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Confidential Filing

Application of British Midland Airways to fly the routes from Heathrow to Glasgow & Edinburgh

AEROSPACE

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March 1982

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
4.3.82							
5.4.82							
21.7.82							
PREM 19/610							

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10 DOWNING STREET

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PRIME MINISTER.

1. ARTHUR C. TELEPHONED THIS MORNING.
 2. HE HAS REACHED THE OPPOSITE CONCLUSION TO HIS PREDECESSOR.
 3. THIS REALLY IS GOOD NEWS.
 4. COULD YOU CONGRATULATE ARTHUR WHEN NEXT YOU SEE HIM?
- 23/7/1962 - 1 am.



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PA
L. J. M. - Am
delivered
not

PRIME MINISTER

BRITISH MIDLAND AIRWAYS: SERVICES TO GLASGOW AND EDINBURGH

British Midland Airways have appealed against the Civil Aviation Authority's refusal to license them to operate scheduled services between London (Heathrow), and Glasgow and Edinburgh. For the reasons explained below, my decision on this appeal has been delayed by action taken by the opposing airlines. I had decided to seek amplification from the parties of the arguments for and against the licensing of only one of the two routes, a possibility which had received little consideration at the Authority's hearing of the applications.

When a letter inviting such amplification from the parties was issued, two of them, British Caledonian Airways and British Airways, immediately wrote challenging the legality of the procedure we had adopted, and arguing that British Midland Airways had made clear at the hearing that their evidence was addressed to consideration of the two routes together. While my legal advisers did not accept the legal objections advanced, it was clear that these might result in litigation which would have further delayed a decision. It also became clear that BMA would be unlikely to add very much to what had been said before the Authority. I decided therefore not to continue with this course of action but to consider the appeal as originally submitted.

I have concluded that I should direct the Authority to license BMA on both these routes as applied for, and my Department will be issuing a letter informing the parties of this next week. I am also considering what form of public statement I should make myself at the same time.

Department of Trade
1 Victoria Street
London, SW1H 0ET

Cockfield
LORD COCKFIELD

23 July 1982

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Aeromax Corp
C. I. Gow

10 DOWNING STREET

From the Private Secretary

21 May 1982

The Prime Minister was grateful for your Secretary of State's minute of 18 May about the Decision by the Civil Aviation Authority not to licence British Midland Airways to operate scheduled services between London (Heathrow) - Glasgow and London (Heathrow) - Edinburgh.

The Prime Minister has noted the course which your Secretary of State is pursuing. She will be grateful to know in due course his decision on the basis of the further representations which the parties concerned have been invited to make.

WR

M. C. SCHOLAR

pp

Jonathan Rees, Esq.,
Department of Trade.

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Prime Minister (2) E/C I.G.
To note.
Much more satisfactory ✓
MUS 18/5

MK

PRIME MINISTER

My Private Secretary wrote to yours on 2 April about two appeals from British Midland Airways against a Decision by the Civil Aviation Authority not to licence BMA to operate scheduled services between London (Heathrow) - Glasgow and London (Heathrow) - Edinburgh.

I regard the "Decision" handed down by the CAA as a most unsatisfactory document. It runs to 42 pages but nowhere is there a clear statement of the Authority's findings on questions of fact: nor is there set down the process of reasoning which led the Authority from the facts established - if they were established - to the conclusion they reached.

In these circumstances one is tempted to refer the case back for rehearing. But there has already been considerable delay - it is more than twelve months since the original application was lodged. To order a rehearing would not only involve further and inordinate delay but would inevitably give rise to charges of indecision. But I believe that the law does provide a way of dealing with the matter without the need for a full rehearing.

There is, in my view, a serious flaw in the way that the Authority - and indeed all the airlines concerned - have approached the matter. There are in fact, and in law, two quite distinct applications, one in respect of a service from Heathrow to Glasgow and another in respect of a service from Heathrow to Edinburgh. Nevertheless the matter has largely been dealt with, and mainly argued, as if there were a single application. This in my view is wrong. The CAA, while recognising a degree, possibly an important



degree, of interrelationship as between one service and another, ought nevertheless to have established the facts and delivered a decision in respect of each application on its individual as well as its joint merits.

