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cc: DTrade

10 DOWNING STREET

THE PRIME MINISTER

11 March 1982

Dear Mr. Thomson,

Thank you for your telex of 4 March about your application to the Civil Aviation Authority for a six-months exemption to operate the London/Los Angeles route as a second British carrier.

I understand that the Department of Trade has now issued a direction to the Civil Aviation Authority to allow this exemption for the period beginning 1 May, 1982 and ending on 31 October, 1982, or until earlier revocation of that instrument on the direction of the Secretary of State. I hope that you can agree that this is very satisfactory! Finally, let me wish you continuing success for all your operations.

Yours sincerely

Margaret Thatcher

A. Thomson, Esq., C.B.E.

DEPARTMENT OF TRADE
1 VICTORIA STREET
LONDON SW1H 0ET

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

9 March 1982

Miss G M White
Civil Aviation Authority
CAA House
45-59 Kingsway
London WC2B 6TE

Dear Miss White,

The Secretary of State has today given a direction, which I enclose, requiring the Civil Aviation Authority to exempt for a limited period British Caledonian Airways (BCal) from the licensing requirements of the Civil Aviation Act 1971, so that BCal may provide a service between London (Gatwick) and Los Angeles while its own and other applications for licences for that route are determined.

Before giving this direction the Secretary of State has consulted the Civil Aviation Authority in accordance with Section 4(3) of the Act. He has considered the Authority's view that the decision on which airline should serve Los Angeles in succession to Laker Airways ought to be reached by the procedures laid down in the Civil Aviation Authority Regulations 1972 (as amended), and that it would not be practicable in this case to adopt the shortened procedure for considering contested applications.

The Secretary of State agrees with these views. However without prejudice to that procedure he recognises that the time required for its completion, and for the submission and consideration of any subsequent appeal, will effectively prevent any of the applicants from operating a service for a significant part of the 1982 summer season.

This would mean that during that period there would be only one British airline (British Airways) but two United States carriers providing direct scheduled services between the two cities. All of them operate from London (Heathrow). The Secretary of State believes that it would be in the public interest, and would facilitate the attainment of the objectives of the agreement between the Governments of the United States and the United Kingdom concerning air services, if a second British carrier were authorised

Miss G M White 9 March 1982

to operate on the route as soon as possible, and to operate from London (Gatwick) Airport rather than Heathrow.

He has directed the Authority accordingly. The necessary designation will be made as soon as the Authority has complied with the direction.

He has asked me to emphasise that this direction is made entirely without prejudice to the outcome of the hearing of applications and objections to them concerning this route, or to the determination of any subsequent appeal. He wishes it to be made clear that if as a result of this procedure the eventual decision is to license a carrier other than BCal, he will direct that the exemption be revoked as soon as the successful applicant is able and willing to operate a service.

Yours

H. J. Blanks

H J BLANKS

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DIRECTION TO THE CIVIL AVIATION AUTHORITY
UNDER SECTION 4(3)(d) OF THE CIVIL AVIATION ACT 1971

The Secretary of State, in exercise of his powers under section 4(3)(d) of the Civil Aviation Act 1971, (the "Act"), after consultation with the Civil Aviation Authority ("the Authority"), hereby directs the Authority to exercise their powers under section 21(2)(b) of the Act, to make an instrument disapplying the licensing requirements of section 21(1) of the Act in respect of the series of flights (being flights other than charter flights) described in the Schedule hereto for the period beginning on 1 May 1982 and ending on 31 October 1982 or, until earlier revocation of that instrument on direction of the Secretary of State.

Dated 31 March 1982

An Under Secretary of the
Department of Trade

SCHEDULE

Operator:	British Caledonian Airways Limited
Terminal Points:	London (Gatwick) and Los Angeles
Aircraft:	DC10-30
Frequency:	Once daily in each direction, on each day of the week except Thursdays
Tariff (within the meaning of Schedule 1 of Series 1 of the Authority's Official Record):	As filed with and approved by the Authority

B/F

DEPARTMENT OF TRADE 1 VICTORIA STREET LONDON SW1H 0ET Telephone 01-215 7877

(1)

Prime Minister

Although this will be unpopular with Laker & BA it offers the best chance of not losing traffic to the Americans.

