



1) Mr. Trinchell

2) Miss Nichols.

A.F.C. 2/5

Prime Minister

UNITED STATES AIRLINE ANTITRUST INVESTIGATION

You will recall the concern last year when the United States Department of Justice initiated the Grand Jury investigation into allegations that British and other airlines had broken the US antitrust laws in conspiring together to put Laker out of business. Taken with the similar action brought by the Laker liquidator in the US civil courts, involving claims of more than \$1 billion, these cases threatened to bankrupt British Caledonian and to frustrate our plans to privatise British Airways. Despite your intervention with President Reagan, the Americans refused to call off their investigation. But we reached a limited understanding with them about handling it; and we subsequently responded to the civil cases by using the Protection of Trading Interests Act to prevent the disclosure of UK located information. These events were reported to you in minutes dated 26 May and 5 July 1983.

Neither the Grand Jury investigation nor the civil litigation has yet been disposed of. Indeed, while we have made some useful progress in the handling of the Grand Jury and the original civil cases, further civil litigation, which we may be almost powerless to influence, has recently been launched. I thought I should bring you up to date on the position, particularly because of the significance of this for the privatisation of British Airways. We may need your help later by an intervention with President Reagan.

GRAND JURY INVESTIGATION

One piece of good news is that we have disposed, as far as the US Department of Justice is concerned, of the allegation that BCal conspired with others to frustrate the refinancing package which might have rescued Laker early in 1982. BCal recently had a letter saying that the Department would not be bringing any civil or criminal proceedings against them. But the allegations of tariff fixing involving BA are still under enquiry; and the Department of Justice have now extended their enquiries into an alleged illegal agreement between airlines (including BA but probably not BCal) on frequency and scheduling.

When all the remaining investigations are complete - we have been told mid-June - and if the Department of Justice consider there may be an offence against US law, there will be consultations with us before any charges are framed. We will try to avert any punitive measures under US law, in line with our position that complaints by the US against airlines operating under our bilateral agreement should be resolved between us, rather than by unilateral application of US law. If we fail, we have reason to believe that fines would not exceed \$2-3 million. Overall, we should know where we stand on all the Grand Jury allegations before we have to finalise BA's prospectus at the end of the year.



CIVIL LITIGATION

The Laker liquidator's case in the US courts against BA and BCal is becalmed, because of the injunction against his pursuing it which was maintained in the Court of Appeal here last July following our use of the Protection of Trading Interests Act (letter to your private secretary dated 3 August 1983). But the case goes to appeal in the House of Lords on 5 June and BA and BCal cannot be certain of winning. In any case the US Judge has been considering whether to appoint a US citizen to represent Laker's US creditors, or to find other ways of getting the case back onto its feet. And recently new cases have been brought by individuals alleging that unlawful tariff agreements caused them to pay too much for their transatlantic air fares; since these are "class actions" (the individuals representing the whole class of people concerned) the financial implications could again run into billions of dollars. There is no serious possibility that these claims will be disposed of by trial this year.

FUTURE AVIATION ARRANGEMENTS

These developments have lent increased urgency to the arrangements we are now (with the BCal part of the Grand Jury investigation out of the way) exploring with the Americans, to define the circumstances in which their antitrust laws might apply to matters essentially governed by our bilateral aviation agreement. But there is a large gap between their ambitions and what we could regard as acceptable and the negotiations will be far from easy.

If we could reach both a tolerable resolution of the Grand Jury investigation and satisfactory arrangements for the future, we should then try to get this to reflect back favourably on the outstanding civil cases, for example by seeking a State Department intervention in these cases to argue that the issue had been resolved Governmentally. US officials have given us no reason to hope that this would be possible or helpful, but we shall continue to explore it.

To prepare the ground for a political intervention, I have firmly impressed on Mrs Dole the political importance we attach both to resolving the outstanding legal disputes in a sensible way which minimises the risk of outrageous and unacceptable claims being endorsed by the US courts, and to making arrangements which will prevent such disputes occurring again. And I warned her that you were interested in this matter and might wish to raise it with President Reagan. It is clear that this message got through rapidly to her officials in Washington.



If the civil cases are outstanding at the planned time of privatisation early next year we should then face difficult choices between: urging British Airways to settle (which might only be at high cost at that time); leaving the claims overhanging (which could damage the privatisation); guaranteeing British Airways against any judgment debt (which would simply encourage the plaintiffs); or delaying privatisation (highly unpalatable). I am, of course, considering whether there is any other useful action we could take.

You will have many other matters to raise when you meet President Reagan at the Summit, so I hesitate to add this one to the list. Nonetheless it would be very helpful, if there were the opportunity, for you to say plainly to the President, as I have done to Mrs Dole, that it is politically imperative that solutions should be found to these problems over the litigation following the Laker collapse (and it would not be enough simply to say that US law must take its course, in a matter of shared concern like aviation). An observation by you on these lines would re-engage his interest: the time is not ripe for anything more detailed.

Copies go to Geoffrey Howe, Nigel Lawson, Norman Tebbit, Michael Havers and to Sir Robert Armstrong.

NICHOLAS RIDLEY *pp HCSD*
(approved by the Secretary of State for Transport and signed in his absence).

1 June 1984

Customer?

