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FM UKREP BRUSSELS
TO DESKBY 211500Z FCO
TELNO 4434
OF 211330Z DECEMBER 87

Prime Minister 2
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22/12.

MWT 13011	
21 DEC 1987	
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FRAME INDUSTRIAL

BRITISH AIRWAYS/BRITISH CALEDONIAN

SUMMARY

1. SUTHERLAND HAS WRITTEN TODAY TO BA AND BCAL WARNING THAT THE PROPOSED MERGER COULD CONSTITUTE AN ABUSE OF A DOMINANT POSITION WITHIN THE MEANING OF ARTICLE 86 EEC (COPIES OF LETTER BEING FAXED TO DTI, D/TRANSPORT AND FCO.) COMMISSION WILL NOT (NOT) MAKE ANY PRESS STATEMENT BUT, IF THE MATTER IS GIVEN PUBLICITY BY THE PARTIES CONCERNED, WILL REACT TO ENQUIRIES IN A LOW KEY WAY.

DETAIL

2. AFTER SUTHERLAND HAD SPOKEN TO HOLMES (D/TRANSPORT) THIS MORNING (IN MR CHANNON'S ABSENCE) HIS CHEF DE CABINET, O'TOOLE, INVITED US TO CALL ON HIM. O'TOOLE EXPLAINED THAT SUTHERLAND HAD GIVEN VERY CAREFUL CONSIDERATION INDEED TO THE QUESTION OF WHETHER HE SHOULD WRITE TO BA AND BCAL ABOUT THE PROPOSED MERGER, AND IN THIS CONTEXT HAD WEIGHED THE INFORMAL ADVICE OFFERED BY UK MINISTERS. HE HAD DECIDED THAT THE COMMISSION SHOULD COMMUNICATE WITH THE COMPANIES IN ORDER TO APPRISE THEM THAT THE PROPOSED MERGER MIGHT GIVE RISE TO PROBLEMS UNDER EC COMPETITION RULES. HE HAD DONE SO ON THE BASIS OF ADVICE FROM DGIV CONCERNING SUBSTANTIVE COMPLAINTS LODGED WITH THE COMMISSION AND A FULL ANALYSIS OF THE PROBLEMS THAT COULD ARISE.

3. O'TOOLE EMPHASISED THAT, IN ACTING UNDER THE COMPETITION RULES, THE COMMISSION WERE NOT TAKING A POLICY POSITION ON THE MERGER. THEY SIMPLY CONSIDERED THAT THEIR CONCERNS ON THE COMPETITION POLICY FRONT - AS FAR AS THEIR KNOWLEDGE WENT - SHOULD BE COMMUNICATED TO THE COMPANIES. LETTERS HAD ACCORDINGLY ISSUED THIS MORNING, COPIES OF WHICH O'TOOLE HANDED TO US.

4. THE MAIN POINTS IN THE LETTERS ARE:
- A REFERENCE TO THE COMPLAINTS WHICH THE COMMISSION HAVE RECEIVED.
- A DETAILED ANNEX SETTING OUT THE PRELIMINARY RESULTS OF THE INVESTIGATION OF THE POTENTIAL EFFECTS ON COMPETITION OF THE PROPOSED MERGER.

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- THE CONCLUSION THAT, IF THE MERGER WERE TO PROCEED IN THE FORM ORIGINALLY PROPOSED, IT COULD CONSTITUTE AN ABUSE OF A DOMINANT POSITION WITHIN THE MEANING OF ARTICLE 86 EEC: AND THAT THE PROPOSALS SUBSEQUENTLY DEVELOPED AND ADVANCED BY BA WERE NEITHER SUFFICIENTLY FAR REACHING NOR SPECIFIC ENOUGH TO ELIMINATE THE ANTI-COMPETITIVE EFFECTS ESPECIALLY ON INTRA-COMMUNITY ROUTES.
 - THE OBSERVATION THAT SUTHERLAND FEELS IT APPROPRIATE TO INFORM THE PARTIES OF THESE CONCERNS IN SUFFICIENT TIME TO ENABLE THEM TO TAKE ACCOUNT OF THEM IN THEIR DECISIONS.
 - STRESS ON THE FACT THAT THE COMMISSION IS NOT OPPOSED PER SE TO MERGERS IN THE EUROPEAN AIRLINE INDUSTRY.
- THE LETTER CLOSES WITH THE STATEMENT THAT SUTHERLAND HAS INSTRUCTED HIS OFFICIALS TO EMPLORE WITH THE AIRLINES, SHOULD THEY WISH TO DO SO, THE ISSUES RAISED IN THE ANNEX TO THE LETTER.

5. O'TOOLE SAID THAT THE COMMISSION WOULD NOT SAY ANYTHING TO THE PRESS AT THIS STAGE. THEY WOULD, HOWEVER, RESPOND DEFENSIVELY TO ANY PRESS ENQUIRIES, IF THE MATTER BECAME PUBLIC, ON THE FOLLOWING BROAD LINES:

- THE COMMISSION HAD RECEIVED CERTAIN COMPLAINTS AND HAD PREVIOUSLY ANNOUNCED THAT THEY WERE CONDUCTING AN INVESTIGATION.
- THE COMMISSION HAVE FELT IT IMPORTANT TO COME TO SOME DECISION AS RAPIDLY AS POSSIBLE, NOW THAT THEY HAD THE BENEFIT OF THE MMC REPORT.
- IF ASKED ABOUT A CONFLICT BETWEEN THE UK AND COMMISSION POSITIONS: THE MMC HAD LOOKED AT THE MATTER IN A UK CONTEXT. THE COMMISSION HAD TO LOOK AT THE MATTER IN AN EC CONTEXT, AND IN PARTICULAR AT THE EFFECTS ON COMPETITION ON INTRA-COMMUNITY ROUTES.
- IF ASKED WHETHER THE COMMISSION BY THEIR ACTIONS WERE FAVOURING AN SAS/BCAL MERGER: THE STATEMENT HAD NOTHING TO DO WITH THAT. THEY HAD BEEN SEIZED OF ONE PARTICULAR MERGER PROPOSAL AND HAD COME TO A CERTAIN VIEW ON IT ON COMPETITION POLICY GROUNDS.

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