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10 DOWNING STREET

THE PRIME MINISTER

29 June 1983

Dear Sir Adam.

Thank you for your letter of 13 June and for your kind words on the result of the Election.

As you will now know, the Government have concluded that it is necessary to respond to the US Government's unilateral application of US anti-trust laws to matters covered by the UK/US Air Services Agreement (Bermuda 2). The powers under Sections 1 and 2 of the Protection of Trading Interests Act 1980 have therefore been exercised to safeguard United Kingdom trading interests affected by the application of these US laws.

Thank you, once again, for your letter.

Yours sincerely  
Margaret Thatcher

Sir Adam Thomson, C.B.E.

Je



10 DOWNING STREET

3

Prime Minister

The legal advice is that your  
reply to Sir Adam Thomson  
should be short and to the point,  
since the Government's decisions on  
the matter were uninfluenced by  
Sir A Thomson's representations  
(a position the Laher liquidator  
might seek to contradict).

MCS 28/6

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DEPARTMENT OF TRANSPORT  
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

Michael Scholar Esq  
Private Secretary  
10 Downing Street  
Whitehall  
LONDON SW1

28 June 1983

*Dear Michael,*

We spoke over the telephone this morning about the revised draft to Sir Adam Thomson's letter of 13 June to the Prime Minister.

/ The attached draft reflects our discussion. If,  
however, the Prime Minister wishes to lengthen the reply,  
/ additional wording from the attached Press Notice has  
been cleared with lawyers and can therefore be used.

*Yours,*

*Dinah*

MISS DINAH NICHOLS  
Private Secretary

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*M type*

DRAFT LETTER FOR THE PRIME MINISTER TO SEND TO SIR ADAM THOMSON CBE

Thank you for your letter of 13 June and for your <sup>kind words</sup> ~~con-~~gratulations on the result of the Election.

As you will now know, the Government have concluded that it is necessary to respond to the US Government's unilateral application of US anti-trust laws to matters covered by the UK/US Air Services Agreement (Bermuda 2). The powers under Sections 1 and 2 of the Protection of Trading Interests Act 1980 have therefore been exercised to safeguard United Kingdom trading interests affected by the application of these US laws.

*Thank you, once again, for writing your letter*

Press Notice No:

209

Date:

24 June 1983

ISSUED JOINTLY BY THE DEPARTMENT OF TRADE  
AND INDUSTRY AND THE DEPARTMENT OF TRANSPORT

## USE OF THE PROTECTION OF TRADING INTERESTS ACT AGAINST US ANTITRUST LAWS

Cecil Parkinson, Secretary of State for Trade and Industry, and Tom King, Secretary of State for Transport, today announced that the powers under sections 1 and 2 of the Protection of Trading Interests Act 1980 have been exercised to safeguard United Kingdom trading interests affected by the application of United States' antitrust laws.

The British Government has made representations to the US Government about the unilateral application of its antitrust laws to aviation activities covered by our bilateral treaty - the UK/US Air Services Agreement (Bermuda 2). Mr King now considers that it is necessary to respond to this unilateral application of US law to matters covered by Bermuda 2 by reflecting HM Government's position in instruments made under the 1980 Act. This Act was expressly designed to provide protection from requirements, prohibitions and judgments imposed or given under the laws of countries outside the United Kingdom and affecting the trading or other interests of persons in the United Kingdom.

Mr Parkinson, whose Department is generally responsible for UK trading interests, is satisfied that the statutory powers should be exercised in these circumstances and has accordingly made an Order and Direction under the Act.

The Order under section 1 reflects the Government's view that the present attempts to apply US antitrust laws to activities of airlines designated under Bermuda 2 by HMG are damaging to or threaten to damage UK trading interests. The associated Direction under section 1 prohibits any person carrying on business in the

UK from complying with requirements imposed pursuant to these US  
s. The Direction under section 2 of the Act has been made to  
ensure that certain commercial documents and commercial information  
are not made available for any proceedings in the US without the  
consent of the Secretary of State for Trade and Industry.

