

Stelios to easyJet board 29 March 20 re AIRBUS final

From: Sir Stelios Haji-Ioannou

To: Non-executive directors of easyJet PLC

Date: 29 March 2020

Via the Chairman's email : John Barton rjobarton@gmail.com

Please circulate to all others

To:

1. John Barton, Non-Executive Chairman
2. Charles Gurassa, Non-Executive Deputy Chairman and Senior Independent Director
3. Dr Andreas Bierwirth, Independent Non-Executive Director
4. Catherine Bradley CBE, Independent Non-Executive Director
5. Dame Moya Greene, Independent Non-Executive Director
6. Dr Anastassia Lauterbach, Independent Non-Executive Director
7. Nicholas Leeder, Independent Non-Executive Director
8. Andy Martin, Independent Non-Executive Director
9. Julie Southern, Independent Non-Executive Director

Dear John Barton,

1. This is further to my first letter to the NEDs of easyJet PLC dated the 16th of March, 20 asking you to reduce the fleet plan and further to my official feedback to you as your largest shareholder mandated by the UK Chancellor's letter dated 24th of March, 2020 which I gave you in my email of the 25th of March, 20 asking you to raise equity from the markets and that I could participate.
2. The purpose of this letter is to put you on notice that unless you address my requests below by 12noon on Wednesday 1st of April, 2020 I will serve upon you notices of General Meetings to remove non-executive directors for dereliction of duty starting with Andreas Bierwirth.
3. The "elephant in the room" and main risk to survival of the company is the expected **£4.5bn** of payments to Airbus between 2020 and 2023 (as stated in the results presentation dated 19 November 2019) for the future delivery of 107 aircraft which the company CANNOT afford. That liability of paying Airbus **£4.5bn** dwarfs today's easyJet market capitalisation of £2.4bn.
4. With the fleet now grounded the only other major costs still running are crew costs of £859m per year (per last year's accounts) which should be reduced by around half thanks to the UK government's furlough schemes (<https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>) and equivalents in the continental European countries. Most other major costs such as fuel and airport landing and handling charges all have fallen away. Therefore, it is unquestionable that the payments to Airbus constitute the largest single threat to the solvency of the company. Yet you refuse to even mention the word AIRBUS in your public announcements.
5. easyJet has issued two RNS profit warnings in regard to the coronavirus crisis. In neither announcement was any reference made to the **£4.5bn** Airbus liability, which is odd given that the announcement of 28 February 2020 was about cost savings and the Airbus contract is the biggest cost by far. The announcement of 16 March 2020 referred to "no debt refinancing until 2022" yet significant payments to Airbus will have to be made before then but it was not made clear if the Airbus liability could be met before that date.

Given its crucial importance and stock market obligations, don't you think it's odd that such information of such magnitude is hidden away from shareholders and bondholders?

6. In addition, even with a resumption of air traffic, any income from passengers is likely to be too low to keep up with outgoings and would most likely render easyJet insolvent if it continues to pay Airbus for more aircraft. The extra 107 aircraft are simply shareholder value destroying. You have already seen how the last significant increase in the fleet reduced profits even in happier times. That is to say that the additional aircraft above 250 up to today's 350 were loss-making.
7. You can no longer refuse to talk about the elephant in the room. That elephant is Airbus.

8. Airbus have been convicted for criminal behaviour.

- 8.1. It is now since January 2020 a matter of public record that Airbus won more business by bribing airline executives. I would like formally to bring to your attention the attached UK court document "*Statement of Facts in the Crown prosecuting Airbus SE*" presented to Southwark Crown Court in late January 2020. In short, this document details how Airbus has been bribing airline executives around the world. I suggest you read it carefully.
- 8.2. I quote paragraph 2: "*The SFO-investigated conduct demonstrated that in order to increase sales, persons who performed services for and on behalf of Airbus SE offered, promised or gave financial advantages to others intending to obtain or retain business, or an advantage in the conduct of business, for Airbus SE. The SFO alleges that those financial advantages were intended to induce those others to improperly perform a relevant function or activity or were intended to reward such improper performance.*"
- 8.3. The criminal investigations resulted in Airbus paying huge penalties (several billion) to those governments who pursued these crimes but, unfortunately, nothing was done to compensate the real victims of these crimes: the shareholders of the airlines that were duped into buying more and more of these overpriced aircraft.
- 8.4. At the risk of stating the obvious, Airbus (via its intermediaries) was paying bribes to airline executives who were spending other people's money for two reasons.
 - 8.4.1. First, to induce the airlines to pay more per aircraft to Airbus than their true open market value or what Boeing was willing to sell their equivalent aircraft for
 - 8.4.2. Second, to induce the airlines to buy more aircraft than they could profitably operate.
 - 8.4.3. As a result, shareholders of the airlines lost money but were not compensated by this court process. Note that paragraph 96 of the Airbus judgment specifically states that it does not prevent any victims from claiming compensation.
- 8.5. Whilst something may have to be done about this injustice one day, the shareholders of these airlines may have a third type of problem right now: at a time of crisis, airline executives would be reluctant to cancel Airbus orders because they may have received bribes: naturally they don't want to fight Airbus in open court, risking exposure.
- 8.6. My question to you John Barton, as Chairman of the board of easyJet PLC is what have you done about it since early February 2020 when the story was published in articles like the one below? <https://asiatimes.com/2020/02/airasia-in-a-tailspin-amid-airbus-bribery-claim/>
- 8.7. Did you launch an official investigation to check if similar practices were deployed by Airbus in securing the easyJet orders? If NOT, why NOT?

