

# Swissair Grounding

## *The Background*

### 1. Introduction

Swissair was a symbol of reliability, safety, integrity, punctuality and quality - in short, a symbol for Switzerland. Swissair also stood for collective pride and patriotic feelings and was an important part of the Swiss inventory. The picture of parked aircraft with the Swiss cross on the fin, stranded passengers who were forced to stay overnight in civil defense facilities in Kloten, was an unprecedented disgrace for all Swiss people and an earth-shattering disaster. Hannes Britschgi, editor-in-chief of *Facts* wrote in his review of 2001: "Swissair's disastrous emergency landing has gone down in Swiss economic history as a unique tragedy. In the fiery finale, a big piece of security was washed away. The grounding did not only affect the Swissair fleet, but also the national characteristics of Switzerland: reliability, safety and quality. Swissair Switzerland. At one point she was of Switzerland. Swissair was a identity is shattered. The icon of Thousands of employees have lost reputations." Some citizens won in a country like Switzerland. The developing country or a "banana October 2, 2001 had shaken the foundations of a country and severely damaged its international reputation. There was a national consensus that the Grounding caused enormous damage to the company's image and that on a single day the gloss and glamour of Switzerland had been lost.



has long benefited from the image of so strong that she built her own image piece of Switzerland. This piece of our capability was on the ground. their jobs, managers have lost their dered how such a thing was possible events were more reminiscent of a republic". The scandalous events of

Only aviation journalist Sepp Moser described the death of the 70-year-old national airline in the foreword to his book *Bruchlandung* emotionlessly: "Seen soberly, an ordinary transport company has vanished here, a - apart from its size - normal procedure".

### 2. Anamnesis

The complete shutdown of the Swissair fleet<sup>1</sup> was the culmination of a gradual decline that began at the end of the 1990s and reached its sad climax on October 2, 2001. As the title suggests, the focus of [www.swissair-grounding.net](http://www.swissair-grounding.net) is on the grounding itself. It is not the aim of this report to analyze in detail the decisive management mistakes that brought the once called "flying bank" to the brink of ruin, but rather to focus primarily on the very last days in Swissair's life. For a better understanding, however, it is essential to get a brief overview of the most important events before the grounding:

#### **On the term "Grounding":**

*Comes from "Ground". In aviation, this refers to the longer-term parking or shutdown of an aircraft or, in extreme cases, the entire fleet of an airline. Reasons for this can be very different in nature, for example due to force majeure (e.g. natural disasters such as hurricanes, tornadoes, ash clouds after volcanic eruptions etc.), strikes or withdrawal of flight permits (take-off ban). Since the end of Swissair, this technical term has become popular in Switzerland and is used inflationary by the media for any economic crisis, similar to the term "MCA" originating from the nuclear energy sector.*

- In 1995 Swissair buys 49.5% of the Belgian airline Sabena, but in practice takes over the operational management of the airline
- After the Swiss voted against the EEA, the Board of Directors of SAirGroup decided in 1997 to pursue the "Hunter strategy" developed by the consulting firm McKinsey. This strategy aimed to create a new alliance ("Qualifyer Group") underpinned by holdings. In the coming years, under the leadership of Philippe Brugger, investments in ailing and loss-making airlines are bought seemingly at random. In addition to the Belgian airline Sabena, significant participations are also acquired in French companies Air Littoral, AOM and Air Liberté, Italian Volare and Air Europe, Polish LOT, South African SAA and German holiday airline LTU. Finally, the acquisition of a participation in the Portuguese companies TAP and Portugalia is being initiated and acquisition of Alitalia, which is in chronic deficit, is being examined. Most companies are undergoing restructuring and require large amounts of capital. A total of around CHF 4-6 billion was spent on participations - without receiving a matching value as assets in the balance sheet.

<sup>1</sup> Already in the year 1979 a partial grounding took place at Swissair: On May 28, 1979 the US authorities imposed a flight ban for DC-10 aircraft after three days before an American Airlines aircraft lost its left engine shortly after take-off and crashed. Swissair immediately checked all its aircraft for material fatigue, but on June 6, 1979 Switzerland joined the flight ban: The entire DC-10 fleet (then 9 aircraft) was temporarily shut down.

On April 17, 2010, the Federal Office for Civil Aviation closed the airspace over Switzerland for more than four days for security reasons, after a cloud of lava ash from Iceland spread all over Europe. Swiss's entire short- and long-haul fleet was stuck on the ground.

- In the summer of 2000, a McKinsey study called “Shield” concluded for the first time that there was a billion-dollar financing gap and that the strategy could no longer be financed.
- On January 23, 2001 CEO Philippe Bruggisser is sacked by Chairman Eric Honegger. However, the latter is unable to present either a successor or a new strategy and plunges the Group into a management and strategy crisis. He will also assume the function of Group CEO, while Moritz Suter, founder and CEO of Crossair, is appointed head of SAirLines - i.e. all airlines in the Group, including Swissair. His successor at Crossair is André Dose, previously Head of Operation.
- After only 44 days in office, Suter throws in the towel because of the imminent liability risks but remains as Chairman of the Board of Directors of “his” Crossair.
- March 9, 2001: Two further studies of consulting firms warn of possible insolvency. Instead of discussing radical rescue actions, the Board of Directors decides to resign in its entirety.<sup>2</sup> Only Mario Corti, who has recently joined the Council, remains. He is willing to take up the almost hopeless job as Chairman and Group CEO ad interim.
- The first urgent task is to bring complete transparency into the financial jungle to determine the extent of the financial imbalance. On April 2, 2001 he presented the annual result with a loss of CHF -2.9 Billion. This includes provisions of almost CHF 2.5 billion to exit the numerous airline investments. A banking consortium (excluding UBS) is providing a bridging facility to ensure the pre-financing of future sales proceeds if necessary.
- On July 12, 2001 Mario Corti presents a comprehensive restructuring plan. An agreement can be reached with Belgium and France on an opt-out. At the same time, the “Change 01” profit improvement program is launched, which aims to reduce costs by CHF 500 million annually. A task force is also being set up to develop synergies between Swissair and Crossair. Beat Schär, CEO Swissair, is inclined to merge the two companies while preserving the two brands *Swissair* and *Crossair* to reduce duplication. André Dose and Moritz Suter vehemently oppose a merger and strike back with a counter concept that envisages a massive reduction of Swissair's long-haul fleet down to 26 aircraft.
- On August 30, 2001, the mid-year results are presented and for the first time, all investments are consolidated in full. The result is shocking. Mario Corti decides to sell the flourishing Group companies Nuance (Tax-Free Shops) and Swissport (Ground Services) to strengthen the massively shrunk equity capital. Besides, 1000 jobs will be made redundant. Thanks to these measures and disposals, funds for approximately CHF 4.5 billion are to be released. To use Mario Corti's words, the chosen path was narrow but passable.

### 3. 9/11

At the latest since the financial mess had been disclosed that was caused by the failed “Hunter strategy”, it was clear to everyone that the air for SAirGroup had become very thin and that it would hardly be able to cope with a major external shock.

But then something happened that humanity had not even imagined in the worst nightmares and that shook the world in its basic values. The events in the USA were not part of any worst-case scenario. Air traffic to the USA was paralyzed for days and the traffic volume worldwide collapsed. The airline industry plunged into the biggest crisis of its 100-year history. Only hours after the attack, Midway Airlines filed for bankruptcy. Days later long-established Ansett Australia followed. Airlines all over the world were forced to ground aircraft, cancel flights and lay off employees. Aircraft manufacturer Boeing announced the elimination of 30,000 jobs. The Executive Board of SAirGroup was confronted with the fact that liquid funds would only last until the end of the month due to the devastating slump in revenues. The sale of Nuance and Swissport, as well as other assets such as MD-11 airplanes to FedEx, could no longer be sold, as the market values of these assets had fallen dramatically overnight. Besides, the “billion-euro loan” approved by the banking consortium was no longer withdrawable, as the conditions dictated by the banks could no longer be met (Swissport and Nuance shares that were intended as guarantees had become almost worthless due to the massive value erosion). The sudden slump in revenues, while costs remained largely constant, had devastating consequences. The negative impact on the SAirGroup's cash flow and equity was estimated at CHF 3.7 to 4.4 billion by the end of the year. The cash drain amounted to about CHF 20 million - per day! Also, contractually guaranteed payments in the millions to the foreign subsidiaries Sabena and AOM became due...

In short: The entire SAirGroup, with its 71,000 employees worldwide - around 19,000 of them in Switzerland - was in extremely life-threatening distress.



Foto © CNN

<sup>2</sup> Eric Honegger, the last representative of UBS, left the executive board of SAirGroup. Honegger has been a member of the Board of Directors of UBS since April 1999.

## 4. Rescue attempts

Mario Corti tried to immediately contact the Government. But according to the Federal Parliament, the first available date for the responsible Federal Councillor Kaspar Villiger was on Monday, September 17, 2001. On this day, Federal Councillor Villiger was briefed in detail by Mario Corti and Finance Director Jacquelyn Fouse about the extremely critical situation the SAirGroup was in and about possible alternative solutions and its consequences: A rescue of the SAirGroup no longer possible without federal support, as it is unlikely that the capital market is willing to invest in the crisis-stricken airline industry under the given circumstances. When Federal Councillor Kaspar Villiger asked whether in 14 days “it will be the end”, Corti had to admit that liquidity would barely last a month due to the consequences of the terrorist attacks. The latter asked for urgently needed financial support in the form of a federal guarantee of about CHF 1 billion.<sup>3</sup> To ensure solvency until the restructuring of the balance sheet. SAirGroup estimated the recapitalization requirement at around CHF 4 billion. Federal Councillor Villiger has a discussion paper prepared for the next session of the Federal Council, which took place four days later.

At the same time in Basel, Moritz Suter also became active on his behalf. He resurrected his mothballed “Phoenix” concept, with which he once torpedoed the “Alcazar” project (planned merger of Swissair, KLM, SAS and Austrian) and immediately started to seek potential investors in the banking community to facilitate the possible separation of his company from the Group. Together with André Dose, Thomas Hanke<sup>4</sup> (Head of Strategy & Network Crossair) and Richard Heidecker (former Head of Marketing Crossair, now external consultant) they created a new, revised concept based on Moritz Suter's old “Phoenix” plan. Professor Peter Bockli, a prominent lawyer in Basel and Vice Chairman of the UBS Board of Directors, gave the concept its legal flair.

Mario Corti was asked by the Federal Council to present a sustainable concept for a viable Swiss airline; the latter offered federal aid for the first time. Corti needed radical actions - immediately. For this purpose, he assigned André Dose, CEO of Crossair, to develop a proposal to this effect. Overnight, together with Moritz Suter, Richard Heidecker and lawyer and Crossair co-founder Georg Wiederkehr, the basic design was completed: Joint airline under the name “Swiss Air Lines”, a massive reduction of the route network, fleet reduction and job cuts at Swissair, especially in Kloten. As the group was now on the brink of bankruptcy and there was no time to study other alternatives, the new concept was quickly approved by the SAirGroup Board of Directors. André Dose was nominated as CEO by Mario Corti. Moritz Suter's influence was severely cut back by the merger of Crossair into Swiss Air Lines.

On September 21, 2001 the US Congress approved an emergency package of US\$ 15 billion to save American airlines from bankruptcy. Direct aid of US\$ 5 billion and loan guarantees of US\$ 10 billion were approved.

On Saturday 22.9.01, a crisis summit with representatives of *economiesuisse*, the Swiss umbrella organization of the Swiss economy, took place in the Federal Council residence at Lohn Estate, where the SAirGroup delegation presented the planned restructuring to form “Swiss Air Lines” and the plans for recapitalizing the Group. The participating Federal Councillors Leuenberger and Villiger, however, still refused to grant a federal guarantee. According to the ideas of the Federal Council, the aim was to bring all stakeholders to a round table and achieve a collective debt relief. But the initiative had to come from the private sector, in particular from shareholders and banks. A working group was formed under the leadership of entrepreneur and former National Councillor Ulrich Bremi to plan a recapitalization in the range of CHF 4 billion. This capital increase was to be proposed to shareholders for approval at an extraordinary general meeting on 9 November.



On Monday 24.9.01 the public was informed about the radical measures that had been decided. The SAirGroup press release announced the merger of Swissair and Crossair, while retaining the two brands but fully integrating the short-haul network and reducing the long-haul fleet by 25%. It was also announced that a recapitalization of the Group will be prepared by October 10 with widespread investor support under the leadership of Ulrich Bremi.

