



PRIME MINISTER

NEGOTIATIONS ON FUTURE ANTI TRUST ARRANGEMENTS WITH THE US GOVERNMENT

1. It is somewhat difficult to understand why, following President Reagan's very helpful decision on the enforcement of criminal anti-trust, the US negotiators last week sought to draw back in the negotiations on future arrangements, from their earlier proposal to remove the civil anti-trust treble damage suit from the services covered by Bermuda 2. How far this was due to an objective reappraisal of the difficulty of securing Congressional approval for the necessary legislation and how far to difficulties with the Department of Justice (DOJ) (who are sore at the President's decision) is not absolutely clear; Mr Dam's stance seems to reflect some hardening of attitudes of senior members of the US Administration, but it also contains some fundamental miscalculation about our position. But I am sure that it was right for us to resist any suggestion that it might be possible to negotiate a package without the all important provision relating to the removal of civil and anti-trust liability.

2. It remains to be seen whether the US will now use the 'pause for reflection', which was the best outcome to last week's exchange we could achieve given the tightness of the US negotiators' brief, to reassess their position and tactics. If not we may have to consider a combination of carrot and stick to get them back to the negotiating table. The removal of civil anti-trust liability for the future remains a cardinal objective for us; not only are private treble damage suits inappropriate, unpredictable and potentially very expensive, but the fact that US anti-trust law contains this independent court-based form of enforcement also severely limits the ability of the two governments to discuss and agree from time to time what should be the appropriate competition rules in our bilateral aviation relations.



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3. To encourage the US to adopt a more forthcoming attitude I think it would be appropriate to clear the remaining obstacles and approve low fares for this winter. This should be seen by the public in both countries as a positive response to the President's decision and might strengthen the more sensible voices in the Administration who wish to see the dispute resolved. However, if they do not show early signs of being ready to return to the negotiating table, I think we may also need to point out that if they insist on retaining civil anti-trust liability our air services agreement may need to regulate aviation much more tightly in order to limit the scope for the mischief of civil anti trust suits (and also - in that event why not? - to even up our market shares). I indicated to Ambassador Price when he called to see me today that this might have to be the alternative. I took the opportunity to restate our position on anti-trust set out in paragraph 2 above.

4. At this stage I hope that wiser counsels will prevail and that a reply from you in response to the President's recent message will encourage this. I should like the views of Sir Oliver Wright and of colleagues on a draft before submitting it to you.

5. On timing I am advised that, though it would be helpful, it is not essential for the BA prospectus to be able to record agreement on satisfactory arrangements on anti-trust for the future. I conclude therefore that we can afford, for a short while at least, to await developments on the US side. However, I would not wish to see the momentum lost completely and will be looking to get the Americans back to the table and in a reasonable frame of mind as soon as possible.

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

*Dinah Nichols*

PP NICHOLAS RIDLEY  
4 December 1984

*(approved by the Secretary of State  
& signed in his  
absence)*

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