act.

As you say, it is not possible to predict whether an Order and Directions will lead to BA and BCAL being successful in the Court of Appeal; but there is a reasonable case for believing that an Order and Directions could assist their case and could significantly affect the Court's decision whether to allow the appeal.

I am copying this to Geoffrey Howe, Cecil Parkinson and to the Prime Minister.

Yours Gr.,
Michael.

The Rt Hon Tom King MP
Secretary of State for Transport
Department of Transport
2 Marsham Street
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Legal Proc,
Mar '83, US Grand Jury

27 JUN 1983

12 11 10 9 8 7 6 5

Legal Proceedure



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14 June 1983

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Prime Minister (2)

The Rt Hon Tom King MP
Secretary of State for Transport
Department of Transport
2 Marsham Street
London SW1

ms 17/6

US ANTI TRUST ACTION AGAINST BRITISH AIRLINES - USE OF THE PROTECTION OF TRADING INTERESTS (PTI) ACT

Thank you for your letter of 16 June.

2 I accept that the over-riding need is to do what we can to protect British Airways and British Caledonian from the effects of private anti-trust suits launched in the United States against conduct which we believe is covered by the Bermuda II Agreement. I therefore agree that the Order under Section 1(1) and the Directions under Section 1(3) of the PTI Act should be made at once.

3 The possible reaction to the Order and the Directions in the United States, to which you very fairly draw attention, remains a matter of some concern to me. I am therefore glad to know that everyting possible will be done to contain this risk, and I take it that officials of this Department and the FCO will be involved in this aspect of the work.

4 I am copying this letter to recipients of yours.