On the same day, Federal Councillor Kaspar Villiger took an active role in the Swissair case - albeit with a surprising direction: He tasked the auditing, accounting and consulting firm *BDO Visura*, which was little known to the general public, to assess alternative restructuring options and prepare concrete recommendations for the Federal Council.



Already in April, this company had advised the Federal Department of Finance given the upcoming General Meeting of SAirGroup about financial aspects and matters relating to the annual financial statements. This time, Federal

<sup>3</sup> A federal guarantee would have been immensely important to attract foreign lenders, as they would have had the certainty that the federal government would not abandon the company. However, since the Federal Council could not / did not want to give a guarantee due to “the lack of a legal foundation”, the SAirGroup was imperatively dependent on the cooperation of the domestic banks - in particular the two major Swiss banks UBS and Credit Suisse.

<sup>4</sup> Prior to Crossair, Hanke was Senior Project Manager for Transportation/Aviation at Roland Berger & Partner and author of the strategy paper Q-Hub, which proposed to SAirGroup a deviation from the McKinsey Hunter strategy and recommended the acquisition of LTU for a total of CHF 1.4 billion.

Councillor Villiger gave clear guidelines to reflect the basic attitude of the Swiss government: To ensure the long-term survival of Swissair, only a one-time, time-limited restructuring should be considered, involving all relevant stakeholders "to ensure the symmetry of sacrifice". The decisive factor, however, was the stipulation that no public funds should be used to "cover previous management errors". It was also erroneously pointed out that the Aviation Act only permits equity investments but no loans, guarantees, sureties, and à fonds perdu subsidies.<sup>5</sup> Already three days later, on 27.9.01, the appointed *BDO Visura* submitted its report to Federal Councillor Villiger.<sup>6</sup> Based on the strict requirements, it was not surprising that restructuring proposals for recapitalization and securing liquidity met little acceptance, as these restructuring measures would either take effect with a considerable delay due to formal requirements or were not in conformity with the law. In general, it was criticized that a rescue of the whole group - due to its size and complexity and the urgency - was difficult to assess and that SAirGroup contained many parts "in which there was no public interest". A debt-restructuring moratorium was also examined but ruled out as being unrealistic because it would significantly restrict normal business activities. The flash report concludes that a complete restructuring of the Group is not a realistic scenario. As an alternative, it recommends the initiation of bankruptcy proceedings with the formation of a rescue company and subsequent sale to third parties or an IPO. The "most interesting option for any participation of the Federal Government" would be the purchase of Crossair as a "virtual rescue company" by investors and the acquisition of further assets "as far as necessary for the preservation of international air traffic". In the nucleus, this proposal already outlined the direction that was later adopted. It was recommended that the Federal Government should influence the "pro-active formation of the rescue company" at an early stage and demand that SAirGroup "work out appropriate options". Neither Ulrich Bremi nor Mario Corti was informed about this. They were led to believe that the rescue of the SAirGroup was still a priority.

Alarmed by the bad news, Moritz Suter returned prematurely from his holiday in France on Tuesday, September 25, 2001 and was willing to pull Crossair's 70% share from the SAirGroup. But he couldn't do it on his own - it would take numerous friends and influential financiers to help him out. In the meantime, he told the world that he had enough investors to buy Crossair out of Swissair. On the evening of September 26, 2001, a meeting took place in Moritz Suter's house with André Dose, UBS Vice President Prof. Peter Bockli, Richard Heidecker and attorney Bernhard Bodmer. Dose, the new CEO of the soon to be merged Swissair/Crossair, provided those present with a detailed update about the current situation - without consideration of disclosing business secrets. Moritz Suter was convinced that there was an interest in having at least one functioning airline in Switzerland and that this would probably rather be Crossair than Swissair.

UBS, which has overseen the cash management of SAirGroup for years, significantly aggravated the liquidity problems by progressively terminating the Group's **zero-balancing cash pooling** facility: on September 10, the contract was unilaterally terminated by UBS as of the end of October. In the opinion of SAirGroup, this would have been possible at the earliest by the end of the year, which was also confirmed by legal investigations. UBS nevertheless insisted on termination at the end of October and also demanded on September 24 that all transactions over CHF 5 million had to be notified, but already on September 26, UBS imposed further conditions: With immediate effect, over-night exposure was prohibited, i.e. from now on all accounts of the pool members had to be balanced manually, which massively increased the administrative expenses and the restricted liquidity in the system. Previously, a request for a daylight overdraft (temporary overdraft of the credit limit) was rejected. On September 28, the sweeping mechanism (settlement of balances of all Group companies at the end of the day) was canceled without notice. UBS demanded that from now on payments would only be accepted on a positive balance basis. This virtually eliminated the cash pooling facility - although the previous agreement would have been valid until the end of October. Also, the necessary transfers for alimenting the accounts had to be triggered in advance. The Group companies could no longer make any payments without the required money being previously available in their corporate bank accounts. This increased the Group-wide liquidity need enormously. From one day to the next, around CHF 250 million more cash was needed.

#### About the term „Cash-Pooling“:

*Cash pooling allows a corporate group to use the accounts of the various group companies over the course of a day as if they were a single account. This allows the Group to function internally as a bank and considerably simplify the management of liquidity between the Group companies. Through the balanced management of Group liquidity, the cash position can be kept lower.*

UBS has never explained in a credible way why it has made such an effort to tighten the screw on SAirGroup. By doing so, it has dramatically aggravated what was already a difficult situation - with full knowledge of the dramatic battle for survival. On the contrary: She told the government that she had continued supporting SAirGroup with the cash management! During mid-May 2001, UBS criticized "irregularities in the use of the cash pool as a tool for financing and investing" as a result of the somewhat high credit and debit balances of individual pool participants. The report of the Parliamentary Commission of the Council of States states that the termination was a reaction to the downgrade of SAirGroup's credit rating by Moody's rating agency. Such a draconian measure as a result of a simple reassessment of an agency is very astonishing, especially when you consider that UBS was well informed about the financial situation as a result of its many years of activity as a cash-management bank and the downgrading

<sup>5</sup> Article 101 of the Swiss Federal Aviation Act allows the Swiss government to grant contributions or loans. In addition, the Swiss Confederation may, in accordance with Article 102, participate in air transport companies if this is in the general interest.

<sup>6</sup> This report remained confidential for decades and was not publicly accessible. It came to light in 2019, after a request for access to the files (based on the Federal Law on the Principle of Publicity of the Administration) had been approved. It had never been used in any criminal or civil court proceedings.

occurred as early as August. According to Marcel Ospel, the termination was merely a “precautionary measure” in case of signs of increased risks - a kind of “signal that one is concerned”. According to Ospel, the effect is “not so important in practice”. UBS probably pursued a strategy formulated by its chief credit officer in an internal “top secret” memorandum to the Board of Directors. This included the recommendation that the cash pool of the SAirGroup should be handled more “restrictively”. Also, a very cautious approach should be adopted concerning the

*„Well, now we have pulled the plug!”*

Peter Kurer, Chief Legal Counsel UBS

injection of new money and UBS “must under no circumstances be persuaded to participate in the billion-euro loan of the banking consortium”. In an internal e-mail addressed to members of management by Andreas Schöni, responsible for the cash pooling of major clients at UBS, the aim and consequences

of a termination were clearly described: “If we are no longer prepared to bear risks in the compensation operations, we could create serious liquidity problems for Swissair and could even push them closer into insolvency”. On September 28, Peter Kurer, Chief Legal Counsel of UBS, called the legal department of SAirGroup asking them to immediately file a debt-restructuring moratorium. Since SAirGroup did not follow this demand, the sweeping mechanism was terminated on the same day without notice. Kurer triumphed by saying to Karin Anderegg, head lawyer of SAirGroup: “Well, now we have pulled the plug!”

On Friday September 28, 2001 the first meeting of the Breimi Group was held, in which influential people from Swiss politics and businesses participated. Mario Corti warned the attending representatives of the catastrophic consequences of a grounding, as a tremendous domino effect is to be expected. There are 28 airlines and around 128 airports worldwide that are fatally dependent on the IT subsidiary Atraxis alone. UBS, represented by Alberto Togni, Deputy Director of the Board of Directors, attended the meeting, but only with reservations and after having been persuaded. The financial newspaper Finanz&Wirtschaft wrote: “UBS plays an obscure role. The big bank apparently advocates a bankruptcy”. UBS made it clear to SAirGroup on September 23, 2001 that a major injection of liquidity without creditor protection was ruled out. On the contrary, the group should actively work on preparing a bankruptcy. Legal advisors of SAirGroup, on the other hand, pointed out that a debt-restructuring moratorium was not a suitable solution for restructuring the group. The procedure is extremely complex, and a consolidated implementation is very difficult (as it must be carried out individually for each group company). No Swiss company of a similar size has ever survived such a procedure: a debt-restructuring moratorium is nothing other than the first step towards bankruptcy. A possible way out was outlined: Swissair and Crossair could be taken over by a rescue company. This would ensure that flight operations could continue without interruption. Liquidity would have to be secured by a federal guarantee. Besides, the possibility of converting creditor capital into share capital (debt-to-equity conversion) was examined. Back in March, UBS declared its willingness to participate in the elimination of over-indebtedness by converting loans into equity and in a debt relief program. SAirGroup's top management was convinced that a collapse of the group had to be prevented under all circumstances to maintain the company at its continuation values. A resumption at liquidation values would have destroyed enormous amounts of asset.

On September 28, 2001, Group CEO Mario Corti took part in the Swiss Television's *Arena* show and stated unapologetically that the situation was extremely delicate and that October wages were not guaranteed. He warned that a bankruptcy would have fatal consequences, as values would be destroyed overnight to an unprecedented extent and everything would henceforth run on a cash basis. In the shortest time, one would have completely chaotic conditions, which would result in a shutdown of the entire airline. For the first time, he used a word that Swiss people did not know: “Imagine, there are Swissair airplanes *grounded* all over the world! Many would regret a bankruptcy”. His conclusion: “We must avoid this”. He promised his employees and viewers to fight for the company's survival and to find a way to ensure liquidity.

## 5. High Noon – The decision

On Saturday, September 29, 2001, the Group was already virtually illiquid. The (remaining) SAirGroup Board of Directors met all morning at Balsberg in Kloten - the headquarters of the SAirGroup. It was examined whether a debt-restructuring moratorium<sup>7</sup> could be initiated without endangering flight operations. The idea was to set up a rescue company by investors to take over Swissair and Crossair to ensure an uninterrupted and smooth continuation of flight operations. However, there were unsolvable legal problems because the operating concessions could not simply be transferred. The financing of the agreed “Swiss Air Lines” was discussed again, but the Federal Council, connected by telephone, pointed out that due to the Federal Aviation Act, a financial participation is limited.

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<sup>7</sup> Under Swiss bankruptcy law, a definitive debt restructuring moratorium is only granted if the company can prove that the business can be maintained for the duration of the moratorium. This means that sufficient financial resources are available for the continuation of the company. In contrast to a bankruptcy, which regulates the liquidation of a company, a debt restructuring procedure has the goal of maintaining and reorganizing the company.



As the meeting continued in the afternoon, Board member Lukas Mühlemann announced that banking specialists of his investment subsidiary CSFB could present a solution. Urs Schenker, attorney at the law firm Baker & McKenzie and representing Credit Suisse at the meeting, presented - completely improvised and directly from his laptop - a new concept called **"New Crossair"**: The aim was no longer to save Swissair, but first of all a separation of Crossair. From a financial point of view, this was a reversed takeover: the smaller subsidiary swallows the usable parts of its parent company, the remainder is to be deferred, including all claims from customers, creditors, shareholders and debentures. The once-proud Swissair should enslave itself to its own subsidiary company. The advisory lawyer of the Board of Directors, Peter Widmer, pointed out that this concept would face major difficulties during the transition phase until Crossair received the necessary operating licenses and traffic rights. It would be much better if an investor also took over Swissair and liquidated it only after a well-organized transition.