9. “Force majeure”

- 9.1. I was extremely concerned to hear that you think that the current virus-induced crisis in the aviation industry does not constitute “force majeure” which would enable easyJet to cancel at least some of the Airbus deliveries. I think you are wrong. The current massive travel and public movement restrictions, have not seen in Europe since the Second World War. The last time most of Europe’s population was in curfew was 75 years ago. Surely that is the definition of Force Majeure.
- 9.2. The French state now officially uses the term Force Majeure on their website: <https://www.economie.gouv.fr/coronavirus-soutien-entreprises> Translation by Google : “Recognition by the State and local authorities of the Coronavirus as a case of force majeure for their public contracts. Consequently, for all state and local government contracts, the delay penalties will not be applied.”
- 9.3. For clarity Airbus is based in Toulouse, France and it is a major military contractor selling arms to governments (including the French government) so they can rely on the clause above to avoid their own obligations.

10. easyJet to serve notice of termination to Airbus

- 10.1. In view of the seriousness of the situation, the very least that can be done is to serve a termination notice to Airbus. My view is that with the court systems in France and the UK at a standstill, if Airbus decides to sue for specific performance from easyJet (after they have resumed production and deliveries) and then demand the payment of suspect penalties, it will be 2-3 years before any such legal action by Airbus finds its way to judgement and even longer on appeal. In short, I would rather spend shareholders’ scarce money paying lawyers to defend easyJet against a potential legal action by Airbus demanding payments for dubious penalties rather than buying overpriced planes that will sit on the ground or fly their passengers at a loss.
- 10.2. Therefore, as your largest shareholder, I am formally asking you to take the following actions:
 - 10.2.1. Select an independent law firm that has zero links with Airbus and the aviation industry in general (to be verified by me):
 - 10.2.2. to serve notice on Airbus for cancellation of all future deliveries and to reserve easyJet’s rights in all respects for several different reasons, including if it transpires by an investigation that any orders which may have been secured by bribes
 - 10.2.3. to argue that “force majeure” as published by the French government is an implied term in the contract and therefore it terminates easyJet’s financial obligations to Airbus, and
 - 10.2.4. to argue that the contract for these goods is null and void because the customer is unable to use the goods (aircraft) for the purpose they were intended, namely, the carriage of fare paying passengers by air.
 - 10.2.5. Unless you accept to address my points above by 12 noon BST time on Wednesday 1st April, 2020 , I will instigate a rolling programme to remove one non-executive director every 7 weeks by calling for General Meetings until we find directors willing and able to carry out their duties to protect the company by terminating and if necessary renegotiating the Airbus contract.

10.3. It should also be remembered that both Airbus (and Boeing) have virtually stopped production. Perhaps easyJet's termination notice will not be as difficult for Airbus to accept. For Airbus it will be a question of which one of their customers will they want to take to court. If we can show strength and determination to fight in court Airbus will go away quietly. Other airlines whose executives have received bribes may keep the orders and simply destroy shareholder value. The Boeing 737 max grounding should also mean that when Airbus resumes production and deliveries they can sell the cancelled easyJet orders to Boeing 737 max customers hence mitigating any loss on their part.

11. Directors' responsibility for defrauding creditors in the event of insolvency.

11.1. As you are no doubt aware, in a situation where insolvency is a possibility, it is an offence to give some creditors preferential treatment over others. This is a formal reminder.

11.2. Needless to say, this crisis may result in the insolvency of easyJet PLC and if it transpires that a single penny from the company has been paid to Airbus between the grounding of the fleet and the date of the insolvency or any equity raising which would prevent insolvency, I will personally sue all the easyJet directors for gross negligence and for defrauding easyJet's creditors with the favouring of one creditor (Airbus with dubious rights to these monies) over all others.

12. Other issues: For completeness, I will also state here that:

12.1. I do not support the current calls by Johan Lundgren for government loans. If we don't pay AIRBUS we don't need government loans. It would be an abuse of taxpayers' money to obtain loans to pay AIRBUS for an unprofitable investment in 107 aircraft. We should raise equity.

12.2. I don't agree with removing the perk of crew food in the current negotiations with the Unions. It is a distraction from the real issue which is that we need to end up with 100 fewer airplanes and hence fewer crews.

12.3. the company needs to raise equity as a rights issue pari passu with the current shareholders in order to replenish the current losses, and

12.4. in order to raise equity, we need to cancel the future liabilities of the £4.5 billion Airbus order and disclose to the markets the true costs of the Airbus aircraft in accordance with listing rules of the London Stock Exchange. All other industries have to disclose to their shareholders how much they pay for major acquisitions except the airline industry. Again, this crisis may have to become a reason for this "cover up" to stop. Shareholders and bondholders have the right to know how much you are paying for each plane and why. A simplistic division of GBP4.5bn by 107 aircraft gives us an average of GBP42m or say US\$ 55m per aircraft which sounds high to me. Without accurate information on the cost per plane shareholders and bondholders can't assess the risk or even properly evaluate the value of the business and they can't invest, which may precipitate the collapse of the company.

13. John, I am happy to discuss on the phone if it helps or we will see you at the EGMs every seven weeks. (reminder that you have 21 days to send out the notice for the EGM and it has to be held within 28 days).

Regards

Sir Stelios Haji-Ioannou