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MDADAN 0175

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FM UKREP BRUSSELS
TO DESKBY 221200Z FCO
TELNO 4445
OF 220950Z DECEMBER 87

*Prime Minister !
Agree a meeting about this
early in the New Year ?*

*DLF
22/12*
ADVANCE COPY

FRAME INDUSTRY
BRITISH AIRWAYS/BRITISH CALEDONIAN
MY TELNO 4434

SUMMARY

1. SUTHERLAND TOLD CHANCELLOR OF THE DUCHY TODAY THAT HE WOULD CONTINUE WITH HIS INVESTIGATION OF THE MERGER: THAT HE WAS AWARE OF THE SENSITIVITIES: THAT HIS INITIAL VIEW WAS THAT THERE WAS A STRONG PRIMA FACIE CASE UNDER EC COMPETITION RULES AGAINST THE MERGER: AND THAT THE COMMISSION WERE READY TO ENTER INTO AN URGENT DIALOGUE WITH BA WITH A VIEW TO TAKING ACCOUNT OF THE COMMISSION'S CONCERNS.

DETAIL

2. THE CHANCELLOR OF THE DUCHY OF LANCASTER RAISED THIS ISSUE WHEN HE CALLED ON SUTHERLAND THIS MORNING. HE EXPRESSED REGRET THAT SUTHERLAND HAD FELT IT NECESSARY TO ISSUE LETTERS TO BA AND BCAL: HMG'S POSITION HAD BEEN TO LEAVE THE MATTER TO THE SHAREHOLDERS. WE HAD FEARED A PROTRACTED TAKEOVER BATTLE, BUT THIS HAD NOW BEEN AVOIDED. SUTHERLAND SAID THAT YESTERDAY'S DECISION BY THE BCAL ON THE BA OFFER DID NOT ALTER THE SITUATION IN BRUSSELS: THE COMMISSION'S INVESTIGATIONS WOULD BE CONTINUING, AND THERE COULD BE SERIOUS DIFFICULTIES. HE STRESSED THAT THE COMMISSION HAD NOT SOUGHT TO FAVOUR ONE OR OTHER OF THE BIDDERS, THOUGH THAT WAS NOW IRRELEVANT.

3. SUTHERLAND RECALLED THAT THE COMMISSION HAD NO FORMAL POWERS TO ACT UNTIL AFTER A MERGER HAD TAKEN PLACE (THIS WAS ONE OF THE REASONS WHY HE WAS LOOKING FOR A MERGER CONTROL REGULATION). HE HAD MADE CLEAR FOR SOME TIME THAT HE WAS MONITORING THE PRESENT MERGER. THEIR POSITION COULD ONLY HOWEVER BE ACTIVATED EX POST FACTO: THE COMMISSION'S INVOLVEMENT THEREFORE NOW BECAME REAL. SUTHERLAND ADDED THAT IT WAS REGRETTABLE THAT THE COMMISSION HAD NOT BEEN CONSULTED DURING THE MMC ENQUIRY. MR CLARKE SAID THAT THE POTENTIAL CONFLICT BETWEEN THE MMC AND THE COMMISSION WAS OF SERIOUS CONCERN: IF THE COMMISSION'S CONCLUSION DIFFERED FROM THAT OF THE MMC THERE COULD BE A REAL MESS. HE ASKED WHETHER SUTHERLAND'S LETTERS OF 21 DECEMBER WOULD HAVE BEEN RECEIVED BY BA AND BCAL BEFORE YESTERDAY'S ANNOUNCEMENT. SUTHERLAND SAID THAT THE COMPANIES WOULD HAVE RECEIVED

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THE LETTERS (WHICH HAD BEEN SENT BY TELEFAX) THOUGH THAT WOULD NOT HAVE MADE ANY FORMAL DIFFERENCE: THE COMPANIES KNEW THAT THE COMMISSION WERE INVESTIGATING THE MATTER. HE RECOGNISED THAT THE COMMISSION'S INVESTIGATION MIGHT LEAD TO A NUMBER OF DIFFICULT CONSEQUENCES, AND WAS SENSITIVE TO THIS. BUT THERE WERE OTHER PARTIES CONCERNED, AND THERE COULD INDEED BE LEGAL CHALLENGES. THERE WAS A STRONG PRIMA FACIE CASE THAT THE MERGER CONSTITUTED AN ABUSE OF A DOMINANT POSITION UNDER ARTICLE 86 EEC. THE MMC HAD OF COURSE BEEN LOOKING AT THE NATION COMPETITION POLICY CONSIDERATIONS, WHILE THE COMMISSION HAD TO LOOK FOR THE COMMUNITY INTEREST. THIS COULD ALTER THE APPROACH OF THE TWO BODIES. HE HOPED THAT BA WOULD NOW (NOW) ADOPT A REASONABLE APPROACH SO AS TO TAKE ACCOUNT OF THE COMMISSION'S CONCERNS. IF THEY DID NOT, THERE COULD BE SERIOUS DIFFICULTIES. ULTIMATELY, THE COMMISSION COULD TAKE A DECISION DECLARING THE MERGER ILLEGAL, WITH CONSEQUENT RISK OF COURT ACTION.

4. MR CLARKE ASKED ABOUT THE TIMESCALE. SUTHERLAND SAID THAT THE COMMISSION HAD RECEIVED A LETTER FROM BA YESTERDAY SAYING THAT THEY WERE WILLING TO TALK. SUCH DISCUSSIONS COULD BE COMMENCED IMMEDIATELY AND CONCLUDED RAPIDLY. MR CLARKE CLOSED BY SAYING THAT HE HOPED THE MATTER COULD BE RESOLVED, AND RAPIDLY. IF THE COMMISSION CAME TO A DIFFERENT FINAL CONCLUSION FROM THE MMC, HE FEARED A WAVE OF ANTI-COMMISSION CAMPAIGNING.

HANNAY

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