**Urs Schenker,**  
**(Baker & McKenzie)**  
*Attorney at Law on behalf of Credit Suisse. Baker & McKenzie had previously executed lucrative deals on behalf of SAirGroup (e.g. the acquisition of US caterer Dobbs).*

The Crossair Board of Directors arrived in Zurich around 7 p.m. to discuss this new concept. Moritz Suter accepted the proposed solution with the only objection that the planned brand change from Crossair to Swissair was not opportune. However, he was convinced that the Regional Airline from Basel had to detach itself from SAirGroup with all its strength. A little later, suddenly a delegation from UBS arrived: Marcel Ospel (President and CEO), Alberto Togni (Vice Chairman of the Board of Directors) and Marco Suter (Chief Credit Officer), Jürg Haller (Delegate of the Group Executive Board for the relationship with SAirGroup) and Peter Kurer (Legal Counsel).<sup>8</sup> SAirGroup's board members were amazed: Until recently, Peter Kurer was legal advisor to the board of directors for many years and thus the most intimate expert on the Swissair dossier - and now, unexpectedly, he appeared in the other party! The UBS team was also supported by legal advisors from the law firm Lenz & Staehelin, in particular M&A specialist Rudolf Tschäni. The CEO of UBS, Luqman Arnold, was abroad this weekend but was firmly opposed to any involvement by UBS.

UBS was only prepared to support the "New Crossair" concept and rejected other alternatives, including the decision to merge Swissair and Crossair into "Swiss Air Lines". This was justified by legal problems and high overall costs. From now on, the "New Crossair" concept, to which UBS had quickly given its approval, was the only one pursued. Swissair's flight operations should continue until the end of October - on behalf of Crossair. In the medium term, parts of Swissair's staff would then be taken over at "Crossair conditions". After that Swissair would cease operations. This meant that Crossair would become the only Swiss airline but would switch its name to Swissair after about two months. A clever plan to eliminate unwelcome inherited liabilities, because a sale avoided the one year prescribed by law to divest assets before the rest could be sent into bankruptcy.



**Peter Kurer,**  
**General Counsel UBS**  
*M&A specialist. Joined UBS in July 2001. Prior to that, he was a leading partner of the Homburg law firm for 10 years and was an advisor to the Swissair Board of Directors and thus one of SAirGroup's most intimate connoisseurs (among other things, he provided legal advice on the complicated contracts with foreign holdings, which were structured with put option clauses): From a professional point of view, this was extremely worrisome: someone with such insider knowledge and such a conflict of interests (attorney-client privilege) would have had to take a mandatory walkout. The Supervisory Commission for Lawyers subsequently examined Kurer's role.*

The UBS representatives asked for a break at around 11 pm. All those present were aware that in the meantime the Bank giants from Basel had taken complete control. After 20 minutes, the bankers returned to the plenum well prepared. From now on, UBS Chief Legal Officer Peter Kurer spoke. He appeared as if he were the new master of the house: self-confident, decisive and incisive in his choice of words. On a sheet of paper, written by hand, he had compiled a multipoint catalog of demands. These essentially matched the wording of the so-called "Term Sheet Phoenix". In his book *Der Fall der Swissair*, René Lüchinger wonders whether a man can be so brilliant that he can draw up a battle plan for such a complicated financial transaction within such a short time: "Can one airline be transferred to another in a few brush strokes and within a few minutes, without the need of some days of preparation?" Some doubt arises as to whether these handwritten notes arose spontaneously that night just before midnight or whether they had at least been formulated in the mind of the lawyer for some time.

Then began the "night of the long knives" (quote Lüchinger): The two bosses of the major banks fought over the financing of the project. Lukas Mühlemann proposed a 50:50 solution. Marcel Ospel ultimately demanded the majority.<sup>9</sup> Mühlemann replied that CS would pay the entire tranche as a result. Ospel replied coolly: In that case, UBS was out and assembled his troop to retreat. It was clear to everyone that CS, whose boss was responsible for Swissair's mess as a member of the SAirGroup's Board of Directors, could not bear the financing alone. Everyone was dependent on UBS. Moritz Suter begged Marcel Ospel to

<sup>8</sup> The news magazine *Facts* wondered how UBS could appear with such a top-class team at Balsberg over the weekend. This considerable achievement left room for speculation as to whether UBS had reckoned with Cortis call for help through indiscretions.

<sup>9</sup> Years later, Ospel explained that UBS "wanted to send a clear signal where the leadership lies" and therefore ultimately insisted on a majority of 51%. Contradictorily, he explained that at 50:50, it would have been too much risk.

ensure at least the survival of Crossair, but the cockfight between the two most powerful Swiss bankers had reached a dead end. Despite the late hour, the UBS delegation then met for a whiskey at the nearby Hilton in Glattbrugg.

On Sunday, September 30, 2001, a SAirGroup delegation informed Federal Councillors Kaspar Villiger and Moritz Leuenberger in Bern of the planned solution. Meanwhile, Lukas Mühlemann was willing to take on the role of junior partner. However, a possible shut down of Swissair was not envisaged, as it was assumed that the proceeds from the sale would provide Swissair with sufficient liquidity. Mario Corti reminded several times what devastating consequences a shutdown of the fleet would have for the company, but also the Swiss economy. Nobody from UBS was present at this meeting because, unlike all the other representatives, they did not manage to arrive in Bern on time. The Federal Councillors could not / did not want to make any financial commitments. They also objected that the federal government should take over the liabilities while the banks would invest in the future.

On the evening of the same day, heated discussions continued at Balsberg in Kloten. Peter Kurer was already at the gate to fly to the USA for a business meeting but was called back to Balsberg by Marcel Ospel. André Dose shocked those present by the statement of an airline law specialist that the fleet had to be grounded. Grounding? The attending bankers needed an explanation of what this meant. In the event of a debt-restructuring moratorium, it is not possible to transfer the landing rights and slots to Crossair. When asked how this could be prevented, Dose answers unmistakably: "Avoid the debt-restructuring moratorium and keep Swissair alive! That's exactly what they disliked hearing. For them the only option was Crossair - anything else could not be financed! If the operation had to be bridged at all - there were real doubts about this - it was up to Swissair to find the money for it. But how could the new company take off successfully if the transition was not harmonious and customers could not be taken over? For such basic operational principles, the financial people lacked the sense - or the will.

At about 10 p.m., UBS General Counsel Peter Kurer took the floor again. He presented a 10-point program that was presented like a machine-gun. Someone urged the man to speak with moderation. Kurer, well prepared, dictated condition after condition. Like a surgeon, he cut out the sick parts of the Swissair Group's body until nothing remained of the national airline. He supplied Crossair with fresh cells and oxygen - chosen to survive. Swissair representatives opposed the idea of not wanting to spend a single franc on flight operations. But the bankers remained tough: There is no money for operating Swissair! Dose pointed out that it would take him four weeks to integrate the Swissair routes: If Swissair did not continue to fly, the Crossair business plan would be endangered! Moritz Suter also pointed out that such a plan only would make sense if it did not lead to a total interruption. But the bank representatives were stubborn investment bankers: if Swissair was sacrificed in the medium term anyway, one could also immediately arrange for at least a partial grounding! Board member Andreas Leuenberger expressed his complaints at the top of his voice, but Kurer replied enervated: "Actually we would rather be somewhere else than sitting here to solve your problems!"

At 2 a.m. there was still a fierce battle over details of the sale of shares. Urs Schenker suggested that the last stock exchange closing price should be set, which corresponded to a selling price of CHF 258.8 million. With that, both banks were collecting a premium of hundreds of millions, as usually a premium of 20-30% is paid for larger takeovers. A price adjustment clause or price increase following a fairness opinion was explicitly rejected several times. The two banks maintained their commitment to Crossair and refrained from providing any funds to prevent a grounding. All parties involved were aware that there would be at least a partial grounding and that there was also a risk that the entire fleet would be brought to a stall. Mario Corti was ordered to make preparations to avoid an uncontrolled grounding. After all, a grounding is not the business of the banks! Shortly before 04:00 in the morning, there was a last attempt to renegotiate the insufficient selling price or at least introduce a price adjustment clause. Both proposals were rejected without words, only with gestures. The wording of the so-called "**Term Sheet Phoenix**"<sup>10</sup> was finally finalized at 04:20 - Lüchinger calls it in his book the "Swissair death certificate". Before the final version, a total of four versions were documented in writing, with increasingly restrictive conditions anchored from version to version:

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<sup>10</sup> On March 4, 2002, UBS claimed to have had nothing to do with the preparation of the "Phoenix Plan" before the Parliamentary Commission of the Council of States. First sentence of the first slide: "UBS has not developed the Phoenix Plan". They added: "The concept 'New Crossair' corresponds to the nucleus of today's solution" - not a single word about the tightened conditions in "Term Sheet Phoenix" dictated by their chief lawyer.

1. The banks buy Crossair's stake at the last stock exchange price. The purchase price will be paid after the shares have been mortgaged and delivered. Conditions:
  - a. The sale proceeds are destined to flight-related companies.
  - b. **No use for maintaining Swissair flight operations beyond October 3.**
2. Banks grant SAirGroup a bridging loan of up to CHF 250 million for airline-related companies. Conditions:
  - a. Securing of the loan by mortgaging assets (in particular investments in Swissport, Gate Gourmet and Nuançe) and the "Swissair" brand
  - b. **No use for maintaining Swissair flight operations**
  - c. No strikes of personnel
  - d. Repayment of the loan on sale of the mortgaged assets (pro rata incl. interest)
3. The banks provide Crossair working capital of up to CHF 500 million to enable it to commence intercontinental flights.
4. The banks will finance a capital increase of Crossair up to a maximum of CHF 350 million.
5. Resignation of André Dosé as CEO of SAirLines and appointment as CEO of Crossair. Strengthening of the management by taking over suitable executives of SAirGroup. No conflicts of interest with SAirGroup.
6. Crossair is granted an option for an instant license for the "Swissair" brand. If Crossair does not agree to the license fee, it may unilaterally terminate the license agreement.
7. dual headquarters Basel/Zurich strictly following cost-oriented criteria
8. Regulation of the takeover bid to minority shareholders
9. Requirement for approval by the relevant banking bodies
10. Requirement for formal recognition by the Board of Directors and approval by the Federal Council
11. Internal allocation among banks: UBS 51% - CS 49%

Mario Corti was degraded by this banking dictate to the mere administrator of the once-proud airline with the Swiss cross on the tail fin. It was deliberately prevented that Corti would play an active role in the new construct. Note that nowhere has it been stated that parts of the Swissair fleet are to be taken over. A fact confirmed by Alberto Togni in an interview with the *Corriere del Ticino* on November 22, 2001: At first no aircraft should be taken over! Only a gradual and above all, partial transfer of the Swissair fleet to Crossair was planned, the rescue of Swissair was not the aim, he said.

It is customary for a company that sells an investment to have the proceeds of the sale at its disposal. The SAirGroup, however, was faced with tough conditions in this respect. It was no coincidence that Federal Councillor Villiger noted when he first read the final version of the term sheet: "This is a surrender document!" UBS explained months later that the utilization of the sale price was limited in time because there was a risk that "the funds available to SAirGroup from the Phoenix transaction would be primarily absorbed by flight operations and would therefore not have been available for the continuation of flight-related businesses".<sup>11</sup> Besides: "Restricting the use of the purchase price was solely for the reasons for the protection and survival of flight-related companies". In doing so, they wanted to prevent Swissair from continuing its flight operations at all costs but tried to save the companies that are vital for Crossair (Atraxis, SR Technics, Swissport, etc.) from collapsing. They ignored the fact that if Swissair collapsed, its heavily dependent affiliated companies (former divisions of the Group) would inevitably also be in an emergency. Swissair was by far the most important customer for all these companies. None of these companies would have been able to cope with a sudden loss over the short term.

Particularly André Dose and Manfred Brennwald (head of operations at Swissair) attempted to convince the bankers that the fleet could not simply be shut down for three weeks and revived at the push of a button. Whoever has ever worked in an airline knows how much effort one flight cancellation can cause - let alone a complete shutdown of an entire fleet. An unthinkable idea - especially in October, traditionally the peak travel season. Once again, the bank representatives were warned by all present that a suspension of flight operations would harm not only Swissair but the entire Swiss economy, Switzerland's image, and ultimately the banks as well. Reconstruction costs and loss of customer confidence are immensely higher than providing interim financing.

On the morning of October 1, 2001, the Federal Council received a copy of the final version of the conditions by fax - which, however, deviated massively from the "New Crossair" solution discussed the day before. Peter Siegenthaler, head of the Federal Finance Administration, tried to contact UBS CEO Marcel Ospel immediately to draw his attention to the disastrous consequences of a grounding. But it was impossible to reach him. At the same time, Attorney Peter Widmer contacted Rainer E. Gut, Chairman of the Board of Directors of Nestlé and former Chairman of the Board of Directors of Credit Suisse for many years, to ask him to personally intervene with the decision-makers through his relations and his function as Honorary Chairman of Credit Suisse. He then contacted Ulrich Doerig, the Chief Risk Officer of the CS Group, to question the decision to refuse the operating loan. Doerig, completely upset, answered him: "You too are coming now. I've had enough! We can't change anything. If CS were prepared to do so, UBS is not. And that one dictates."