No point in sending an interim reply to Adam Thomson now.

MCS 8/3

CONFIDENTIAL

From the Secretary of State

Michael Scholar Esq
Private Secretary
10 Downing Street
London SW1

C.P.
Draft reply
now expected 9/3 or 10/3
MCS 9/3

8th March 1982

Dear Michael,

Agreed

My letter to you of 5 March, attached, said that my Secretary of State intended to have urgent consultations with the Civil Aviation Authority on the request by Adam Thomson, Chairman of British Caledonian Airways, for the Secretary of State to issue a direction to the CAA to exempt British Caledonian temporarily from the licensing requirement. This would therefore enable British Caledonian to operate the London/Los Angeles route as a second British carrier over the Summer months; this would be without prejudice to the CAA's licensing decisions on whether B.Cal. or Brenpage Ltd, the Laker successor company, should operate this route in the long term.

Told Rees MCS 9/3

Agreed

My Secretary of State has now had an opportunity to discuss British Caledonian's request with the Civil Aviation Authority. Following these discussions, my Secretary of State is minded to direct the CAA to issue an exemption in B.Cal's favour. He is well aware that such intervention to overturn a ruling by the CAA is rare, and he has taken this decision only after full and careful consideration. Although we still need to consult the CAA formally, as well as to sort out the drafting and terms of any exemption direction, my Secretary of State would hope to be able to issue the direction as soon as possible, and preferably tomorrow.

Although my Secretary of State thinks that such an exemption direction is essential if we are to secure a second British airline carrier on the London/Los Angeles route this Summer, with all the benefits that entails for the UK industry and balance of payments, he believes such action might excite considerable public interest. It might well be criticised, particularly by Sir Freddie Laker, as unfair; in particular it could be interpreted as an action which could harm Sir Freddie's attempts to raise Institutional and City finance for his new airline company. However, my Secretary of State thinks that as long as he makes clear that the direction is totally without prejudice to the CAA's licensing decisions this Summer, we should be able to defend our action on grounds of overall air licensing policy. In any case, it does not seem likely that any sucessor company which Sir Freddie Laker might establish, would be in a position to begin operations by the start of the Summer, and a second British carrier on the Los Angeles route should be our prime objective at the moment.

It will also be criticised by BA, who will dislike a British competitor MCS.

Yours Ever,

Jonathan Rees

JONATHAN REES
Private Secretary

CONFIDENTIAL

There is a feeling that B Cal is not getting a fair share of the market and that the foreign carriers will gain MT

Prime Minister (2)

Sir J Sinclair telephoned to say he would be running an article supporting the B Cal case. We will be putting a draft reply to you as soon as possible.

MCS 4/3

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COMS PSE PASS FOLLOWING TO TLX NO 27582

TO THE PRIME MINISTER CABINET OFFICE

BRITISH CALEDONIAN HAS APPLIED TO THE CIVIL AVIATION AUTHORITY FOR A SIX MONTHS EXEMPTION TO OPERATE THE LONDON/LOS ANGELES ROUTE AS THE SECOND BRITISH CARRIER. THIS IS NOT A PRECEDENT AS EXEMPTIONS ON MAJOR ROUTES HAVE BEEN GRANTED IN THE PAST.

IF THIS APPLICATION IS GRANTED THEN IT WILL AVOID THE SECOND BRITISH CARRIERS SHARE OF THE LOS ANGELES MARKET GOING TO FOREIGN AIRLINES, IT WILL ASSIST WITH THE UKS BALANCE OF PAYMENTS PROBLEMS, THROUGH EARNING FOREIGN CURRENCY, AND IT WILL HELP LOCAL EMPLOYMENT. NO OTHER BRITISH AIRLINE IS IN A POSITION TO TAKE UP THE SECOND BRITISH AIRLINES RESPONSIBILITY ON THIS ROUTE THIS SUMMER.

