



Loan to Swissair Schweizerische Luftverkehr AG

Audit of the Swissair loan settlement

Final report following the conciliation procedure between the Federal Office of Civil Aviation, the Federal Finance Administration and Swissair

#### Key facts

---

As the last act in the national airline debacle, the Swissair fleet was grounded at the start of October 2001 due to a lack of liquidity. Within hours of the grounding, the Swiss government decided to grant Swissair a loan to maintain operations until an orderly takeover took place. In the end, the loan amounted to CHF 1.45 billion, of which CHF 1.15 billion were paid out.

The Swiss Federal Audit Office (SFAO) was responsible for auditing the accounts showing the use of this loan. According to initial calculations, the payments would not have been sufficient and would have had to be increased by another CHF 9 million. The SFAO checked the settlement point by point and highlighted that various transactions were not related to the purpose of the loan. After almost fourteen years, the liquidator approved these objections. CHF 220 million will be refunded to the Confederation.

#### **Complex issues had to be ironed out in the settlement procedure**

By letter dated 31 March 2009, the SFAO received the settlement approved by the creditors' committee concerning the loan from the Swiss Confederation to Swissair Schweizerische Luftverkehr AG, in debt restructuring liquidation (Swissair). The loan settlement concluded with "turnover" of around CHF 2.1 billion, with an additional claim of CHF 9 million vis-à-vis the Confederation.

As a result, the SFAO requested evidence, substantiations or supplementary assessments for 18 of the 23 settlement items. Within the context of this provision of proof, Swissair itself corrected the loan settlement by CHF 53 million to give a balance in the Confederation's favour amounting to CHF 43 million.

The SFAO subsequently audited the settlement. It discovered deficiencies of about CHF 324 million and, in its report of 28 October 2011, called for corresponding corrections to be made. According to the SFAO's report, the Confederation's credit balance in relation to Swissair should be corrected to around CHF 367 million.

As a result, by 10 February 2015 Swissair once again revised the loan settlement within the scope of seven partial deliveries. Swissair corrected its settlement by another CHF 87 million in favour of the Confederation. This sum essentially comes from the balance of a credit note requested by the SFAO in particular for cargo receipts (approximately CHF 140 million overall) and new expenditure which had not previously been debited to the Confederation (approximately CHF 54 million). The remaining corrections requested by the SFAO (approximately CHF 184 million) were not taken into account by Swissair in its revisions, but they were sufficiently substantiated in part in subsequently supplied documents.

### Differences remained even in the revised settlement

According to the revised Swissair loan settlement of 10 February 2015, approved by the creditors' committee on 23 February 2015, the settlement balance in favour of the Confederation was CHF 130 million. Swissair refunded this amount to the Confederation in April 2015.

The SFAO checked the revised loan settlement and the comments provided by Swissair and found that, contrary to the provisions of the loan agreement, receipts were still being withheld from the Confederation and that expenditure was being debited to it contrary to the agreement.

Essentially, the following items amounting to about CHF 180 million were concerned:

Receipts from tickets which were issued before 5 October 2001 but were paid for and used subsequently	CHF 12 million
Repayment of the SAirLines intragroup loan before entry into force of the loan agreement with the Confederation and contrary to the contractual purpose	CHF 50 million
Debiting of payments for services before entry into force of the loan agreement on 5 October 2001	CHF 70 million
Debiting of payments before entry into force of the loan agreement for services before and after 5 October 2001	CHF 30 million
Bridging loans	CHF 10 million
Miscellaneous	CHF 8 million

The SFAO is lacking legal options to enforce this loan repayment, as they are incumbent upon the Federal Office of Civil Aviation (FOCA) as the contracting party. Following the recommendation of the SFAO, the FOCA claimed loan repayment from Swissair for the aforementioned amount. There was the option of a mutual agreement or claiming the outstanding amounts by filing a lawsuit with the Federal Administrative Court<sup>1</sup>.

### It was possible for the differences to be resolved through negotiations

The SFAO's assessment is based on a strict interpretation of the loan agreements. However, this only partly addresses the true conditions after the grounding and during the winter flight schedule of 2001/02. In various discussions with the FOCA and the Federal Finance Administration (FFA), the SFAO pointed to scope for interpretation and the inherent process risks for the individual items. The FOCA additionally had the process risks and opportunities assessed by an external expert.

Following discussions between the FOCA, the FFA and Swissair, the FOCA submitted a settlement proposal to Swissair with a requested final payment of CHF 90 million. The settlement proposal was justified and took into account the process opportunities regarding the individual settlement items. The negotiations led to the agreement of 1 February 2016, in which the proposed settlement was authorised.

---

<sup>1</sup> Details on receivables can be found in the table in appendix 1.



Originally, Swissair demanded a subsequent payment of CHF 9 million from the Confederation. After examining all of the documents and taking into account the inherent risks in the event of a claim through legal action, the result was a repayment totalling CHF 220 million in favour of the Confederation.

The SFAO was consulted by the FOCA and the FFA in the negotiations and decision-making. It considers the settlement agreement to be comprehensible and appropriate in terms of both the procedure and the result achieved.

**Original text in German**