At the same time, both the Crossair and Swissair Boards of Directors met, as the banking solution had to be urgently approved. In Basel, people were aware of the risks that any interruption in Swissair's flight operations would entail.

<sup>11</sup> The report of the Parliamentary Commission of the Council of States that UBS assumed that the transfer of air rights was only possible after a temporary shutdown of the fleet and that, for this reason, the use of the sales price to maintain flight operations was deliberately excluded.



However, Crossair CFO Thomas Hofmann confirmed that “the banks are aware that the Swissair fleet will be on the ground for at least two weeks”. At the same time, in Kloten, there was further criticism that no funds were provided for maintaining flight operations. The minutes noted: “The BoD is concerned that granting the debt-restructuring moratorium could be considered as a sign of insolvency and lead to the grounding of the fleet”. Manfred Brennwald, Chief of Operations, warned one last time that grounding the fleet of aircraft would have disastrous consequences, as Swissair would be immediately deleted from all reservation systems worldwide. Mario Corti was therefore authorized by the BoD to urgently approach the government for a bridging loan of approximately CHF 250 million. The BoD notes that the proposal of the banking consortium, consisting of UBS and Credit Suisse, would lead to an immediate suspension of Swissair's flight operations. The President is charged with one final attempt, in collaboration with the federal government and the business community, to raise funds to prevent a business interruption”. Federal Councilor Villiger, who wanted to avoid a grounding at all costs, was immediately willing to pay half of this sum if the two major banks would take over the other half. He informed Marcel Ospel about this proposal immediately and asked him to contact Lukas Mühlemann. He was quite clear: “The Federal Council wants Swissair to continue flying!” Marcel Ospel, however, refused any financial support, took a period of reflection, and promised to return to the Federal Council at its inquiry. But UBS boss Marcel Ospel did not come back and pitifully let the Federal Council down. Although Lukas Mühlemann was contacted by Marcel Ospel he only asked him if he knew anything about a bridging loan. When the latter answered no, the matter was closed for Marcel Ospel.<sup>12</sup>

UBS justified its conduct in front of the Parliamentary Commission of the Council of States by stating that further financing would have exceeded the Bank's risk capacity. UBS could not and did not want to make any *à-fonds-perdu* contributions, as they could not have justified this to their shareholders and clients. Cheekily it was added: “The Swiss Confederation and Credit Suisse Group were at liberty to make such contributions, either alone or with partners.”

The media, however, reported around noon that a breakthrough to save Swissair had been achieved. Headlines such as “Swissair continues flying thanks to a billion-dollar loan from the banks” made the rounds.

## 6. Press conference of October 1st

At the press conference at the Hilton Hotel near Kloten airport, Mario Corti informed the media about the decision to sell the stake in Crossair to the banks and to apply for a debt-restructuring moratorium for parts of the Group. Two versions of the official SAirGroup press release were prepared for this conference. One version stated literally: “From Wednesday, October 3, 2001, the Swissair fleet will be temporarily shut down until Crossair takes over parts of Swissair flight operations”. Further: “Unfortunately, Swissair's flight operations will be suspended until the start of the winter flight schedule on October 28, 2001 at the latest, until Crossair has taken over the aircraft under the regulations”. A previous version even contained the following passage: “The banking consortium that provided Crossair with fresh capital expressly forbids using the funds allocated to Swissair Group to continue Swissair's flight operations and is not prepared to provide a bridging loan for this purpose”. But the press release, which was finally distributed, did not mention any grounding. The only information provided was that Crossair would take over “parts of Swissair flight operations” by the start of the winter flight schedule on October 28, 2001 at the latest. UBS's media release, however, stated that thanks to the measures taken by the major banks, Crossair could “absorb a significant part of Swissair's European and intercontinental flight operations as soon as possible”. Only those who read the media release carefully noticed that no money was intended for Swissair's flight operations: “Both the proceeds from the sale of the Crossair shares and the bridging loan will be used by Swissair to maintain the services associated with flight operations to maintain their value and profitability”. It was also pointed out that the implementation of the solution was linked to “various regulatory and commercial conditions”. Marcel Ospel was quoted: “We are committed to a far-reaching relaunch in the Swiss aviation business”.

The public was left to believe that Swissair would continue flying normally. The News correspondent explained to the TV viewers that nothing would change for the customer for the time being: “Tomorrow, the day after tomorrow and in the next few days Swissair and Crossair will continue flying unchanged”. In fact, at the time of the media conference, it was not clear whether the bridging loan would be available for flight operations and thus enable an organized transfer of the operation to Crossair. After consultation with the federal authorities, Mario Corti received an explicit request from Peter Siegenthaler not to inform the press conference about the planned shutdown of the operation, as the Federal Council is still in negotiations with the banks.

*“We will provide Swissair with additional liquidity to enable it to maintain its flight operations.” Marcel Ospel, UBS*

The banks praised themselves as “saviors of Swiss aviation”. Marcel Ospel dictated the journalists: “We will provide Swissair with additional liquidity so that it can continue to provide its flight operations or services related to flight operations”. In interviews, Marcel Ospel repeated



<sup>12</sup> According to the CS Group before the Parliamentary Commission of the Council of States of the Council of States, it had *not* been contacted by UBS in this regard.

several times that he did not consider it right from a regulatory point of view if the federal government took part in the rescue. He did not mention, however, that the Federal Council had offered to take over one half of a bridging loan. Contradictorily, he also pointed out the danger that liquidity might no longer be available on Tuesday (October 2).

Ulrich Bremi attended the press conference as a perplexed spectator - he was just as surprised by the presented solution as everyone else. His efforts to find financial backers were thus already over after only a few days.

Around 30% of Swissair's workforce (9,000 worldwide, 4,100 of them in Switzerland) lost their jobs in a single stroke with this solution forced by the banks - without the security of a financially guaranteed social plan - while Crossair remained untouched.

After the first euphoria, disillusionment spread among the media. First reports now spoke of a rescue exercise that turned into an enormous struggle for power for Swiss air sovereignty: With the help of UBS, Crossair President Moritz Suter wanted to become the king of the skies!

**Christof Moser, Moneycab, October 2, 2001:**

*"It's more amazing than Denver Clan: With a coup of the Basle Connection around Moritz Suter and UBS CEO Marcel Ospel, Mario Corti is to be undermined and put in the cold. (...) The UBS concept: Save the Swissair diamonds while forgetting the rest. It almost seems as if Suter and Ospel made a joint game and waited until Swissair was on the brink of collapse and accepted any rescue offer".*

**Beat Römer, Moneycab, October 2, 2001:**

*"It is no longer a question of saving the entire company, of preserving as many jobs as possible, but rather exploiting the opportunity of these days and satisfying Basel's desires with the company's diamonds. The whole process increasingly appears to be a cleverly orchestrated move that shuts Mario Corti offside and reinstalls Moritz Suter as "King of the Swiss Skies". The same Suter, nota bene, who has already thwarted the groundbreaking Alcázar project with all sorts of indiscretions."*

The Federal Council also held a media conference on the same day. In it, he expressly warned against grounding the fleet. He also stated his expectations to the banks and the SAirGroup to maintain flight operations.

On the evening of this memorable day, UBS General Counsel Peter Kurer contacted Alexander Karrer, an employee of Federal Councillor Villiger. The former Swissair, he said, must be wrecked. Only then something new can emerge and that is why the new concept is called Phoenix.<sup>13</sup> UBS could not have been clearer about Federal Councillor Villiger's proposal to finance flight operations until the takeover of Crossair.

*„The former Swissair must be wrecked.”*  
Peter Kurer, UBS

That same evening, André Dose tried to reach UBS CEO Marcel Ospel several times. He also contacted Peter Kurer, UBS's General Counsel, twice. Shortly afterward he received a call back - not from UBS but Moritz Suter. He told him to stop using the Federal Council or other bodies to get Mr. Ospel to prevent what had to happen! Months later, Moritz Suter denied having whistled back André Dose. But the manager, who stood next to André Dose during the controversial call, stuck to his witness statement: "Suter is lying! I wasn't dreaming."

## 7. Grounding

Due to the debt-restructuring moratorium announced the evening before, the cash requirement increased exponentially on this day, as all suppliers (Fuel, Ground Handling, Airport etc.) insisted on the immediate settlement of outstanding invoices and were only willing to deliver against prepayment. On the morning of October 2, 2001, according to SAirGroup, Swissair's available liquidity of CHF 4.2 million was just enough to allow the first wave of departures to start. The pilots were provided with money to pay the kerosene and the fees in cash. Subsequently, the oil companies refused to refuel the aircraft, which meant that all flights had to be delayed until further notice.

The figures below were easy to prove with bank receipts. Moneycab's business journalists confirmed this after having seen the original documents. Due to the announced debt-restructuring moratorium (risk of preferred creditors) and the de facto cancellation of the cash pooling facility by UBS, it was not possible to pay Swissair invoices with any other accounts (e.g. SAirGroup). It is important to note that most of the liquid funds were blocked and unavailable. A fact that UBS has always ignored to this day.

Swissair CFO Franz Kälin informed the Group's internal crisis management team at 7:30 a.m. that as a result of the new situation CHF 150 million instead of the average CHF 17 million in cash will be required on that day.

<sup>13</sup> The name change from "New Crossair" to "Phoenix" does not seem entirely coincidental, because Phoenix is known to be the bird of ancient Egyptian legend rejuvenating itself in the fire, which became the symbol of eternal renewal and a Christian symbol of resurrection. The saying "Like phoenix rising from the ashes" describes that someone or something that has already been seen lost and destroyed suddenly rises in new splendor, even renewed.

Federal Councillor Kaspar Villiger called both major banks at about 08:00. These told him that they had short-circuited and had previously agreed that they would pay until October 3 to have enough time to find a solution - with the help of the Federation. Kaspar Villiger assumed that the danger of a grounding had thus been averted and that sufficient time was available to find a joint solution. In the meantime, the Federal Council wanted to draft a short communiqué, and have it dealt in parliament the next day. According to Villiger's ideas, the banks could have advanced money and the financing would have settled somewhere at "fifty-fifty".

At 08:10 Peter Kurer (Legal Counsel of UBS) confirmed to the SAirGroup lawyers that Crossair's legal department had been given detailed instructions on the forthcoming transaction. The telephone conference between UBS, CS and SAirGroup lawyers, scheduled for 08:30, was postponed by one hour because not all parties had the latest version of the contract. The signing was rescheduled from 10:00 to 14:00, as SAirGroup lawyers were unable to obtain all the additional documents required by UBS. Contrary to UBS's statement, however, Crossair's legal department had not received any instructions for the transaction and first had to be instructed by the SAirGroup lawyers.

At 09:15 Federal Councillor Kaspar Villiger called Lukas Mühlemann (CEO CS Group) and Hans-Ulrich Doerig (Vice President of the Executive Board and Chief Risk Officer CS Group) to inquire why CS had not responded to the bridging loan proposal. Both pointed out that they were unaware of this proposal but were spontaneously willing to contribute half of the requested CHF 125 million. Alberto Togni from UBS was then contacted. However, he categorically refused: In his opinion, Swissair had enough money to maintain flight operations!<sup>14</sup> CS then proposed at least to extend the use of the proceeds from the sale of Crossair's stake to October 5, which was acceptable to Togni.

At the same time, Mario Corti tried to make personal contact with UBS. But Marcel Ospel was on board a private jet on his way to the USA this morning and could not be reached for the time being, because the onboard telephone supposedly defected.<sup>15</sup> His deputy Alberto Togni, according to his secretary, was continuously in meetings. Mario Corti asked her to send him an urgent message. When Alberto Togni finally answered, he said there should be no hustle - first the sale contract had to be signed - no money would be flowing before this. Mario Corti urged him to transfer the pro-rata purchase price (CHF 132 million) for the Crossair shares in advance by 10:00 at the latest, otherwise, a grounding of the fleet would be unavoidable. Lukas Mühlemann was also informed accordingly.