THE UMBRELLA LICENSING HEARING, INCLUDING LOS ANGELES, WHICH IS BEING CALLED BY THE CAA WILL INCLUDE MANY PARTIES, INCLUDING BRENPAGE, AND A NUMBER OF DIFFERENT ROUTES. IT WOULD BE OVER OPTIMISTIC TO SAY THAT THE COMPLETE PROCEDURE, INCLUDING THE APPEALS TO THE SECRETARY OF STATE FOR TRADE WHICH WILL UNDOUBTEDLY FOLLOW DECISIONS, WILL BE OVER BEFORE THE END OFF THIS SUMMER. THE LOS ANGELES MARKET IS SEASONAL AND IF A SECOND BRITISH CARRIER IS LICENSED, THEN A WINTER START IS IN MY VIEW OUT OF THE QUESTION AND THIS WOULD RESULT IN THE SECOND BRITISH AIRLINES PRESENCE BEING LOST UNTIL THE SPRING OF 1983.. BY THEN THE FIGHT FOR MARKET SHARE WILL BE EXCEEDINGLY DIFFICULT AS BUSINESS AVAILABLE WOULD HAVE BEEN MOPPED UP BY THE TWO U.S. AIRLINES. APART FROM THE BENEFIT OBTAINED BY THEM, BRITISH AIRWAYS WOULD ALSO INCREASE ITS CARRYINGS, BUT THEY CERTAINLY WOULD NOT PICK UP A SIGNIFICANT AMOUNT OF THE LOST BUSINESS AND WHAT THEY DO WOULD BE AT THE EXPENSE OF THE BRITISH PRIVATE SECTOR.

IF BRITISH CALEDONIAN IS SUCCESSFUL IN OBTAINING LOS ANGELES FROM THE LICENSING PROCEDURE, THEN IT WOULD CONTINUE TO OPERATE AT THE EXPIRATION OF THE PROPOSED EXEMPTION PERIOD. IF UNSUCCESSFUL, IT WOULD GIVE UP THE ROUTE AFTER THE EXPIRATION OF THE EXEMPTION, BUT AT LEAST WOULD HAVE HELD A SECOND BRITISH PRESENCE IN THE MARKET IN THE MEANTIME.

I HAVE BEEN INFORMED THAT THE C.A.A. IS ABOUT TO REFUSE OUR APPLICATION FOR AN EXEMPTION. I BELIEVE THAT OUR EXEMPTION PROPOSAL IS CLEARLY IN THE BRITISH INTERESTS AND WOULD NOT DAMAGE ANY OTHER APPLICANT FOR A LICENCE. I AM SO CONCERNED ABOUT THIS THAT I FEEL I MUST ASK, CAN YOU HELP.

ADAM THOMSON
CHAIRMAN
BRITISH CALEDONIAN AIRWAYS

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NNNNHOW RVD PLSE////
27582 CABOFF G REC AT 03/1816Z WH

BRITISH CALEDONIAN AIRWAYS: APPLICATION TO SERVE LOS ANGELES

1. Before Laker Airways went into receivership, it was one of the two British airlines providing scheduled services between London and Los Angeles. The other was British Airways, which is now the sole UK carrier on the route. It competes with two US airlines Pan Am and TWA providing direct services, and several others who operate through other American cities (eg World Airways Los Angeles-Boston-London).

2. British Caledonian operated a service to Los Angeles some years ago, but lost money and gave it up. When Laker Airways won their court action over Skytrain in 1977, they were designated as the second UK carrier to Los Angeles, and at their request the CAA deleted this destination from the licence BCal already held.

