



10 DOWNING STREET

From the Private Secretary

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*bc John Wybrew
(Policy)*

17 December 1984

BA Privatisation and US Anti-Trust Suits

The Prime Minister held a meeting today to discuss BA privatisation and US anti-trust suits. Present were the Chancellor of the Exchequer, Secretary of State for Transport, Attorney-General, Minister of State for Foreign and Commonwealth Affairs, Financial Secretary to the Treasury and Mr Fletcher. Also present were Mr Gregson and Mr Redwood.

The Secretary of State for Transport said that following President Reagan's decision not to proceed with the Department of Justice's criminal action against BA, three areas of litigation remained - the Laker liquidator's suit, the anti-trust class actions, and possibly future anti-trust cases relating to BA actions between 1977 and 1982. Progress had been made in negotiations with the Laker liquidator and it now looked possible to settle in the region of \$80 million for all the airlines, of which BA's share would be \$15-20 million. While the terms of a settlement might be known before Christmas an agreement could not be signed until later in January. This would make it impossible to proceed with the February date for the disposal of BA - indeed a delay of at least three months was likely. BA's total exposure under the class actions could be substantially greater and no prospectus could be signed until such actions were either settled or an indemnity was provided. This could occasion an even greater delay.

In discussion it was argued that privatisation of BA could be frustrated for the rest of the Parliament if no way could be found of divorcing present and future legal actions from the sale of BA. Furthermore, the knowledge that Government had a deadline for the privatisation of BA created an advantage for those bringing legal action. Work was needed to identify the options for separating BA plc from the residual liabilities arising from the legal cases. This residuary body would remain the responsibility of HMG. Any such solutions were likely to require legislation.

It was agreed that this course came close to providing an indemnity but it was argued that HMG was effectively at risk already - no new contingent liability would be acquired. Divorcing the legal cases from privatisation

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would allow HMG a freer hand in deciding whether to fight the legal actions over an extended period or whether to settle out of court.

Summing up this part of the discussion, the Prime Minister said that if a settlement could be reached with the Laker liquidator on terms close to those indicated, it would be advantageous to settle. A decision on this should be deferred until the final terms were known. The Secretary of State for Transport, in conjunction with the Financial Secretary, should prepare a paper, for discussion with the Ministers concerned early in the New Year, on the options for divorcing the legal cases from privatisation. Meanwhile, if questioned on the timetable for the disposal of BA, Ministers could confirm that it would take somewhat longer than hoped to resolve the legal difficulties and that there would, in consequence, be some delay to the BA privatisation.

The discussion then turned to the negotiations with the US Government on air traffic across the Atlantic. Lady Young said the President had taken a courageous decision in calling off the Department of Justice's criminal case against BA. The Americans were disappointed with the UK's response to this step. It would be helpful if the UK could, at an early date, offer further steps towards liberalisation beyond the agreement already reached on winter fares.

The Secretary of State for Transport said the Government's objective had always been an agreement combining liberalisation with the removal of North Atlantic air traffic from the scope of US anti-trust legislation. While the President's action on the DoJ case was helpful, its benefit to the UK had been reduced by the news that the US administration now felt unable to offer any improvement in the position on anti-trust action. It was possible that the President had not fully appreciated the disappointment which this change of tack had caused to the UK.

Summing up this part of the discussion, the Prime Minister said she should continue to urge on the President that our objective was an agreement on liberalisation plus the removal of air traffic from the scope of anti-trust action. In view of HMG, it was wrong that fares agreed by the CAA and CAB should run foul of anti-trust legislation. While she should not offer any specific concessions, she could hint that further concessions on liberalisation could be offered if progress was made in negotiations.

She asked for a brief to be prepared which should reach her before her departure from Hong Kong. This should provide the line she should take with President Reagan; the line she should take at any press conferences; and a short note on the working of the Bermuda 2 Agreement. In order to meet the Prime Minister's deadline, a draft of the brief should be circulated to Treasury, Foreign Office and Cabinet Office by close on Tuesday, so that it can be completed by Wednesday, to reach desks in Hong Kong during the afternoon of Thursday.

I am copying this letter to Len Appleyard (Foreign and Commonwealth Office), David Peretz (HM Treasury), Henry Steel (Law Officers' Department), Callum McCarthy (Department of Trade and Industry) and Richard Hatfield (Cabinet Office).

(Andrew Turnbull)

Miss Dinah Nichols
Department of Transport