At 10:00, neither money had been transferred nor UBS had called back. Alberto Togni did not answer before 10:40. Although the transaction was about to be concluded, an upfront advance payment of the purchase price was refused. UBS insisted that all formal conditions must be fulfilled first and that payment could only be done after the purchase

## Liquidity Situation of SAirGroup

(All values are day-end balances in million Swiss Francs)

	Friday 28-Sep-01	Monday 01-Oct-01	Tuesday 02-Oct-01	Wednesday 03-Oct-01
<b>SAirGroup</b>				
UBS	32.4	30.5 <sup>1)</sup>	27.9 <sup>1)</sup>	34.8 <sup>1)</sup>
CS	9.8	9.8 <sup>2)</sup>	9.8 <sup>2)</sup>	9.8 <sup>2)</sup>
HSBC	0	0	73.2 <sup>3)</sup>	98.1
Subtotal	42.2	40.3	110.9	142.7
of which disposable	<b>42.2</b>	<b>10.5</b>	<b>81.0</b>	<b>112.9</b>
<b>SAirLines</b>				
UBS	0	0	-2.5	228.2 <sup>4)</sup>
CS	0	0	0	0
Subtotal	0	0	-2.5	228.2
of which disposable	<b>0</b>	<b>0</b>	<b>-2.5</b>	<b>228.2</b>
<b>Swissair</b>				
UBS	1.9	3.3	-7.1	7.2
CS	0.5	0.5 <sup>2)</sup>	0.5 <sup>2)</sup>	0.9 <sup>2)</sup>
Postal account	0.6	0.9	1.2	1.3
Subtotal	3.0	4.7	-5.4	9.4
of which disposable	<b>3.0</b>	<b>4.2</b>	<b>-6.1</b>	<b>8.5</b>
<b>TOTAL</b>				
Subtotal	45.2	45.0	103.0	380.3
of which disposable	<b>45.2</b>	<b>14.7</b>	<b>72.4</b>	<b>349.6</b>

1) CHF 20 mio. were blocked by UBS (Pension fund deposits)

2) Account blocked as of October 1st

3) Arrived not until after 17:30 from escrow account

4) Proceeds from the sale of the Crossair stake



Photo © SF DRS

<sup>14</sup> UBS allegedly assumed that, despite the announcement of the debt-restructuring moratorium, daily cash requirements would remain unchanged at CHF 17 million and did not take into account in any way that the need for cash would explode in such a situation. If a small regional bank falls into a crisis and all scared small customers want to withdraw their deposits at the same time at the counter, it would also be advisable to provide more than just the daily cash requirement based on experience! The reclaiming of loans or the refusal of financial support to companies and the resulting opening of bankruptcy proceedings or the initiation of a debt-restructuring moratorium are also part of the daily business of every bank. As a result, it is completely unconvincing that UBS could not have foreseen the panic-like reaction of suppliers. The success of a debt-restructuring moratorium depends not only on the serious preparation, but also on the surprising announcement and rapid implementation in order to minimize uncertainty among customers, employees and suppliers. Announcing a debt-restructuring moratorium in advance - and this without adequate financial support to counter the prepayment reflexes of the suppliers - is sheer suicide. These interdependencies are well known to every bank.

<sup>15</sup> Even at that time, any business aircraft can be reached by modern means of communication, be it via in-cabin telephones, Internet access or not at least via ACARS, a kind of e-mail with which ground stations send messages to aircraft crews. This applies in particular to corporate jets as used by UBS.

agreement had been signed. The opening of a credit line was also expressly refused: Swissair had long since lost its creditworthiness and a loan would no longer be repayable!

Due to ongoing new demands, UBS lawyers further delayed negotiations on the purchase agreement for the Crossair shares despite their awareness of the serious emergency. In particular, the unexpected insistence on drafting and signing an option agreement to take over the “Swissair” brand - which was not originally intended in this form - significantly delayed the processing of the sale of shares. Instead of a license, a purchase option should now suddenly be incorporated in the contract (full purchase instead of mere licensing, exclusivity rights, an extension to the “Balair” brand).

News arrived from England that two Swissair aircraft were held back as local authorities wanted to see the cash. Flights to Brussels were canceled as a precautionary measure to prevent the same fate. Mario Corti immediately informed Federal Councillors Kaspar Villiger and Moritz Leuenberger about the latest developments.

At 11:00, an attempt was made again to ask UBS to cooperate, but neither Alberto Togni nor Marcel Ospel was available. Finally, at least one legal representative of the bank was available on the phone. Mario Corti now energetically demanded: “We need help now!”. Mario Corti had pressed the speaker button. The banker's answer: “Blocked airplanes? That's not so bad! I've been stuck in a plane once.” Universal head shaking in the room. “They want us on the ground,” one of the present executives said spontaneously. Corti announced that the money must be available by 14:00 at the latest as a grounding was imminent.<sup>16</sup> At the same time, Peter Kurer informed the SAirGroup lawyers that the contract of sale would not be signed at Kloten Balsberg as originally planned, but rather in the law firm of Lenz & Staehelin in the city of Zurich.

At 11:15, Crossair's legal service informed that Crossair's BoD resolution was not possible before 15:00, and this caused problems to record the shares in the share register, as it was in Zurich and was not accessible in the afternoon.

At 12:40, SAirGroup received a new, more detailed draft of the option agreement, which went far beyond the condition set out in the Phoenix term sheet regarding the “Swissair” brand name.<sup>17</sup>



Photo © Keystone

Indescribable chaos has broken out at Zurich Airport. All planes of the midday peak were awaiting refueling with the passengers on board. Thousands of passengers were stranded. Nothing worked anymore! For Swissair employees, it was the day of the greatest shame. Total humiliation!!

The following press release was published early afternoon: “Swissair's flight operations were suspended at 12:30 CET. All aircraft on the air continue their flight to their destination as scheduled. Swissair is conducting intensive negotiations with the banks to ensure that flight operations can continue. A final decision will be taken at 14:00.”

But the deadline of 14:00 passed without a bank transfer or call from UBS.

At about 14:10 the SAirGroup lawyers arrived at the law office in Zurich. Surprisingly, the signing of the term sheet was now demanded by Peter Kurer. Since this was not previously planned, the lawyers did not have the authority to do so. According to Kurer, the option agreement between Swissair, SAirLines and SAirGroup had to be approved before the signing of the share purchase agreement. However, the agreement on the use of the “Swissair” brand went far beyond the provisions of the term sheet.<sup>18</sup> This led to heated discussions. At 15:00, Crossair's Board resolution arrived at the law firm, but Peter Kurer refused to acknowledge it - since a single signature was still missing. Although there was oral approval, he deemed the decision to be invalid. Also, the Board resolutions of SAirGroup and SAirLines were criticized and a further letter was demanded. Furthermore, Peter Kurer still insisted on the signing of the term sheet by Mario Corti. In front of the Parliamentary Commission of the Council of States, UBS claimed that they had been prepared at 14:00 to transfer the purchase price immediately as soon as SAirGroup would bring the shares and that all other conditions would be waived. They blamed the CS lawyers who, according to them,

<sup>16</sup> In the book *Blackbox Swissair*, the former president of the personnel committee confirms the events: “By chance I witnessed in Mr. Corti's office for two hours the rotten game UBS was playing with the SAirGroup on that day. Even today, I am still amazed at the insolence with which UBS has publicly claimed that on October 2 there was enough money in the accounts of SAirGroup to maintain flight operations. In these two hours I also saw UBS delaying the signing of the relevant transaction agreement for shabby and formalistic reasons.” Days later, he was able to speak to the same UBS management member who made the first telephone call to Mario Corti that morning: he complained that Mr. Corti had “not exactly caught the right tone” at the time.

<sup>17</sup> René Lühinger, editor-in-chief of *BILANZ*, suspected after the sale of Swiss to Lufthansa that UBS wanted to enforce access to the “Swissair” brand with all power, because even at that time it was speculating that Lufthansa as a potential future buyer of the investment would value the brand name very highly.

<sup>18</sup> UBS claimed that the option contract for the Swissair brand was not linked to the purchase contract.



stubbornly insisted on the fulfillment of all conditions. During the debate with the Parliamentary Commission, the CS representatives vehemently contradicted the statements of UBS. UBS had never filed such an application.

In the meantime, the situation in the airplanes and at various airports was becoming increasingly chaotic and uncontrollable. Passengers already seated in the aircrafts were asked to disembark, return to the terminal and wait for new information. The flight duty regulations (working time restrictions for flying personnel) have been massively exceeded in some cases. Where possible, the crews were exchanged to allow them to start at any time.

Kuoni, the largest Swiss tour operator, no longer issued Swissair tickets. American Airlines immediately terminated its codeshare agreement.

At around 15:20 Manfred Brennwald called Mario Corti: “Mr. Corti, it is no longer possible! For safety reasons, we are no longer able to fly like this!” The latter asked for time to think it over.

At 15:35, Mario Corti was obliged to accept the proposal of his Head of Flight Operations to suspend flight operations owing to the safety risks of exceeding the flight duty regulations. He then immediately informed the Federal Council and the Board of Directors of SAirGroup. With watery eyes he sat in his office, devastated. When he stepped out of his office he said to his employees: „I'm sorry”.

Thousands of holidaymakers were stranded at the airport waiting for more information. Then at 16:17, after news of the end had already been reported on the radio, a devastating announcement came over the loudspeakers: “Swissair is no longer in a position to carry out its flights for financial reasons. Therefore we can't pay out any compensation. We have to ask you to arrange your travel plans with another airline or via your travel agent.” Thousands of Swissair tickets had suddenly become worthless. One after another, faxes from airlines terminating their interline agreements arrived at the headquarters. Crossair was the first airline to cancel reciprocal staff travel with Swissair.



In Basel a spokesman for Crossair commented unemotionally on the Swissair grounding: “Since noon we no longer belong to Swissair, the banks have bought us out”.

Finally, at 16:30 Peter Kurer waived the obligation to sign the option agreement. However, the listing in Crossair's share register was still outstanding. But Kurer had achieved his goal.

Only at 17:35 - two hours after the grounding - the confirmation of the listing in Crossair's share register arrived and the sale contract was finally legally valid. Only now were payments initiated by the banks. In a media release, UBS announced that the purchase proceeds were “already available to SAirLines”. However, the CHF 132 million from UBS arrived in the accounts of SAirLines - not Swissair, mind you. CS transferred the purchase price of CHF 126.8 million the following day. The amount was paid in two tranches to the account of SAirLines on October 3, 2001 at 14:22 and 14:48. Negotiations on the license agreement for the use of the “Swissair” brand continued in the evening and were not signed before 21:30.

The USD 45 million (CHF 73.2 million) held in an UBS escrow account of SAirGroup (not Swissair, as originally paid in by Flightlease<sup>19</sup>) were released after long negotiations with the aircraft manufacturer Airbus in the night of October 1<sup>st</sup> to October 2<sup>nd</sup> by the Wiederkehr Forster law firm, but due to the announcement of the application for a debt-restructuring moratorium and the resulting unclear legal situation, extensive investigations were necessary, which made speedy processing impossible. Besides, the responsible fiduciary demanded the payment order in writing together with a legally correct confirmation that the company was not (yet) in default. It was not until 17:30 that the money was transferred to an account of SAirGroup.

Crossair told the SDA news agency that unlike Swissair, Crossair's flight operations are proceeding normally and no difficulties were expected.

Swissair crews were stranded all over the world. Some crews were even literally thrown out of their hotels and could no longer withdraw money from their expense accounts. The Operations Control Centre called on all crews staying

<sup>19</sup> Flightlease was a subsidiary of SAirGroup which dealt with aircraft leasing and asset management. It owned a large number of the aircraft operated by Swissair, which was leased to Swissair.

abroad to return home as soon as possible. Many airlines were willing to transport them free of charge, even Sabena. Crossair, on the other hand, was only willing to do so against payment.

On the evening of this memorable 2nd October, the discredited Federal Councillors Kaspar Villiger and Moritz Leuenberger and Vice-Chancellor Achille Casanova addressed the media, criticizing the two major banks and explicitly UBS Chairman Marcel Ospel with unusual severity. Never before had a press conference in the Federal Parliament been held in this conciseness: "Yesterday evening the Federal Council made it clear that the banks should take the necessary measures to prevent a shutdown. Today we have to conclude: The banks have not complied with this clear request". The banks have assured that flight operations will be secured until the 3rd of October. The federal government had offered financial support several times, but the banks had refused. Moritz Leuenberger spoke of the damage to the image of Switzerland and the catastrophic consequences. The responsible persons of the new airline had said that airplanes might remain on the ground so that the new airline would look even more glamorous. He also expressed the suspicion that they had speculated that the revenue for unused tickets would become part of the bankruptcy assets. "Trust in the whole economy, in the whole of Switzerland, has been deliberately muddled." Kaspar Villiger added: "You can't destroy a brand name like that". When asked whether he felt betrayed by the two big banks, he answered diplomatically he was sorry that they hadn't tried to solve the problem jointly.