A consent has been given so that the section 1 Direction shall  
not apply to US airlines. The section 2 Direction applies to  
certain documents and information in the possession of any person  
in the UK including US airlines.

The Order and Directions, and the Consent, come into effect on  
Monday 27 June 1983.

Discussions between the two Governments are expected to continue  
with a view to resolving the underlying dispute and any jurisdictional  
issue which may arise.

#### NOTE TO EDITORS

1. The Protection of Trading Interests Act 1980 contains provisions  
enabling the Secretary of State to counter measures taken or  
proposed under the law of another country which would damage the  
trading interests of the UK. It also provides that the Secretary  
of State may prohibit compliance with certain requirements of a  
court or authority in another country seeking commercial documents  
or information located outside that country.
2. The last occasion the Protection of Trading Interests Act was  
used was in the summer of last year when Lord Cockfield, then  
Secretary of State for Trade issued Directions under the Act  
prohibiting a number of British companies from complying with the  
US embargo on contracts connected with the West Siberian gas  
pipeline project.
3. The American investigations involve a number of American and  
European airlines as well as British Airways and British Caledonian.
4. For general questions relating to the PTI Act contact DTI  
Press Office on 215 5678. For questions concerned specifically  
with the US antitrust aviation dispute contact Department of  
Transport Press Office on 212 0431.

Press Enquiries: 01-212 0431  
Night Calls (6.00pm to 8.00am)  
Weekends and Holidays: 01-212 7071

Public Enquiries: 01-212 3434  
ask for Public Enquiry Unit

LEGAL PROCEDURE: Anti-trust  
Case (Laker) March 81

100-100000

100-100000

CP/ I have requested  
another from D/TD

M of 29/6

27/6

This letter is out of date





10 DOWNING STREET

THE PRIME MINISTER

*Dear Sir Adam.*

Thank you for your letter of 13 June and for your congratulations on the result of the Election.

I have been following with close interest the aviation anti-trust cases in the United States which carry such risks for British Caledonian, and I am glad to know that you are pleased with the progress recently made in negotiations.

As your letter makes clear, the risks which remain are still very serious indeed, and the Attorney General has been consulted. I would like to assure you that the Government are taking full account of the points which you have raised; in particular careful consideration has been given to the use of the Protection of Trading Interests Act and an announcement is being made about that very soon.

Sir Adam Thomson, C.B.E.

*Legal  
Procedure*

2506



DEPARTMENT OF TRANSPORT  
2 MARSHAM STREET LONDON SW1P 3EB  
01-212 3434

Michael Scholar Esq  
Private Secretary  
10 Downing Street  
LONDON  
SW1

23 June 1983

*Dear Michael,*

I attach a revised draft reply to Adam Thomson's letter of 13 June to the Prime Minister which I hope accords with our discussion yesterday evening.

You will see that the draft promises an announcement about the use of the Protection of Trading Interests Act 'very soon'. It is in fact likely that the Secretary of State for Trade and Industry will make the necessary Order under the Act, as foreshadowed in the earlier correspondence, within the next day or so.

*Yours,  
Dinah*

MISS D A NICHOLS  
Private Secretary

*Pl type for PM*

DRAFT LETTER FROM THE PRIME MINISTER TO SIR ADAM THOMSON

Thank you for your letter of 13 June and for your congratulations on the result of the Election.

I have been following with close interest the aviation anti-trust cases in the United States which carry such risks for British Caledonian, and I am glad to know that you are pleased with the progress recently made in negotiations.

As your letter makes clear, the risks which remain are still very serious indeed, and the Attorney General has been consulted. I would like to assure you that the Government are taking full account of the points which you have raised; in particular careful consideration has been given to the use of the Protection of Trading Interests Act and an announcement is being made about that very soon.

Legal Proceedure CCNO



Please by

24/6

DEPARTMENT OF TRANSPORT  
2 MARSHAM STREET LONDON SW1P 3EB

Cashed Transport for

a better draft.