The user interest is clear, namely that both applications should be allowed. It is in respect of the airline interest that the problem principally arises. Here there are inadequate facts and inadequate argument to arrive at a satisfactory conclusion whether both applications should be refused: whether both should be allowed: whether one should be allowed but not the other: and if so which. And equally therefore how the airline interest should be balanced against the user interest.

There is a further point. As a matter of commercial judgement it may not be wise for BMA to try and take on both new routes simultaneously: they did themselves refer to it as a "quantum jump" in the size of their operations. In the light of what happened to Laker, the CAA might well have been justified in feeling that the BMA should take a more prudent line.

The right decision in the light of all these considerations might well be to license BMA in respect of one route leaving them to reapply in respect of the second route when they had satisfactorily demonstrated their ability to operate the first route and where the facts - as opposed to speculation - about the impact on the other airlines would be known.

Rather than order a rehearing to determine these matters, I have in mind adopting an alternative route which is available under the Civil Aviation Regulations namely to call for "amplification or explanation" from the parties. I attach a copy of the letter my officials will be sending to the parties concerned.

In responding to questions, in Parliament and from the Press, we must, because of the nature of my appellate role, make it clear that the appeal is still under consideration, that the parties are being asked to amplify and explain their submissions and that asking them



questions does not indicate the likely outcome of the appeal.

When I have taken a view on the basis of these further representations I shall, of course, let you know my decision.

Arthur Cockfield

LORD COCKFIELD

Department of Trade

18 May 1982

CIVIL AVIATION POLICY DIVISION



DEPARTMENT OF TRADE
1 VICTORIA STREET
LONDON SW1H 0ET

Telephone Direct Line 01-215 5157
Switchboard 01-215 7877

May 1982

The Managing Director
British Midland Airways Ltd
East Midlands Airport
Nr Derby
DE7 2SB

Dear Sir

APPEAL AGAINST DECISION OF THE CIVIL AVIATION AUTHORITY ON
APPLICATIONS 1A/20325 AND 1A/20326

In this appeal British Midland Airways have invited the Secretary of State to reverse the decisions of the CAA not to grant air transport licences for two routes; London (Heathrow) - Glasgow, London (Heathrow) - Edinburgh. British Caledonian and British Airways oppose the appeal.

In their decision the Authority concluded that neither licence should be granted but commented that of the two applications British Midland Airways' preferred route in the immediate future was Glasgow, but in the medium and long term there would be a cross-over of advantage from Glasgow to Edinburgh.

The submissions in this appeal to the Secretary of State fully discuss the reasons why the Secretary of State should, or should not, direct the Authority to license both routes applied for. There is little argument however on the question of whether only one of the two routes should be licensed and, if so, which one. The Secretary of State is therefore unable adequately to consider this aspect of the appeal and hence whether the Authority was right to refuse both applications.

It appears to the Secretary of State that different considerations may apply to each of the routes separately and to the routes when considered together, and that the parties to the appeal may wish to amplify their submissions on this point.

The Secretary of State accordingly invites you to submit amplifications of the arguments already put forward setting out the reasons why he should or should not direct the Authority to grant one or other of the applications. These further submissions should, of course, be based on the evidence which was before the Authority when it decided the case. A similar invitation is made to British Airways, British Caledonian, and to the Air Transport Users' Committee to whom a copy



The Managing Director
British Midland Airways Ltd

May 1982

of this letter is being sent. A copy is also being sent for information to the Civil Aviation Authority.

These further submissions should be received by the Secretary of State on or before 11 June 1982 with copies to the other parties. Thereinafter each party may comment on the observations of the others. These should be received on or before 25 June 1982.

Yours faithfully

H J BLANKS

cc IG
Aerospace



10 DOWNING STREET

From the Private Secretary

5 April, 1982.

Many thanks for your letter of 2 April about the appeal to your Secretary of State by British Midland Airways (BMA) against the decision by the Civil Aviation Authority not to license BMA to operate scheduled services between Heathrow and Glasgow and Heathrow and Edinburgh.

I showed your letter and its attachments to the Prime Minister. She has commented that your Secretary of State's prospective decision will be received with disappointment and amazement, both of which she shares.

