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Foreign and Commonwealth Office

London SW1A 2AH

24 June 1983

The P.M. discussed the situation on Friday evening with the Foreign Secretary and read the enclosure to the letter but not the letter itself.

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Mr. Fisher to use.

Dear John,

US Anti-Trust Action against British Airlines

I understand that the Prime Minister will be seeing Vice President Bush again this evening. She will wish to know that the American Ambassador called on the Secretary of State this afternoon, on instructions, and left with him the attached paper. Mr Louis explained that it had been intended as speaking notes for use by Mr Bush in his calls this morning, but it did not arrive from Washington in time. The Ambassador took this as an indication that the message had been agreed at a very high level in Washington.

As you will see, the message is very dramatically worded. It is, however, based on very substantial misunderstandings of our position. It fails to recognise that we have used the PTI Act against anti-trust law only in a very narrow field, namely that of matters covered by Bermuda 2. Additionally, the message fails to recognise that the Order and Directions under the PTI Act, although they will in theory affect a wide range of people and documents, contain powers which allow Ministers to exempt people and documents from the application of the Order: as we have repeatedly told the Americans, this will allow us to honour our obligations under the informal agreement (the Non-Paper) reached with the Americans last month for the handling of criminal cases against British Airlines in the Laker dispute. Finally, the message appears to overlook our argument, again put many times to the Americans, that since the Non-Paper is a confidential arrangement between governments (and the American Administration is even more concerned than we that it should remain so) it would be difficult and potentially dangerous to use the PTI Act in any way which indicated that our dispute with the Americans now only concerned the civil suit in the American court.

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There are other points raised in the message which we would dispute, but I think these have been adequately covered in the brief prepared for the Prime Minister's meeting with Mr Bush this morning.

In short, there seems to be a large part of misunderstanding in all this, but also an important core of disagreement between us and the Americans. The Embassy are already in contact with American officials in an attempt to put them straight on points such as those covered above, but Sir G Howe believes that we must do more to show that we are taking the message very seriously. We are therefore discussing with the Department of Transport the idea of sending a delegation of officials to Washington on Monday. Their first job would be to clear up the misunderstandings and then to carry forward the consultations already foreseen in the Non-Paper to which we remain committed.

I am sending copies of this letter to Dinah Nichols (Department of Transport) and Jonathan Spencer (Department of Trade and Industry).

Answer

(B J P Fall)
Private Secretary

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NORTH ATLANTIC AVIATION ANTITRUST CASE

In light of the painstaking effort and great care which went into working out the accommodation reflected in the non-paper understanding, between our two governments, we had anticipated that HMG would make every effort to act consistently with it.

Regrettably, with the issuance of the order under the Protection of Trading Interests Act (PTIA), which is quite provocative in its content and inconsistent with the letter and spirit of the non-paper, HMG seems to have abandoned the effort to limit the conflict and pushed matters, quite unnecessarily in our view, to a new level.

The action appears to put at risk aviation relations, as well as antitrust consultation and cooperation. The order appears to require that carriers and their personnel neither comply with nor permit compliance with our law barring conspiracies in restraint of trade, and to make it an offense under UK law for persons to cooperate with our efforts to investigate serious allegations of violations of that law. It is difficult to imagine how HMG could expect our relations to be unaffected by such an order.

It is particularly troubling to us that the Secretary of State for Trade proceeded to sign it without even considering our most limited, reasonable and modest request for a delay and consultation. This is even more disturbing since the Justice Department bent over backwards to accommodate HMG's repeated requests for delays and adjustments in its investigation.

We reiterate our request for a delay in issuing the order and an opportunity for consultation. Without such steps by HMG, and recall or substantial revision of the order, we can only register our disappointment and note that we will obviously have to review the implications of HMG's apparent implicit repudiation of accommodations reached to date, and the question of whether UK carriers can, despite the order, fulfill their obligation to comply with U.S. law, which is implicit in their authority to do business in the United States.

The PTIA order will almost certainly result in UK carriers being unable to respond to present U.S. subpoenas or new ones likely to be issued. That will almost automatically lead to contempt citations and potentially substantial and continuing fines-- which can be levied against the airlines' assets in the U.S., including aircraft. Beyond that, there will be adverse Congressional reaction and other possible consequences neither government should want, such as suspension of operating authority for UK carriers violating U.S. law as a result of the PTIA order.

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We question whether this disruption in bilateral relations is necessary now, or if some way can't be found to resume the more cooperative handling of the present antitrust cases.

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