3. The CAA have now received applications

(a) from Brenpage Ltd, the Laker successor company, to take over the licence held by Laker Airways, and amend it to bear the name of the new company;

(b) from BCal for the reinstatement of Los Angeles on its existing licence.

As in the case of all contested applications, the CAA will hold a public hearing. This has been provisionally scheduled for 4 May.

4. There are two main reasons for this delay. The first is that CAA have agreed with the airlines a procedure whereby evidence for their hearings can be prepared and made available in advance, so that other parties can consider and prepare their responses to it. The second is that there is doubt whether Brenpage Ltd is a reconstruction of Laker Airways, and hence whether the Laker licences could legally be transferred to it in the way the company seek. CAA have sought a court ruling on this matter; they hope to get it quickly, but it could go to appeal.

5. Whatever decision CAA reach at their hearing is likely to provoke an appeal to the Secretary of State by one or more of the other parties to the case. There are statutory periods for the submission of papers on the appeal, which can add up to about 9 weeks from the CAA's decision, and the Department then has to digest the submission and advise the Secretary of State. Hence at the earliest it could be well into the summer before a final decision is taken.

6. This means in practice that neither of the parties could expect to start operations in time to catch this summer's peak traffic to Los Angeles.

7. BCal have argued that while British Airways would expect to pick up some additional traffic, other passengers who would have flown by a British service will be lost to a competing American carrier. Since an airline would be unlikely to start operations in the slacker winter period, this loss could persist until a second British carrier appears in 1983.

8. In the last two years BA and Laker have carried over 55% of direct London-Los Angeles traffic. This route is one of better North Atlantic routes from an economic point of view, and BA and Laker have said in confidence that they expected to make a profit on it in 1982. Licensing and statutory procedures apart, therefore, it is desirable that a second British airline should have the opportunity to serve the Los Angeles route as soon as possible.

9. BCal therefore asked the CAA to make an instrument under Section 21 of the Civil Aviation Act 1971 which would exempt them temporarily from the requirement to hold a licence. They could then operate to Los Angeles this summer, while the licence question was being decided, and if that decision went against them would withdraw in favour of the successful applicant. (A copy of their letter to CAA is attached).

10. The CAA have refused this request on the grounds that it would tend to prejudice the hearing, and that an exemption granted for the summer months would prevent any other airline who was granted a licence as a result of the hearing, from using it until any appeal was settled.

11. Although licensing decisions of the CAA are subject to appeal to the Secretary of State, the Department's lawyers consider that the Regulations do not permit appeals from decisions by the Authority to refuse to make instruments which would have the effect of exempting the flights in question from the need for a licence. The existing regulations are written in the context of appeals from licensing decisions made on applications for licences. Nor on balance do they think that Regulations could be made which would confer a right of appeal from the CAA's decision not to make an instrument exempting the BCal flights from the need for a licence.

Possibility of a direction under Section 4 of the Act

12. Apart from the power to direct the Authority as a result of an appeal, the Secretary of State's other powers of direction are limited to specific circumstances specified in Section 4 of the

1971 Act. They have been used sparingly under Section 4(3)(b) usually to prevent an operator being licensed because this would affect our relations with another country. It could not be held that we should direct the CAA to grant BCal's temporary exemption in order to avoid harming our relations with the USA: they would probably be delighted if Laker Airways were not replaced on the route for a while.

13. It might be possible however to direct the CAA under Section 4(3)(d) on the ground that it "attained or facilitated the attainment of any other object, the attainment of which is, in the opinion of the Secretary of State appropriate in view of the fact that the UK is ..... a party to an international agreement" - in this case Bermuda 2.

14. The objectives of that Agreement include the "continuing growth of adequate, economical and efficient air transport by airlines at reasonable charges", and meeting "the requirements of all categories of public demand". It can be held to be in the public interest to provide a fourth alternative service on a busy route, especially when that service, unlike the other three, will operate out of Gatwick rather than Heathrow.