Michael Scholar Esq  
Private Secretary  
10 Downing Street  
LONDON SW1

MCJ 22/6

21 June 1983

Dear Michael,

You asked for a draft reply to Adam Thomson's letter of 13 June to the Prime Minister by 20 June, but I waited until today, since it was not clear until Ministers had met yesterday evening whether we would in fact be making the Order and Directions under the Protection of Trading Interests Act which Sir Adam Thomson is requesting in his letter.

Since we will be taking action on the lines urged by Sir Adam, a relatively short reply will suffice. We should, however, avoid giving the impression (which in any case is not true) that we are acting at his request, since it would be quite wrong for it to appear that Government and airlines were working together to bring pressure to bear upon the Courts either in this country or in the United States.

I understand that the Prime Minister needs no further background on this case, since Lord Cockfield reported the outcome of the recent negotiations in his minute dated 26 May and you have also had copies of the correspondence between Ministers recommending the use of the PTI Act in the present situation.

Yours,  
Dinah

MISS DINAH NICHOLS  
Private Secretary

DRAFT LETTER FROM PRIME MINISTER TO SIR ADAM THOMSON

Thank you for your letter of 13 June and for your congratulations on the result of the recent Election.

I have been following with close interest the progress of the aviation anti-trust cases in the United States which carry such risks for British Caledonian, and I am glad to know that you are pleased with the progress recently made in negotiations. No one underestimates the risks which remain, and I would like to assure you that the Government are taking account of the points which you have raised in your letter.

LEON Proc: US Grand Jury

March 83

21 JUN 1983

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DEPARTMENT OF TRANSPORT  
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

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Prime Minister

We will be letting you  
have a draft reply

16 June 1983

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

*Dear Cecil*

*ms*

to Adam Thomson's letter  
which also sought the Attorney  
-General's involvement.

*MS 16/5*

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.

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*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.

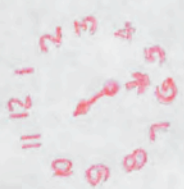
For reasons connected with the time-table for hearings in the Court of Appeal the Order and Directions should be made by 20 June, and I shall therefore be grateful to have confirmation by midday on Friday at the latest that my colleagues agree that I should make the Order and Directions.

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.

*2*  
*—*  
*lan*

TOM KING







01-405 7641 Extn

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ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

2 pms

Prime Minister <sup>2</sup>

17 June, 1983

MUS 17/6

Dear Tom.

mt

17/6

US ANTI TRUST ACTION AGAINST BRITISH AIRLINES

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. <sup>with SSC</sup>

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  
London SW1P 3EB

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Legal Proc,  
Mar '83, US Grand Jury

27 JUN 1983

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DEPARTMENT OF TRADE AND INDUSTRY

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*Legal Proceedure*

*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*

*[Handwritten signature]*

*[Handwritten initials]*

*[Handwritten initials]*  
*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.

*[Handwritten signatures]*  
*[Handwritten initials]*

*Legal Procedure.*

*Fuz*

*RW*



*ca NO*

10 DOWNING STREET

*From the Private Secretary*

15 June, 1983

I attach a copy of a letter the Prime Minister has received from Sir Adam Thomson, Chairman of British Caledonian.

*6/5/*

I would be grateful if you could let me have a draft reply, after consulting as necessary with the Department of Trade and Industry and the Attorney General's Office, for the Prime Minister's signature, on the points raised by Sir Adam. Please could I have this by close of play on Monday, 20 June.

I am sending a copy of this letter and its enclosure to Jonathan Spencer (Department of Trade and Industry) and to Henry Steel (Attorney General's Office).

M. C. SCHOLAR

Ms D. Nichols,  
Department of Transport

## **British Caledonian**

Caledonian House  
Crawley West Sussex  
RH10 2XA England

Telephone: Gatwick (0293) 27890  
Cables: Scotair Gatwick Telex: 87161

Sir Adam Thomson, C.B.E.  
Chairman

13th June 1983

The Rt. Hon. Margaret Thatcher, MP,  
Prime Minister,  
10 Downing Street,  
London SW1.

Dear Prime Minister,

Let me first offer my heartiest congratulations on your magnificent and well-deserved triumph. It is particularly gratifying to know that you now stand equipped to bring to completion your efforts for Britain's revitalization.

