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DEPARTMENT OF TRANSPORT
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24 APR 1987

The Rt Hon Viscount Whitelaw PC CH MC
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON SW1

Prime Minister 2
To see, for form's sake.
DLW 27/4.

Dear Willie.

BAA PLC PRIVATISATION: MINISTERIAL STATEMENTS/PURCHASE OF SHARES BY MINISTERS

I am writing about the offer of shares in BAA plc to private investors which is planned to take place in June/July. As we get closer to the time of the offer, and during the offer period itself, members of the Government will need to consider carefully any references they may wish to make to the company or the flotation.

Unguarded or unverifiable statements in speeches, or in response to questions from the media or constituents, could have very serious consequences for the flotation, and could even make it necessary for us to delay the flotation. If at all possible, therefore, colleagues should sidestep questions about the flotation. Annex A sets out guidelines for dealing with such questions, together with a series of Questions and Answers to illustrate how the guidelines should be interpreted in practice. You will see from this material that the rules have been tightly drawn, but this approach is absolutely necessary in the circumstances. As a general rule, any public statement to be made in the UK or abroad should be specifically cleared in advance with my Department.

Another area of concern is the legality and propriety of Ministers purchasing and holding BAA plc shares. The advice in Annex B addresses this question and has been prepared in consultation with Sir Robert Armstrong's office. I should be grateful if colleagues would follow these guidelines when deciding whether they should buy shares. It is of course equally important to avoid the appearance of conflict of interest. If in doubt it is obviously best to err on the side of safety.

I am copying this letter and attachments to the Prime Minister and to all other members of the Cabinet: I should be grateful if they would circulate it to Ministerial colleagues within their Departments. I am also copying it to Richard Luce and to Sir Robert Armstrong.

Yours ever

John

JOHN MOORE

MINISTERIAL STATEMENTS ON THE PRIVATISATION OF BAA plc

There are four basic rules which must be followed:

(i) anything said about the share offer, BAA plc itself or BAA plc's trading environment must be factual, accurate and fair;

(ii) statements made outside the UK must have specific regard to the requirements of the local regulatory laws, particularly in the USA;

(iii) no opinion should be expressed, and no prediction made, about the prospects for the shares or for BAA plc's business or about BAA plc's competitors or the civil aviation industry generally (beyond whatever forecasts are set out in the Prospectus after its publication and even these statements must be set in context);

(iv) enquirers should be urged to obtain their own copies of the Prospectus, once it has been published and to make up their own minds after reading it. No statements should be made which could be interpreted as an inducement or recommendation to buy BAA plc shares.

RESPONSES TO QUESTIONS

1. <u>Why is the Government selling BAA plc shares?</u>

The BAA plc sale is part of a continuing Government programme of returning state companies to the private sector. The need to satisfy shareholders and customers should stimulate an improved managerial performance.

2. <u>When will the shares be offered for sale?</u>

In June/July. The full Prospectus will be printed in a number of newspapers at that time. A shortened version of the Prospectus will be widely available from the branches of banks and from post offices, and will be sent to anyone registering an interest with the Share Information Office.

3. Why is the Government advertising this sale? Does the advertising reflect a lack of confidence that the public will buy shares?

The Government believes that a wider spread of share ownership would be beneficial, both to industry and society. The advertising is designed to inform people who might be interested in buying share how they can get the information they need to make their choice. It is up to the members of the public to decide on the basis of the information in the Prospectus which is available to them whether they want to invest in BAA plc shares or not.

4. Should I buy BAA plc shares? Will they go up in value?

You must decide for yourself. Shares can go down in price as well as up.

5. How much is this sale going to cost Government by way of fees, advertising etc?

All the costs of the sale will be presented to Parliament.

6. Is the Government not turning a public sector monopoly into a private sector monopoly? Will the Government take steps to curb BAA plc's power?

These questions were debated fully when the Airports Bill (now the Airports Act 1986) was before Parliament. The legislation is now in place. The BAA airports will be subject to regulation by the CAA to ensure that there is no abuse of their market power. Traffic charges at BAA South East airports in the period 1987-1992 will be subject to an RPI-1 formula, which will limit the maximum price increases allowable.

PURCHASE OF SHARES BY MINISTERS

There are two points for consideration:

(a) whether it is proper for Ministers to purchase shares in the BAA plc issue;

(b) what are the constraints, either legal or of propriety in respect of the holding of BAA plc shares.

(a) Purchase Of Shares In The BAA plc Issue

On the first question, it would clearly be ill-advised for Department of Transport Ministers to purchase shares in the forthcoming BAA plc issue. This is because of the potential conflict of interest where Ministers are both shareholders themselves and are responsible for, or associated directly with, decisions which will affect the circumstances of shareholders immediately following the flotation, either through the share price, or matters affecting the regulation of BAA plc, its competitors or the civil aviation industry generally. For this reason, the same advice should apply in respect of Treasury Ministers who are concerned with the privatisation programme, and to the Prime Minister.

The position is less clear-cut in the case of Ministers not directly concerned with the privatisation of BAA plc. The guiding principle is that laid down in Questions of Procedure for Ministers that Ministers "must so order their affairs that no conflict arises, or appears to arise, between their private interest and public duties" and specific guidance on shareholdings is contained in paragraphs 72 and 73.

Paragraph 73 says that Ministers should "scrupulously avoid speculative investments in securities about which they have, or may be thought to have, early or confidential information likely to affect the price of those securities". The decision to privatise BAA plc has, of course, been the subject of Cabinet and Cabinet Committee discussion, and this has inevitably involved consideration of BAA plc's prospects. Although many Ministers will not have had access to detailed financial information, there is a danger that Ministers might be thought to have had access to inside knowledge. There is therefore some risk of embarrassment, and the safest course would be for Ministers not to purchase shares during the initial flotation.

(b) Subsequent Holding Of BAA plc Shares

Here the issues are very like those which would apply to the holding of any securities, but particularly shares held in any company where the Government continued to have substantial contractual and regulatory dealings. The legal issues are quite straightforward in broad outline:

(i) it is a criminal offence ("insider dealing") for a Crown servant (ie a Minister or a civil servant) who has, because of his position, price-sensitive information about a company's securities, to deal in them, whether or not on the Stock Exchange (here or abroad), unless he can prove he did not intend to take advantage of the information so as to make a profit or avoid a loss. Actually applying for BAA plc shares in the initial issue does not fall within this (because, in the view of our solicitors, it is not "a dealing" but is, rather, a direct contract with the Secretary of State). However, it is most unlikely that a Minister (or civil servant) other than one concerned with the regulation of or contracts with BAA plc will have such information because of his position per se;

(ii) if Ministers (or civil servants) are concerned in the regulation of BAA plc or one of its competitors, or the civil aviation industry generally, a shareholding in BAA plc may well be evidence of bias in particular regulatory decisions. Bias invalidates administrative acts and may well found an action in damages against the Crown.

Here again the advice contained in Questions of Procedure, and particularly in the paragraphs referred to above, is relevant.

Ultimately Ministers must decide for themselves whether to purchase BAA plc shares. They will want to bear in mind that it is as important to avoid the appearance of conflict of interest as to avoid actual conflict.