In an interview Mario Corti said: "I never thought I'd ever have to beg for money on my knees!" As a guest in the evening news studio, he was asked if he had been cheated by the banks. He assured that he had repeatedly pleaded for an advanced payment. He had already made it clear in advance that an announcement of a debt-restructuring moratorium would increase liquidity requirements and that the necessary cash would have to be available at the beginning of the day: "If we had been able to draw on the account, this would not have happened!"



Photo © SF DRS

On the same evening, Josef "Joe" Ackermann, CEO of Deutsche Bank, contacted Federal Councillor Pascal Couchepin and outlined to the Minister of Economic Affairs an envisioned concept for a rescue company under the leadership of Swissair. Deutsche Bank affirmed its willingness to actively participate in a rescue package and highlighted its extensive expertise in corporate restructuring, especially in aviation. Couchepin, who was removed from the Swissair case by his colleagues Villiger and Leuenberger, sensed an opportunity to get himself back on the political scene. But already the next day, October 3, 2001, the offer was dropped by Couchepin.



**Alberto Togni,**  
Full-time Vice  
Chairman of the  
UBS Board of  
Directors

UBS disappeared into obscurity. Media inquiries were not answered. Marcel Ospel was in the USA and the head of communications was on holiday. For the news program *10vor10*, the only available representative was called up: Alberto Togni. On the day where 262 Swissair flights had to be canceled and 19,000 passengers stranded worldwide, the nation witnessed a stiff banker who was unable to say a word of regret. On the contrary! With a whining voice, he lamented the lack of recognition for the enormous effort his bank had made: "No one could have done what we did in such a short time." He was probably right - but not in the sense he had meant it. "That the planes are on the ground, that's not our problem!" Or: "Mr. Ospel has postponed his departure by 24 hours, and he has also other obligations for God's sake". UBS executive board member Jürg Haller was interviewed on Radio DRS the following day: He pointed out that 80 Crossair aircraft were in the air and reassured that Crossair would soon function well thanks to the support of the major banks.

Again, not a word of sorrow or regret.

It is astonishing that aviation journalist Sepp Moser, who otherwise always relies on insider knowledge and anonymous sources, hardly mentions the fateful days in his book *Bruchlandung*, because he - as he writes - was only able to portray the events in a highly condensed form for the sake of clarity. About the grounding, he writes uniquely: "For reasons that are still unclear for the time being, Swissair suspended its entire flight operations on October 2 and 3 without any warning. According to Moser, the Phoenix project was launched jointly and amicably by banks, SAir-Group and Crossair.

## 8. The days after

The public in Switzerland was outraged! The people's anger was mainly directed against the two major banks. Thousands of customers had their accounts balanced and withdrew their funds. But neither UBS nor Moritz Suter made a statement: Universal silence!!

The reaction of the press was very fierce:



**NZZ:** „Massive damage“, October 3, 2001:

*“The two major banks UBS and CS Group have acted as saviors of Swiss aviation on Sunday and Monday. (...) However, the way in which the “reconstruction” was apparently implemented and how an unprecedented chaos was caused on Tuesday is defying description. (...) Two banks are using fine words to justify their commitment to Swiss aviation, but apparently cannot or do not want to ensure that Swissair’s flight operations run safely until October 28 and that an organized transition to the new Swiss airline can take place. (...) If all customers with paid tickets and employees with accounts at Swissair’s own deposit office are offended over the next few days by counting their claims as part of bankruptcy assets, the disaster will be complete, and the damage will hardly be repairable. (...) It seems that no one on Bahnhofstrasse has realized how worthwhile it would be to maintain even a lossmaking Swissair flight operation for a few weeks. (...) However, no one can deny that the banks, which have simply disappeared when it comes to communication, are causing enormous damage to the confidence in our economic system and the reputation of Switzerland and Swiss aviation with their clumsy, if not even stupid or ruthless behavior.”*

**Tages Anzeiger:** „They lie to the Federal Council“, October 3, 2001:

*“Never since the state was founded has a democratically elected government in Switzerland been so humiliated by a banker as on October 2. Marcel Ospel, a banker from Basel, is not available for the Swiss Finance Minister. (...) The Confederation is prepared to guarantee Swissair’s flight operations together with the banks on a temporary basis. But the banks, more precisely: Ospel’s UBS, are not interested - and consider it unnecessary to communicate this. They save themselves in dodgy excuses, one can also say: they lie to the Federal Council. (...) One wonders where these people live. One guessed that they had long since said goodbye to this country politically. But with such brutal honesty they have never told the public. However, it was less known that as businessmen they have ascended to new dimensions, where there are no more customers, only useful idiots. This strange mixture of arrogance and political naivety is not easy to understand.”*

**Blick:** „Arrogance that shudders“, October 3, 2001:

*“They have embarrassed us in the whole world. (...) Switzerland is a banana republic. (...) Everything we are proud of all went down the toilet in a single day yesterday: Honesty. Cautiousness. Reliability. Politicians and businessmen have disgraced themselves and us”*

**Basler Zeitung:** „Apprentices magicians at work“, October 3, 2001:

*“Either the brutal crash of bankrupt Swissair was consciously accepted, or there were apprentice magicians at work who did not know what they were about to cause.”*

**The Wall Street Journal:** „An unparalleled embarrassment“, October 3, 2001:

*Either incompetents are at work - or malicious cynics who deliberately want to destroy not only the former Swissair, but also the brand, the well-established reputation. (...) It is hard to believe that UBS and Credit Suisse are headed by dilettantes. Is there a plan? Did they want to create chaos to help the new airline take off?”*

**Tages Anzeiger:** „At least one alpha animal lies“, October 4, 2001:

*“Tuesday’s disaster has proven that the economic costs and the damage to the country’s image are huge. Who only wants to cherry-pick and could not care less what happens to Swissair proves autistic thinking that is geared towards short-sighted maximization of benefits alone? (...) The banker from Basel (Ospel) is putting his credibility at risk if he now passes the buck to Mario Corti and claims that Swissair had enough money. That contrasts with Lukas Mühlemann’s statement that a financing was actually not possible in time to secure the company. At least one of the alpha animals seems to be lying.”*

The planes remained on the ground on Wednesday since a large fleet of aircraft - even with enough financial resources - cannot be brought back into the air simply by pressing a button. Major US airlines such as American, United and Delta required well over a week after the lifting of the flight ban after 9/11 until their complex systems were functioning again to some extent. It is not enough for a large intercontinental airline to simply turn the starter key like in a car!

Due to the passivity of the big banks, the Government had an unintentional duty to save what could still be saved.<sup>20</sup> On the same day, the Federal Council decided to grant a financial injection of CHF 450 million<sup>21</sup> à fonds perdu (without the participation of banks) for the continuation of flight operations in order “to stop the blatant destruction of economic values”, as the President of the Parliamentary Supervisory Body explained. Federal Councillors Leuenberger, Dreifuss and Metzler opposed this emergency loan. The two magistrates of the Social Party considered the grounding “an unacceptable oppression for a democratic government”. Federal Councillor Kaspar Villiger did not spare the banks from another bashing: “The closing down of any industrial company and a complex public air transport system is a different matter”. The investors had underestimated excessively the “soft factors”. At the same time, the Federal Council instructed SAirGroup to develop alternatives to the Phoenix concept, which were to be presented the day after next, on October 5, 2001.

Without the rapid intervention of the federal government, an estimated 40,000 unemployed would have had to be reckoned with in the Zurich area alone, as it was feared that many companies dependent on the airport would have been sucked in and would have triggered an unstoppable avalanche. According to a study, over 93,000 jobs and 215,000 lives were directly or indirectly linked to the airport.<sup>22</sup>

<sup>20</sup> Quote from the Swiss TV news: “After the banks failed yesterday, Bern is in demand today to limit the damage of the Swissair crisis”.

<sup>21</sup> The restrictive bridging loan envisaged in the Phoenix term sheet (condition 2) was thus no longer required and was never drawn upon. The Federal Loan was based on Art. 101 of the Aviation Act - even though the Federal Council had previously always spoken of a “lack of legal basis”.

<sup>22</sup> An Infras study from 2005 calculated a decline in Gross Value Added for the airport of Zurich between 2000 and 2004 from CHF 15.8 to 13.2 billion and a loss of approx. 23,000 full-time jobs (formerly 120,000). A more recent study even speaks of a loss in value added of around -25%.

The two major banks announced that the deadline for using the proceeds of the Crossair share sale for Swissair's flight operations would be extended from October 3 to October 5 - but the entire fleet was already grounded and difficult to get back in the air. On October 3 alone, 39,000 passengers were affected by the cancellation of around 470 flights.



Foto © Keystone

The private savings of SAirGroup employees in the company's deposit bank (around CHF 100 million) were blocked by the banks and designated for the bankruptcy estates. There had not yet been sufficient separation of the private deposits of employees from the Group's liabilities and there was a risk that these private funds would have disappeared into the bankruptcy assets without any preferential treatment. Days before, employees had been queuing up for hours at the company's cash registers and only were paid a maximum amount of CHF 5,000 - irrespective of the amount paid in. The private credit cards of the employees had also been blocked by UBS and CS. As early as September 29, SAirGroup instructed them to transfer the funds held in CS and UBS

accounts to the individual salary accounts of their employees. This did not happen anymore, however, as the banks had blocked the accounts with the justification of creditor preference. It was only thanks to the intervention and pressure of the Federal Council that the savings deposits were finally released. According to Federal Councillor Kaspar Villiger, this was the counteroffer of the two major banks to avoid having to participate in the financial injection for Swissair. Releasing these amounts can perhaps seem "generous" from a bankruptcy law perspective - from a moral-ethical point of view, it was probably nothing more than an act of fairness!

The two major banks endured hard criticism with silence. On October 3, 2001, Marcel Ospel contacted his employees by e-mail: UBS had given its best and it could not have done more. He claimed that UBS was ready to transfer the money as of 2 pm. But it was CS that insisted on the completeness of all documents. Lukas Mühlemann wrote to his employees that the federal government and CS were prepared to grant a bridging loan to maintain flight operations - but "timely financing, however, had not materialized". UBS Chief Legal Counsel Peter Kurer, however, publicly stated: "We had not wished to take over the moribund Swissair, which we have known inside and out for years. In any case, Swissair could not have been saved!"

On the same day, UBS invited the new management team of André Dose to Zurich's Bahnhofstrasse to address the crisis. Quote from the book *Sturmflug*: "Now even the otherwise self-confident bankers were beginning to panic. We were instructed to use the back entrance." At the same time, a meeting with Federal Councillor Kaspar Villiger took place in Bern. Suddenly, Federal Councillor Pascal Couchepin appeared accompanied by Mario Corti. The latter announced that there was an alternative to "Phoenix" if the Confederation was prepared to finance the restructuring of Swissair. But Villiger had little sympathy for this proposal. Nevertheless, Couchepin publicly confirmed that the federal government is examining alternatives: "Now there is the banking solution, but perhaps there are other solutions that would be better."

Only in the late evening of October 3, 2001 UBS CEO Marcel Ospel appeared before the media: From the US he tried to appease in the news program *10vor10*: The aim was to do something for Switzerland: Namely to build a Swiss airline based on Crossair with parts of Swissair. When asked if UBS was behaving naively, he replied: "We were surprised... we knew there was a risk. Swissair has explained to us that it may be necessary to partially suspend flight operations - for reasons of flight safety, but also other reasons - e.g. liquidity issues". However, liquidity had always been available - not least on UBS accounts: "I know what was in the accounts; I know what Swissair needs in liquidity per day. I can only say: "There has been more than necessary". According to him, the grounding was completely unexpected: "We were even more surprised that shortly after the press conference - where this was not mentioned - the fleet was completely shut down without warning! He further specified that UBS was always of the opinion that the Swiss Confederation was not required for the new company but was invited to join in out of pure courtesy. However, there was no objection against the financing of the old company's flight operations by the federal government: This would guarantee flight safety during the debt-restructuring moratorium and ensure that the aircraft "would not get stuck abroad". Like his Vice-President Alberto Togni the day before, he took every opportunity to highlight the extraordinary performance of his bank. In the same program, Credit Suisse CEO Lukas Mühlemann was interviewed for the first time. Visibly drawn from the last days he stuttered into the microphone: "I regret what happened. We fought until the end that this would not happen! Unfortunately, it didn't work".



Foto © SF DRS



Photo © Keystone



Photo © Keystone

10,000 SAirGroup employees demonstrated peacefully outside their headquarters in Bâle on October 4, 2001 and then walked to the UBS building in Glattpark. On self-made signs, there were slogans such as: “We would have liked to have flown you today” “Mr. Ospel: Apart from money, people do exist” or “UBS = United Bandits of Switzerland”. The following day, thousands of Swissair employees demonstrated in front of the Federal Parliament in Bern.