I would be grateful if you could make no copies of this letter, which I am sending to you on a personal and confidential basis.

M. C. SCHOLAR

J.N. Rees, Esq.,
Department of Trade.

PERSONAL AND CONFIDENTIAL

RM

c Ian Gow



Prime Minister

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I understand that Ian
Gow has minuted you separately
on this.

From the Secretary of State

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Michael Scholar Esq
Private Secretary
10 Downing Street
London, SW1

The Secretary of State is, as

I see it, acting in a

2nd April 1982

(quasi-) judicially

This decision will be received with disappointment and amazement - both capacity of which I share you, Mrs 2/4

1 There has been some press publicity about the appeal to my Secretary of State by British Midland Airways against the decision by the Civil Aviation Authority not to license BMA to operate scheduled services between London (Heathrow)-Glasgow and London (Heathrow)-Edinburgh. I am writing to let you know that my Secretary of State is minded to dismiss the appeal and to uphold the ruling by the Civil Aviation Authority. However in view of the considerable political interest in this case, and of the Prime Minister's own concern which Ian Gow reported to my Secretary of State, Mr Biffen thought it might be helpful to outline the reasons behind his thinking.

2 My Secretary of State recognises that whatever he decides on this appeal will be controversial. It involves important domestic trunk routes and is also the first major domestic case to be the subject of a hearing under the more liberal and less regulated regime established by the 1980 Civil Aviation Act. However, my Secretary of State believes that a policy of greater liberalisation must also be conditional on other factors. He would therefore not wish to sanction more carriers than the route can sustain - recent experience in and to North America has shown only too clearly the dangers of over-capacity in the present weakened state of all airline carriers, both in the public and private sector. In the present case, the CAA took the firm view that the BMA's traffic forecasts were unrealistically high. The Authority concluded that the introduction of a third carrier would gravely weaken all three airlines, and that British Midland Airways itself would probably lose money on the routes. The arguments advanced on appeal have not led the Secretary of State to doubt these conclusions.

3 On the other hand, my Secretary of State recognises that any decision to dismiss the appeal may well be criticised by some Government supporters and consumer groups as undermining our policy of increasing competition domestically, as well as making more difficult our negotiations for a more competitive regime in Europe. It could



From the Secretary of State

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also meet opposition from some Back Benchers as an attempt to protect from competition British Airways, who are making a profit on these routes.

4 My Secretary of State recognises that there is some force in these arguments, but believes that we should not pursue a liberal licensing policy at any cost, and in particular where it might do lasting damage to our airline industry, and possibly rebound to the disadvantage of our wider liberalisation objectives. Even so, my Secretary of State does not wish to rule out the possibility of licensing a third carrier on these routes in the future. The draft Decision Letter, which is attached, therefore leaves open the possibility that the licensing of a third carrier on these routes may be justified when the market can convincingly be shown to be adequate to support three competing services. This gives BMA the opening necessary to make a fresh application in future.

5 Finally, my Secretary of State has seen the comments by Mr Bishop, the Chairman of BMA, in his letter of 1 April to the Prime Minister. He will let the Prime Minister have a draft reply as soon as possible; clearly, though, this must await the publication of the Decision Letter since until then the appeal is "sub judice".

Yours Ever,

Jonathan Rees

J N REES
Private Secretary

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The Secretary
Civil Aviation Authority
CAA House
45/59 Kingsway
London WC2B 6TE

Dear Madam

I refer to the appeal by British Midland Airways Ltd (the appellant) against the decision of the Civil Aviation Authority (the Authority) to refuse applications 1A/20325 and 1A/20326 for the appellant to operate scheduled services between London (Heathrow) - Glasgow and London (Heathrow) - Edinburgh.

The Secretary of State has considered the appeal and the submissions from the British Airways Board, British Caledonian Airways Ltd, the Air Transport Users Committee and the Authority made under Regulation 16 of the Civil Aviation Authority Regulations 1972, as amended.

In reach his conclusion, the Secretary of State had the following considerations principally in mind:-

1. He accepts that the Authority did take into account all the objectives in its Statement of Policies, and gave due weight to all relevant considerations in reaching its decision.
2. He is satisfied that the Authority gave sufficient weight, on the evidence before it at the Hearing, to the requirements of the Civil Aviation Act, particularly in regard to competition, the interests of users, and the effect on existing services provided by British airlines.