15. Such a direction (which could be given only after consultation with the CAA) might require the CAA:-

(i) to expedite the hearing of licence applications; or

(ii) to grant the exemption requested to BCal.

The first of these would allow parties very little time to prepare an adequate case, and would be an unprecedented interference with the procedure of the Authority. It could well provoke protests from parties to the hearings, and might still not enable the licensed carrier to begin operations early enough to overcome the problem described in para 7 above.

16. There are also serious objections to directing the Authority to exempt the BCal flights. To do this would put BCal, as the incumbent, in an unfairly advantageous position in relation to Brenpage and would be said to prejudice the applications now pending before the Authority. The Authority could be expected to object to it on this ground. Nor could it be ruled out that Brenpage would challenge such a direction in the courts.

17. Their objection would be reinforced if the court holds that Brenpage (as a reconstruction of Laker) holds the Laker licences by operation of law.

British Caledonian

Caledonian House
Crawley West Sussex
RH10 2XA England

Telephone: Crawley (0293) 27890
Cables: Scotair Gatwick Telex: 87161

1st March 1982

From the Chairman's office

Sir Nigel Foulkes,
Chairman,
Civil Aviation Authority,
CAA House,
45-59 Kingsway,
London WC2B 6TE

Dear Sir Nigel,

LOS ANGELES

British Caledonian Airways Limited (BCAL) commenced services between London (Gatwick) and Los Angeles in April 1973 pursuant to Licence No. A. 12826 (subsequently reclassified as 1B/24033). The licence, which was made effective until 31st March 1988, was revoked on 2nd August 1978 in favour of Laker's application to operate the original Skytrain concept. This was in preference to BCAL's proposal for a multi product service, the validity of which has since been amply demonstrated and underscores the fact that BCAL is well qualified to serve the London/Los Angeles market.

BCAL estimates the size of the London/Los Angeles market is presently some 610,000 passengers per annum and an approximate value of the revenues to be earned on the route is £146M. Before the cessation of its services Laker was operating four flights per week, and was planning twice-daily services from 28th May for the Summer peak. Laker carried 159,944 passengers in the Summer 1981 period. It is, therefore, apparent that the withdrawal of Laker services means a loss of a significant number of passengers which, if the same as last year, puts over £20M at risk of loss to the UK, since not only is the remaining British carrier, British Airways, outnumbered by two to one on direct services, but there are additionally a number of US carriers who actively promote Los Angeles via an intermediate point, e.g. World over Baltimore, Northwest over Minneapolis, Delta over Atlanta and Braniff over Dallas. British Airways will not be able to maintain the British share of the market against this combination of US carriers which serve both Heathrow and Gatwick. Furthermore, since there will be no direct service from Gatwick the consumer will be denied an important element of choice and the range of services from Gatwick is depleted.

To help preserve the British position on this important North Atlantic route and to avoid the risk, which is material, of a dominant position being established by US carriers, BCAL proposes to operate between

Gatwick and Los Angeles with DC 10-30 aircraft six days per week (daily except Thursday) from 1st May 1982 and the grant of an exemption permit for a period of six months from 1st May would enable such operations to be carried out pending a licensing hearing. Since it would be impossible for the hearing of the Brenpage application for transfer of the Laker licences to be heard during the period of the exemption sought and determined through to Appeal, allowing for the necessary period of preparation for commencement of operations during that period, the reality is that the BCAL operation, as proposed, cannot, for the reasons set out below, be prejudicial to the interests of the Brenpage application and is vital to protect the interests of British civil aviation and the consumer.

It is inevitable that the Brenpage application will not be determined for some months to come with the probable consequence that the peak summer traffic, which would otherwise have been carried by a second British operator, will be lost to US carriers.

BCAL, therefore, seeks an exemption under Section 21 of the Civil Aviation Act 1971 to enable it to operate as proposed above. Attached, in confidence is a short statement of the economic benefit to BCAL. The proposed operation can be mounted with existing resources.