At the same time, the two chambers of parliament were discussing the Swissair crisis. The two Federal Councilor Moritz Leuenberger and Kaspar Villiger personally informed the parliamentarians about the negotiations of the past days. Federal Councillor Villiger confirmed several times that the banks ruled out the use of funds to maintain flight operations. He said literally: “The banks wanted this grounding: If everything stops, it is much easier to restructure everything. From a purely technocratic point of view, their thinking seems to be somewhat understandable: Only a grounding would bring “a bit of peace to the restructuring process”, prevent losses and enable them to build something new. However, the Federal Council had tried until the very end to finance flight operations, but the banks remained firmly convinced that restructuring with a grounding would be easier. The parliamentarians harshly criticized the behavior of the major banks: Hans Hofmann, Councillor of the Canton of Zurich: “The banks humiliated our country in front of the whole world! I cannot get rid of the suspicion that this scenario has been planned in detail by these banks. They took over Crossair, 70 percent of which they now own, and they wanted Swissair to die as quickly as possible so that they could let their new airline rise from the ashes like a phoenix”. Maximilian Reimann, Councillor of the Canton of Aargau: “I do not want to imply to Mr. Ospel and his people that they maliciously co-induced this debacle. But they at least carelessly played a game that had to lead to this debacle. At least they have not considered the consequences of a dawdling credit policy”.

*„The banks wanted a grounding: If everything stops, it is much easier to restructure everything”*

Federal Councillor Kaspar Villiger

In New Zealand, the government decided to take over the majority of Air New Zealand, which was privatized in 1989 and was also bankrupt after 9/11.<sup>23</sup>

On the same day, Swissair aircraft took to the skies for the first time. However, only 160 of the 486 flights could be operated as scheduled and these were only sparsely occupied. Booked passengers had already looked for alternatives as a precaution and canceled their bookings. Tour operators switched their customers to other airlines and their competitors Lufthansa, Air France, etc. took advantage of the situation and attracted financially attractive business travelers with lucrative corporate agreements and committed them to themselves for the long term. The pilots were given cash to pay the fueling, landing fees or catering costs at the destinations. Utilization of the flights was at a dizzying low level. There were even flights with fewer passengers on board than crew members.

In a media release, it was announced that Lukas Mühlemann, CEO of Credit Suisse, is stepping down from the SAirGroup Board of Directors with immediate effect. This was the consequence of his bank's commitment to Crossair and the Phoenix plan. Previously, after repeated insistence, he succeeded that the formal application for a debt-restructuring moratorium was submitted to the relevant authorities.

In the nightly news program *10vor10* of Swiss Television, Ulrich Thielemann, a business ethicist at the University of St. Gallen, spoke empathetically about the crisis, which reached more and more proportions of an ancient Greek drama: It was simply incredible how the government, the staff, the passengers and the population of a country had been disgraced. He could not imagine that this was a mishap, but rather a real coup: “Here the opportunity was taken, and a grounding was tolerated with embarrassing efforts of explanation! They’ve gone too far!” In a newspaper interview on the morning of the same day, he said: “The outrage at the banks is justified, they have not accepted their responsibility towards all involved. This is not about the bankruptcy of any regional airline, but about the na-

<sup>23</sup> The Air New Zealand case was similar: following the takeover of the ailing Australian airline Ansett Australia, it was also wrecked after 9/11. The government immediately jumped in with NZD 870 million (the equivalent of around CHF 575 million). In the meantime, New Zealand's flag carrier has again reported record profits and received countless awards for its excellent service. The aviation magazine Air Transport World awarded her Airline of the Year 2010 and 2012.

tional airline of Switzerland. With all the reluctance of the ethicist about specific cases - here I have no problem to say loud and clear: "This is a monstrosity!"

On the morning of October 5, 2001, at a short notice press conference, the Federal Council announced that it only supported the Phoenix concept and abandoned any alternatives. The delegation of SAirGroup, which traveled to Bern with alternative solutions as requested by the Federal Council, heard on the radio about the unexpected change of opinion! The Federal Council was therefore no longer willing to examine other solutions and expressed its full support for the Phoenix Plan. Federal Councillor Moritz Leuenberger explained: "There are always 1000 well-intentioned ideas in such situations, but today the debt-restructuring moratorium has been initiated: There's no other way than that!" He also commented on the role of the banks: "The two major banks expected a grounding on October 4. "They had not deemed that a grounding was so terrible and had no ill intent" added Federal Councillor Kaspar Villiger. At the same time, Federal Councillor Leuenberger called on media representatives to ask only "forward-looking" questions instead of "investigative fact-finding questions to assign blame". The invited SAirGroup delegation was not even heard.<sup>24</sup> Mario Corti was instructed to sign the loan agreement with the Swiss Confederation and to commit himself to cooperate faithfully with Crossair.

On the same day, Moritz Suter wrote Mario Corti a personal letter in which he accused him of being the sole person responsible for the grounding - by the way, the only sign of life of Suter during the days immediately after the grounding. It is no coincidence that a copy of the letter was sent to the editorial staff of the newspaper *Cash*. Already at the beginning of the 90s, Moritz Suter knew how to cleverly use the media for his interests. In his reply, Corti pointed out that he had been in telephone contact with him on October 2nd, and that Suter promised to reach Mr. Ospel. Only much later it became known that Suter's "personal" letter was written in cooperation with attorney Ernst Staehelin and was subsequently modified and extended by Prof. Peter Böckli. Böckli was Vice Chairman of the UBS Board of Directors and a member of the Executive Board alongside Alberto Togni and Marcel Ospel. At Mario Corti's inauguration in March 2001, Suter assured his unconditional loyalty: In a personal letter he wrote: "If I can be of any help, you know you can always count on me".

In another *Arena* show on Swiss television, UBS boss Marcel Ospel finally appeared in the media and admitted having made mistakes. He acknowledged that he should not have traveled to the USA, but rather would have stayed in Switzerland to deal with the crisis. Of course, he did not specify what other mistakes he had made. In his view, it was probably the unprofessional "no comment" attitude after the events and the resulting damage to his bank's reputation, which he had seemingly totally underestimated. However, he did not apologize for his role in the grounding debacle, but only condemned the fact that his communication had been too vague: They only wanted to invest in a new airline and not in the old Group. The promise he made during the media conference on October 1 to provide Swissair with liquidity was "a bit a slip of the tongue"! The promise to pay money thus became a cheap "misunderstanding". It is indeed unthinkable that a top executive should mispronounce such a central statement without noticing it. This is like when the groom would say later that the "yes" in the church was just a slip of the tongue! Nevertheless, he confirmed that he was expecting that aircraft would stay on the ground. He was only astonished that suddenly all of them could no longer start and that this was already the case on Tuesday. Thus, he implicitly admitted that their internal concept included a grounded fleet. When asked why he had not replied to the Federal Council, he responded smugly: "The Federal Council had certainly got all telephone calls answered". When asked if the Federal Council was lying in this matter, he said it must have been another misunderstanding. Nonetheless, this brilliantly coached and media-effective *Mea Culpa* of Ospel<sup>25</sup> was sufficient that weeks after the grounding no one was asking about the reasons anymore, since the media and the public were already totally absorbed with the turmoil surrounding the build-up of the new national airline, the war in Afghanistan and the fear of the anthrax virus.

Advertisements appeared in newspapers the following day from a "UBS without Ospel association" calling for immediate de-election at an extraordinary general meeting. This was justified by his apparent weakness in communication: Unavailability, false and vague statements, and inappropriate crisis management. Asked about these advertisements, Marcel Ospel replied in the news program of Swiss TV: "I sincerely regret that the great achievement my bank has made has not been acknowledged". He categorically ruled out any resignation: "Of course not! The bank needs me!"

On October 8, 2001, UBS published a media release with the following content: "UBS is providing the management of the new Swiss airline with CHF 55 million to mitigate the impact of last week's events on passengers, clients and

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<sup>24</sup> René Müller, former President of the SAirGroup Personnel Committee, states in the book *Black Box Swissair*: "One thing immediately becomes clear to me: That this behavior on the part of the Federal Council is something of the most unbelievable thing I have experienced and witnessed in recent months. A delegation from the SAirGroup goes to Bern in accordance with the mandate of the Federal Council in order to present alternative proposals, and on its way to Bern it has to learn on the radio that the Federal Council had already decided for another solution on the morning of the same day without informing the persons commissioned by it. This is so outrageous and so incredulous that I still can't believe it."

<sup>25</sup> In his book *Sturmflug*, André Dose recalls how perfectly the PR department had prepared Marcel Ospel for his publicity tour: "When I was standing beside him, I saw a whole stack of cards lying in front of him, on which all the statements he was supposed to make that evening were written in large letters".



partners of Swissair. Funds are also being made available to Zurich Airport to enable passengers to continue their journey.” Thus, the bank was now ready to spend almost the same amount that it had ultimately denied SAirGroup a week earlier as part of a bridging loan!

During the days from October 7 to 9, 2001, Swissair was only able to fulfill about 55% of the published flight schedule and increased it only gradually in the following days. However, the state before the grounding was never reached again.

The Federal Council set up a task force called “Airlift” under the leadership of Peter Siegenthaler. Already in the first meeting, it became apparent that it was completely unrealistic to take over part of Swissair's long-haul fleet within one month. Besides, the working capital for implementing the concept was far from sufficient. The bank deal agreed on a capital injection of only CHF 1.35 billion - a deliberately scarce sum that could only cover the takeover of a small number of long-haul aircraft. Another indication that the “Term Sheet Phoenix” assumed that in future Crossair could romp freely and on its own in the Swiss skies - enriched with cherries of Swissair. This was confirmed by Alberto Togni, in a famous interview with the daily newspaper *Ticino*: the costs of the project had not been underestimated because only the evolution of Crossair had been considered and a takeover of Swissair aircraft was never planned. A UBS press release dated October 10, 2001 also referred only to the “financing of Crossair's first expansion phase”.

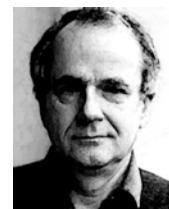
In mid-October, a new model known as “26/26” was mentioned for the first time, which meant that Crossair would take over 26 long-haul and 26 short-haul aircraft (Swissair's fleet comprised a total of 33 long-haul and 41 short-haul aircraft). The capital requirement was estimated at CHF 3-4 billion with start-up costs alone at CHF 1 billion. Aviation journalist Sepp Moser, known in airline circles as Moritz Suter's secret spokesman, promptly rated the 26/26 model as far too big. According to his calculations, it could not have exceeded 5 to 12 long-haul jets. Years later, in an article in *Weltwoche*, he stated that the operating loss estimated in the Swiss Air Lines business plan was a “bluff” and not meant to be serious. The aim was to reach the politicians' pain threshold with a deliberately fictitious amount and thus prevent a “senseless” rescue of Swissair.<sup>26</sup> Just two weeks after the grounding he wrote in unsurpassable cynicism: “Let Swissair finally die!” He praised the advantages of a Crossair relaunch without Swissair jets. In the years that followed, he did not miss to mention in any article on Swiss Air Lines that the long-haul network was retained solely out of “national-romantic delusion”.

Crossair announced that it would not be able to take over parts of the Swissair long-haul fleet before spring next year and the short-haul aircraft not before the end of the year. The original plan foresaw a takeover within 3-4 weeks. Either a larger takeover of the fleet was never planned - or the tight deadline arose from a vision of theorists without industry know-how.

On October 22, 2001, the Federal Council presented the “Phoenix+” plan - the plus was used to distinguish it from the existing banking plan without the participation of the government.

Before this important press conference, a heated debate took place between the Federal Council, representatives of the two major banks and the Crossair Board of Directors. To the great surprise of the government members, Moritz Suter rejected the “Phoenix+” project. In a passionate speech, he emphasized the enormous liability risks, the unpredictable consequences of 9/11 and the different corporate cultures of Crossair and Swissair. Suter always tended towards a modest solution, according to which Crossair would have taken over only a few Swissair aircraft and thus only picking the cherries - all strictly at “Crossair costs”. He argued that the Crossair-BoD would not voluntarily participate in the “Phoenix+” project, but only under external pressure. Quote: “If it were not a question of saving thousands of jobs, safeguarding fundamental economic interests and, in particular, ensuring adequate connections to Switzerland as a business hub, this project would hardly be justifiable from an economic point of view”.<sup>27</sup> Four days before the meeting, Marcel Ospel had told him that there would be no place for him on the new board. Several private investors made their financial commitment conditional on Moritz Suter being removed from the list of candidates.