As you know, much progress has been made in containing the threat to British aviation and trade interests posed by the U.S. Grand Jury investigation, though the understanding with the Americans is fragile and not free of risk, your negotiators are to be commended for their excellent efforts in the recent negotiations.

Of immediate concern to us is the continuing threat to British interests posed by the 1,000 million dollar treble damage civil antitrust suit brought by Laker's liquidator in defence of whose unmeritorious claims British Caledonian already have spent some £400,000 and whose prosecution over the next several years jeopardizes our survival. We believe that this suit, as formulated by Laker's liquidator against British Caledonian and British Airways, is quite contrary to British public policy. Moreover, its continuance particularly as to discovery demands could well undermine the understanding just reached with the Americans. The applications of British Airways and ourselves to enjoin the Laker suit will be considered by the Court of Appeal commencing 27th June, and our advisers tell me that two actions by the Government are required to ensure that vital British interests are not seriously injured.

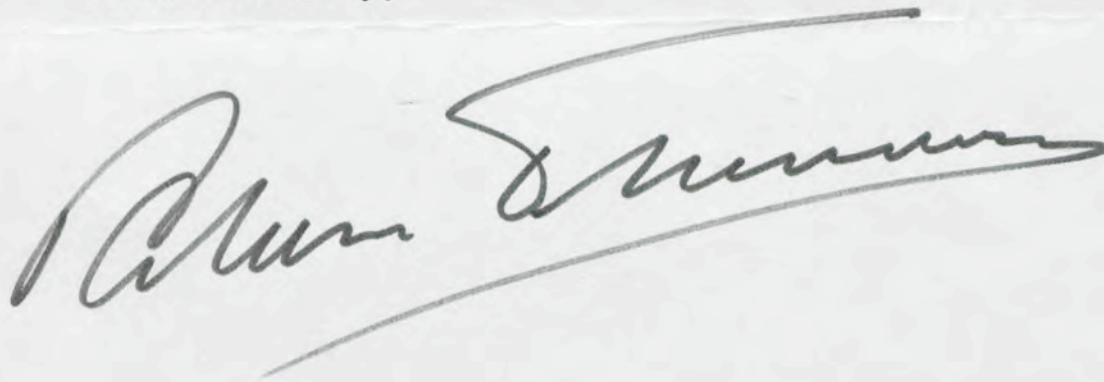
.../...

1. As Mr. Justice Parker has pointedly noted, HMG's view that the Laker action contravenes British public policy by threatening essential trading interest can be accorded judicial recognition if it is expressed in an appropriate order issued under Section 1 of the Protection of Trading Interests Act. We understand that DoT officials have agreed a draft of an order which meets this requirement, and we urge that it be issued at the earliest opportunity and be vigorously supported by the Attorney General.

2. The focus of HMG's concern as expressed to Mr. Justice Parker has been Laker's challenge to various alleged airline pricing actions involving principally British Airways and other of Laker's former route competitors, but we think it clear that the liquidator's ill-founded attack on British Caledonian's alleged interference with Laker's financial restructure should cause the Government equal concern. This challenge to matters and decisions occurring in Great Britain in which HMG was intimately involved, constitutes a broad and intolerable assertion of extra-territorial jurisdiction by the American Courts. Moreover, Laker's liquidator asserts a single antitrust conspiracy in which the alleged pricing actions and financial plan interference are treated as two wholly interrelated aspects. Unless the liquidator is restrained from pursuing both of these intertwined strands of the alleged antitrust conspiracy, British Caledonian will continue to be deeply enmeshed in and subject to liability respecting Laker's pricing claim.

For these reasons we believe it is essential that the Attorney General make it known to the Court of Appeal that HMG views the totality of Laker's antitrust conspiracy claims, as directed at British Airways and British Caledonian to be an impermissible interference with and contrary to British public policy and the Nation's trading interests. We would appreciate your assistance in ensuring that a strong position is taken to that effect and that it is forcefully presented to the Court.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Robert S. Summers". The signature is written in a cursive style with a long, sweeping underline that extends across the width of the signature.