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HM Treasury

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8 March 1999

BA/POCL AUTOMATION PROJECT: THE WAY FORWARD

I am writing to confirm that, following our exploratory discussions over the past weeks, the Prime Minister has now indicated that he shares other Ministers' enthusiasm for finding a route forward building on the proposals set out in the attached annex. The proposed alternative for achieving the project's objectives is premised on our view - which we accept you dispute - that ICL Pathway has placed itself in breach of contract for failure to deliver on time. On this basis, Ministers have authorised a further set of discussions to explore whether there is a commercial deal acceptable to Government around which we can find a way forward.

All are anxious now to reach a conclusion as a matter of urgency. The timetable to which we will need to work - and which we believe to be practicable - must ensure that we are in a position to reach non-binding heads of agreement ideally by the end of March but certainly by mid-April. If approved by Ministers and the contracting authorities themselves, it would be our intention to move as rapidly as possible to incorporate these heads of agreement into a detailed and binding renegotiation of the current contracts in accordance with the established contractual change control procedures.

In addition, I should reiterate formally what I have already confirmed in our informal discussions: that Ministers still hold to their position that ICL should not be looking for a positive return on their investment over the life of the project, given its history. I should also make clear that we would wish to establish the ground rules for the discussions in the form of a binding Standstill or Moratorium Agreement, similar to the one agreed at the outset of the contract discussions in September of last year. These ground rules should include as a minimum agreement that:

- our discussions are without prejudice and confidential;
- all parties reserve their rights and remedies with respect to past performance of the contracts;
- none of the parties will take pre-emptive legal action against any other party while discussions are continuing;
- all discussions and any agreements arising from them are subject to contract;

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- any settlement resulting from our discussions is subject to consideration of the procurement law consequences;
- work on the Horizon Project will continue in accordance with existing contractual obligations while discussions are continuing except and only to the extent that all the parties agree in writing to suspend the performance of any of their obligations.

I look forward to taking forward with you and Richard Christou the next stage in developing a potential approach to which all parties can commit.

Finally, I am grateful to Richard for his letter of 4 March. As I indicated when we met this morning, I am not in a position to respond to that letter now - much of it is concerned with technical and commercial matters which are for the parties to address. But, as you know, I do understand your perspective on the timetable.

Copies of this letter go to Private Secretaries to Alan Milburn, Alistair Darling, Stephen Byers and Charles Falconer; to Richard Christou, John Roberts and Peter Mathison; and to those who will be attending the meeting I am chairing with the parties tomorrow.

STEVE ROBSON

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