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3. He recognises that it is a very difficult task for the Authority to judge the size of the market for a route when presented with forecasts of traffic which, as in this case, differ very widely. Applicants who base their case on the argument that the service and fares they offer will stimulate substantial increases in demand must be expected to produce ~~some~~ convincing evidence to support their forecasts. He is satisfied that on the case submitted to it, the Authority made a reasonable judgment in assessing the market for the routes in question.

4. He is persuaded by the evidence at the Hearing that the Authority took full and proper account of the interests of Scottish consumers before reaching a decision and that such interests were not prejudiced by the holding of the Hearing in London.

The Secretary of State has therefore decided to dismiss the appeal. He has noted the Authority's comment that it by no means ruled out the licensing of British Midland at some future date when both it and its competitors were in a stronger position to compete. The Secretary of State broadly agrees with those remarks. He recognises that travellers would welcome a wider choice of service and he hopes that the licensing of a third carrier on these routes may be justified when the market can ^{more} convincingly be shown to be adequate to support three competing services.

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No order is made as to costs.

Copies of this letter have been sent to British Midland Airways Ltd, British Airways Board, British Caledonian Airways Ltd, the Air Transport Users Committee, the Scottish Consumer Council, Mr A Macleod and Knapp-Fishers.

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10 DOWNING STREET

From the Principal Private Secretary

4 March 1982

Dear John,

Thank you for your letter of 1 March 1982 about the applications which British Midland Airways have made to fly the routes from Heathrow to Glasgow and Edinburgh.

I have shown the Prime Minister the note which you sent with your letter and she has read it with interest.

Yours ever,

Sheila Whinnery

John Rhodes Esq.,
Department of Trade.

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From the Secretary of State

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From Minister.
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Clive Whitmore Esq
Principal Private Secretary
10 Downing Street
London SW1

1 March 1982

Dear Clive,

BRITISH MIDLAND AIRWAYS: LONDON (HEATHROW) TO GLASGOW AND
EDINBURGH ROUTE APPLICATIONS

You asked this morning for a note about the application which British Midland Airways (BMA) have made to fly the routes from London Heathrow to Glasgow and Edinburgh. This is attached.

The appeal to the Secretary of State necessarily involves advice from officials and lawyers in the Department, but we expect the final decision to be made no later than the end of this month.

Yours sincerely,

JOHN RHODES
Private Secretary



BRITISH MIDLAND AIRWAYS : LONDON (HEATHROW) TO GLASGOW
AND EDINBURGH ROUTES

British Midland Airways (BMA) applied last year to the Civil Aviation Authority (CAA) for air transport licences to operate daily scheduled services between Heathrow-Glasgow and Heathrow-Edinburgh. The main consumer benefit BMA claimed over the shuttle services operated from Heathrow by British Airways, and the scheduled services from Gatwick of British Caledonian, would be lower fares. Both BA and BCal objected to BMA's applications and in accordance with the Civil Aviation Regulations 1972 the CAA held a hearing.

2. During the hearing the CAA examined a large amount of evidence from the applicant, rival airlines and also a strong consumer contingent from Scotland. In the event the Authority decided to refuse both applications. There were three main reasons for this decision:-

- a. The Authority considered BMA's assumption that the market would increase by 45% over three years as extremely optimistic.
- b. The two routes together would be unremunerative for BMA in the long run.
- c. Granting the application would result in a reduction in the existing services of BA and BCal bringing a disbenefit to consumers.

3. BMA have appealed to the Secretary of State against the decision. The main thrust of their grounds of appeal was that the Authority failed to recognise the need to inject greater competition at lower fares on these domestic routes, and thereby departed from the requirements of the Civil Aviation Acts of 1971 and 1980.

4. As required by the Regulations the appeals procedure provides for comment by the other parties and by the CAA; these submissions have been received and the Department is now preparing advice for the Secretary of State on the case.

5. Because of the Secretary of State's quasi-judicial role it would be improper to offer any comment to any of the parties or to take into account any representations from them at this stage about the possible outcome of the appeal.

