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PRIME MINISTER

## BRITISH AIRWAYS PRIVATISATION AND LAKER

I am circulating this note on further developments since my minute of 10 December and commenting on some of the points in the Foreign Secretary's minute of 12 December.

Quite a bit of progress has been made on our exploration of a global settlement of the liquidator's action. Both the creditors and the other airlines (European and American) are being realistic. The major outstanding question is how much Sir Freddie Laker will demand. The position is unlikely to be finally clear until later next week. As for figures, the working assumption on which discussions are taking place with the airline contributors is that the creditors would need \$60 million (provided that certain major creditors in fact agree to reduce their claims). In addition to this there are as yet unquantified claims by Sir Freddie Laker and his US attorney. So it is not certain what people will in the end settle for. It looks as if British Airways' share may be much less than the £75 million figure mentioned in my earlier minute. A settlement of this action would have the advantage of limiting the real risk of further actions arising from the continuation of the US discovery processes in relation to it; and also of the problems which would arise if it is fought further and the US Judge chooses to combat the continuation of our blocking Order and Directions under the Protection of Trading Interests Act by making adverse findings of fact against British Airways.

But a settlement of the liquidator's case still leaves serious problems in relation to privatisation. British Airways' present US legal advice is that it would not be possible to settle the class action earlier than a year from now; and that until it is settled other steps to reduce their exposure to further private suits are not feasible. The figures we have been quoted for their possible exposure go up to \$240 million for the present class action. There is in addition a third province of possible class actions beyond that. A very crude estimate of the potential



maximum liability if BA lost a case about collusive price-fixing with TWA and Pan Am between 1977 and 1982 amounts to a further \$600 million. There is grave doubt as to whether the risks are insurable; and British Airways consider that they cannot in any case evaluate that until the liquidator's suit has been settled. But under the threat of these class actions, there is no question of BA's Board being able to sign a prospectus.

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I must emphasise that all these figures depend crucially on the fairly arbitrary assumptions which one makes. I have been taken by British Airways' US counsel through the sort of calculations which are involved. The experience has fully borne in on me the horrors of the US treble damage anti trust action (combined with the contingency fee system, the US discovery processes and the fact that a successful defendant can recover no costs) which have turned this from an instrument for justice into a weapon for commercial blackmail. In any case, as the Foreign Secretary knows, 95% of these cases are settled and in a settlement the cost all depends on what the other man will accept. It is all too true that Lord King's judgement about the importance of the cases for privatisation has fundamentally changed since his remark to the American Ambassador: I commented on the behaviour of the BA board in my earlier minute. As for George Shultz' argument, there is a fundamental difference between the continuation in the New York stock market of a quotation for a company faced with anti trust litigation, or perhaps even a modest rights issue there, and the problem of selling in its entirety a company bigger than any previous flotation (British Telecom apart) on the London Stock Exchange. But the fundamental point is that BA's potential exposure is such that our rigorous disclosure requirement prevents our proceeding.

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I am clear that without the resolution of all the private actions, privatisation cannot be achieved for at least a year unless the Government gives BA a general indemnity against all anti trust liabilities which they may have incurred to the present. I set out in my previous minute the powerful objections to such an



indemnity which have led us all to recommend against it. If the liquidator's action can be settled quickly at a sum we can accept I believe that it will be the best course. But I do not think we should yet exclude the possibility that BA should fight the class actions hard with the aim of securing an early resolution (or possibly settlement.)

As for the negotiations with the US over future arrangements, I think we must await the President's reaction to your message. The situation we are in now is intolerable. Privatisation is effectively prevented because of US Court actions, for things allegedly done by our airlines which were legal under our own law. This is a major political setback. In addition, we will have to make an expensive settlement out of Court. This will be followed by having to fight, or settle, at possibly even greater expense, the class actions.

If in addition to this we make an agreement with the Americans which does not for the future get rid of the civil treble damage suit and which contains liberalisation measures on the North Atlantic which can only be of benefit to US airlines at our expense, we have in sum an absolutely impossible political passage. It would be impossible to sell such a craven series of capitulations to our backbenchers and public opinion.

I have told the American Ambassador that I am ready for negotiations to continue on the whole package previously discussed without pre-conditions about the timing of US legislation (for which we have never asked). My impression is that, unless the President decides otherwise, the US position will not be re-evaluated until the return of the Congress at the end of January/early February permits soundings of Congressional leaders. We can make some gestures of goodwill now. We can agree in principle on low winter fares; we can start talks on next summer's capacity when our preparations are complete (though there are difficult issues for BCal here). I do not think we should go



further. It would be fatal to give unilaterally virtually all the US commercial interests want with nothing in return. In particular we are certainly not substantially operating a double disapproval system at present: if we had been we could not have stopped the low winter fares, which is what started the earlier movement on the US side.

In addition, the public presentation of all this raises very difficult issues.

I am sending copies to the Foreign Secretary, the Chancellor of the Exchequer, the Secretary of State for Trade and Industry, the Attorney General and to Sir Robert Armstrong.

*Su.*

pp NICHOLAS RIDLEY  
14 December 1984

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