Whilst it is theoretically possible for Brenpage to operate, since the ex-Laker licences technically remain valid throughout the Hearing process, these licences are subject to the steps the Authority has already taken to suspend/revoke them and I am sure you will agree that it would be nothing short of an irresponsible gamble for it to be assumed, even with a withdrawal of the steps the Authority has taken, for the operation to be mounted before the expiry of the application process. Thus, in the absence of the grant of this request for exemption by BCAL there will be no [SECOND] British operation on the Los Angeles route this summer. BCAL maintains that the acceptance of such a situation by the Authority will be contrary to the Authority's statutory duties.

BCAL has applied for a licence on the Gatwick/Los Angeles route and has applied for the revocation of the Laker (Brenpage) licence. When submitting these applications on 11th February 1982 BCAL requested the Authority to set them down for Hearing at the earliest date in view of their importance. By a further letter of 22nd February 1982 BCAL asked for a reply by last Friday, being two full weeks after the original request. Although no formal reply has been received I understand that it has been indicated to our Mr. Bench by your Mrs. Diamond that a letter declining our request is now with your Legal Department for approval. This letter, we understand, contends that an early Hearing could prejudice the Brenpage application and goes on to indicate that the Authority has already determined that an exemption would not be appropriate. I am surprised if such a determination has been made prior to any request for an exemption as now contained in this letter.

I am sure you will agree that such a premature determination is highly prejudicial to the request herein contained; further I am sure you will wish to have regard to your statutory objectives which cannot, as stated

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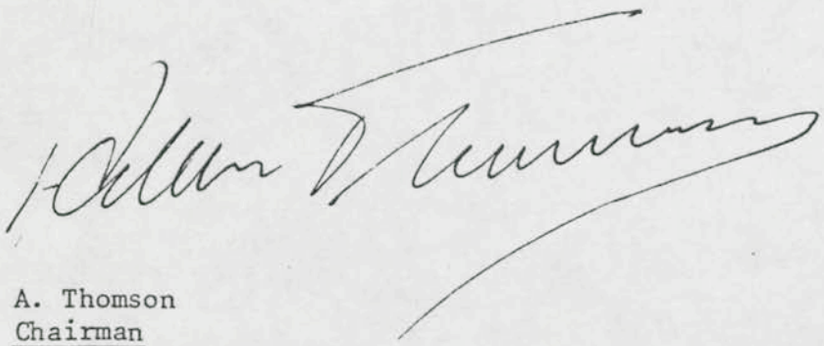
above, be achieved by a determination which has the consequence of prohibiting a second British carrier on this route during this summer. I ask that you and the other members of your Authority give this request for exemption your most earnest and urgent consideration.

A copy of this letter is being sent to the Secretary of State for his information.

I shall be pleased to supply any further information that you, or your officials, may require and I shall, of course, be willing to meet with you to discuss the exemption or the terms thereof at any time.

Yours sincerely,



A. Thomson
Chairman

STATEMENT OF ECONOMIC BENEFIT

LONDON - LOS ANGELES ROUTE - SUMMER 1982
MAY - OCTOBER

Production	:	Frequency	6	
		Round Trips	158	
		Hours	3358	
		Seats	76156	
		Share of Capacity	15.7%	
Traffic	:	Passengers	41200	
		Market Share	11.2%	
		Capacity CPI	.71	
		PLF	54.1%	
		Freight w/b	316 tonnes	
		" e/b	1580 "	
Net Yield	:	Passenger	£ 217	
		Freight w/b	£ 760	
		" e/b	£ 850	
			£'000	
Revenue	:	Passengers	8940	
		Freight w/b	240	
		" e/b	1343	
		Total	10523	
				£'000
Costs	:	Aircraft DOC	(7949)	
		Flying Contribution		2574
		Operating and Outstation Costs	(940)	
		Launch, Sales and Admin costs	(1196)	
System Benefit and Stimulation	:		823	
Loss of other Services			(450)	
Marginal Benefit to BCAL				811