As the contractually guaranteed capital injection from SAirGroup did not materialize, Sabena had to file for bankruptcy on November 7, 2001. 12,000



**Sepp Moser,**  
aviation journalist  
Close friend of Moritz Suter and for years the fiercest Swissair critic. In 1980 he was added to the group of then still hand-picked Crossair shareholders after receiving a share as a gift from Suter. Although he works as a freelancer, he is not known for his journalistic independence.



Foto © Reuters

<sup>26</sup> André Dose was also “convinced until practically the last minute that Phoenix+ would never be realized” as he writes in *Sturmflut*.

<sup>27</sup> As a side note, Crossair Board member Michael Pieper said at the meeting that “Swissair must be terminated very quickly and without compromise” and that only Moritz Suter would be suitable for this.

employees were affected. It was the biggest company bankruptcy in the history of Belgium. German LTU was rescued thanks to a EUR 100 million guarantee from the federal state of North Rhine-Westphalia and became later a subsidiary of Air Berlin in 2007.



In mid-November, details of alternative plans were unveiled in the media for the first time. Renowned investment banks such as Merrill Lynch ("Globus" project) and the Texas Pacific Group presented viable alternative concepts. Based on government-backed securities of around CHF 2-3 billion, the SAirGroup was to be recapitalized and restructured in the same style as major US carriers such as United Airlines. Merrill Lynch presented a concept that envisaged restructuring

on a private-sector basis through the international capital market. In contrast to "Phoenix+", the federal guarantee would not have had to be backed, but only had to be held on call. The rescheduling of debts would therefore not have had to be financed from taxpayers' money and would also have prevented assets from being sold in a hurry during a depressive market phase. Inexplicably, these alternative proposals were not examined in Bern because, according to press spokesmen, they were overloaded and were not able to examine all proposals. Only Merrill Lynch's proposal was allegedly investigated due to public pressure, but at a time, when the "Phoenix+" project was well underway. The alternative project was not being pursued because of the risk of "massive delays" - even though the integration of "Phoenix+" with the magic formula 26/26/82 into the "Globus" project would have been possible without compromises and was even offered by Merrill Lynch. The investment bank had a team of 30 specialists ready in London and New York and offered its services on a pure success basis. But Bern ignored this alternative concept: Peter Siegenthaler explained to the banking representatives that their proposal had come too late. Also, his people were overworked and he could "not call on them for talks with any specialists in their spare time"<sup>28</sup>. The idea of a public bond was not heard either, although Bank Julius Baer's preparations were already well advanced: Under the term "Newco Swissair", shares with a total value of CHF 5 billion would have been offered for purchase, with a payment date of October 28, 2001 and the possibility of exchanging the old Swissair bonds at a ratio of 4:1.

On November 16 and 17, 2001, the National Council and the Council of States approved a 2 billion loan to form a new national airline based on Crossair. The "rescue" of Swiss aviation amounted to more than CHF 4.3 billion, most of which was borne by the Confederation. In the private sector, a total of 25 companies and private individuals contributed CHF 1.7 billion. At that time, British Airways could have been acquired in full or 2/3 of the Lufthansa Group could have been acquired with this sum. However, only 80% of the federal bridging loan to Swissair was used up. Later, the Confederation and the liquidator argued over the definitive settlement and repayment of the loan (correct separation from the liquidation assets).

The originally planned recapitalization of the SAirGroup by the Bremi Group would have required less capital and would have embraced an entire aviation group instead of a single airline. The alternative concept of the investment bank Merrill Lynch ("Globus" project) would only have foreseen a federal guarantee in the order of CHF 2-3 billion and would only have come into effect if it had not been possible to keep the Group operationally alive after 25 years. Neither of these alternatives would have harmed creditors nor would Switzerland have suffered such a high image loss. The grounding and bankruptcy proceedings of SAirGroup and five of its subsidiaries have destroyed assets of approximately CHF 17 billion (including ruined shareholder assets of over CHF 600 million and lost bonds holder assets of almost CHF 4 billion).<sup>29</sup> Besides, there are hard-to-quantify damages such as loss of tourism industry turnover, depreciation of real estate, loss of income from suppliers, expenses for unemployment funds and tax losses.



## 9. Afterpains and Reappraisal

At the beginning of November, UBS published on the Internet a "Factsheet on the restructuring of Swissair". It stated that UBS had already advised SAirGroup to apply for a debt-restructuring moratorium before the terrorist attacks of 9/11. It wondered why this had not been done before October 4 and why the shutdown of the fleet had been carried out in an uncontrolled manner: "The events of Tuesday, October 2, 2001, with the shutdown of

<sup>28</sup> In a postulate by National Councillor Barbara Polla of November 16, 2001, the Federal Council was asked to explain in a detailed report to parliament why the "Globus" project was initially ignored and later rejected. A response was only given three months later: The project had aimed at a reorganization of Swissair, which is said to have already been rejected by the Bremi working group on September 28, 2001. Globus would not have brought savings, but instead would have required additional engagement on the part of the federal government. In addition, the project's fundamentally different conceptual approach would have jeopardized the realization of "Phoenix+".

<sup>29</sup> Interestingly, the credit exposure of the two big banks was very small. First and foremost, foreign banks and leasing companies were the victims



flight operations came as a surprise to everyone, especially as Swissair had substantial funds available on UBS accounts". Figuratively speaking, this means that instead of helping, UBS recommended Swissair to prepare their funeral and wondered why they had not killed themselves before October 4, 2001. It was further stated that the signing of the sale agreement on October 2 had been "strongly accelerated" by UBS. Swissair, on the other hand, had delayed it until late afternoon! Also, the decision to ground the fleet was taken exclusively by Swissair and was not comprehensible for UBS in this uncoordinated form. The willingness of Marcel Ospel to participate in the financing of the social plans as announced on Swiss television proved to be a misconception since it could now be read that the companies in debt-restructuring moratorium had no assets available to secure any bridging loans and that there was, therefore, no room for helping out.

In a mid-November hearing with Federal Councillors Leuenberger and Villiger on a motion by the Council of States, Federal Councillor Kaspar Villiger reaffirmed that the banks had planned to "restructure and integrate" more effectively by grounding the fleet on October 5. However, the Federal Council had said from the very beginning that a grounding would be out of the question due to image-damaging reasons. However, the blame question was no longer answered clearly. Villiger said literally: "I have the impression that the grounding may have somehow developed because the speed of events overtook the whole thing. Maybe it just sorts of happened according to the chaos theory. But I didn't quite figure out how it happened".

On December 18, UBS issued a strange press release: The President of the Group Executive Board, British citizen Luqman Arnold, is leaving UBS with immediate effect and this after only 8 months in office. Besides, Markus Granzio, Head of Investment Banking, and Joseph J. Grano, CEO UBS PaineWebber, will take on new responsibilities but will be deprived of power. A few months later Granzio left the bank, Grano followed a little later. This was the result of an internal power struggle between Marcel Ospel and the operational management of UBS. Arnold, Granzio and Grano had rebelled against Ospel because they were not involved in the Phoenix plan, although Swissair fell within their area of responsibility. This was considered a gross infringement of Ospel's authority. At a special meeting of the UBS Board of Directors, however, the latter unanimously decided that there had been no violation of authority and rejected the attempted internal coup. Luqman's successor was former McKinsey consultant and Ospel's trusted friend Peter Wuffli. Board member Peter Böckli, Ospel's legal adviser during this difficult period, was appointed part-time Vice-Chairman for his last term of office, despite an age limit of 65 years for Board members. Ospel made use of an exception. As a result, Böckli's earnings rose to more than one million Swiss francs a year.

Five months after the grounding, UBS claimed to the **Parliamentary Commission of the Council of States** that Swissair simply ran out of money without any blame on UBS! In their opinion, SAirGroup's emergency call came much too late on September 29. The shutdown of the fleet could only have been avoided if either the federal government had immediately given a guarantee or the banks had made substantial *à fonds perdu* contributions. The banks could not justify this to their stakeholders. The word "shareholders" would have been more precise because in a stakeholder approach social responsibility is treated in the same way as purely monetary and profit-optimizing goals. UBS reported a pre-tax profit of CHF 6,718 million for 2001. Assuming they had had to write off their share of the bridging loan of CHF 62.5 million in the worst-case scenario, the profit would have decreased by less than 1%!<sup>30</sup> It would still have been one of the best results of the year that a Swiss company was able to present. Somewhat cumbersome, UBS further explained that the financing package of the banks according to Term-Sheet Phoenix does not allow a partial shutdown of the Swissair fleet. It also accused SAirGroup of using the ample liquidity that was still available primarily for purposes other than for flight operations before the grounding. In particular, the transfer of CHF 112 million to the employees' Deposit Bank was harshly criticized. It thus indirectly recommended that flight operations be financed with the personal savings of the employees until handover to Crossair. A morally highly questionable notion!



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The report published by the Parliamentary Commission of the Council of States in September 2002 contained the following passages: The Federal Council made the offer to release financial resources for Swissair's flight operations by purchasing the Crossair shares held by SAirGroup. On October 1, 2001, however, it became apparent that the two major banks were planning a transaction without the Confederation. However, they were not prepared to finance Swissair's flight operations during the transition phase. They have accepted the shutdown of the Swissair fleet. Who exactly hesitated was clearly stated: The Confederation was willing to bridge flight operations with a loan of 125 million Swiss francs if the two major banks together were to commit themselves with a suitable amount. UBS was not prepared to do this. The report also states that even if the money could have been transferred in time, it is questionable whether Swissair should have had access to it. It was made available to SAirLines and not to Swissair under the terms of the agreement, even though a transfer of liquidity within the Group was not permitted for reasons of creditor disadvantage. The conclusion states that within the framework of the Phoenix plan unrealistic scenarios were developed and their impacts underestimated. For example, the assumption that Swissair's flight operations

<sup>30</sup> In addition, it is customary in a group of this size to "manage" the financial result with the release of (hidden) reserves in order to absorb such unforeseeable events. This is an attempt to achieve or exceed the profit forecasts of financial analysts.

could be transferred to Crossair in an ordered manner within a few weeks. A smooth transition of flight operations from Swissair to Crossair could only have been ensured if the financial, operational and legal conditions had been met. These conditions were not fulfilled. The two major banks also failed to recognize the emotional and political consequences of the accepted shutdown of the Swissair fleet. They also failed to take into account the fact that, for the implementation of the “Phoenix” term sheet, in addition to financing the purchase price for the Crossair shares and the bridging loan for the companies close to the airlines, financing for a smooth transition was a priority. This is surprising as the head of the Federal Department of Finance insisted on a bridging loan with the banks several times on October 1 and 2, 2001. Also, the “Phoenix” plan underestimated that careful preparation of a debt-restructuring moratorium would probably take several months. Even an organized grounding would at least have assumed that sufficient time would be available to explain the effects of the shutdown, in particular to customers and staff, and to take any necessary measures regarding the already issued tickets. According to the Parliamentary Commission of the Council of States, the three days from October 1 to October 4, after which the banks expected a grounding, would have been short for the preparation of an organized grounding. Although the report identified who had caused the mess, it renounced condemnation and referred to the emotional stress of those involved, which had made rational decision-making more difficult. Certain statements of the involved parties were contradictory in the interrogation, but the report of the Parliamentary Commission of the Council of States explained this by the strong emotional side effects that influenced the decision-makers - but the events had been taking place months ago and the emotions had calmed down. Parliamentary Commission member Hansruedi Stadler confirmed in an interview that UBS was in favor of a grounding and that the bridging loan was not granted due to UBS's refusal. Nevertheless, he defended UBS because it was caused by a “chain of circumstances” and, according to the theory of chaos, events can occur that cannot be explained in every respect. Besides, every player had shareholders and supervisory bodies in the background to whom they had to be accountable: “A bank cannot simply spend money according to emotional considerations if it knows that it will never be repaid”. Why the CS Group was then able to approve CHF 62.5 million of a bridging loan, but UBS was not? Marcel Ospel, as Chairman of the internal control body (Board of Directors), could have made autonomous decisions, which he demonstrated with the far higher sums for “Phoenix”.

In the 2001 Annual Report of UBS, one could find one small reference: “UBS and Credit Suisse Group agreed to purchase 70.35% of the outstanding shares in Crossair from SAirLines. This is an important step towards a new start in the Swiss aviation industry.” At the Annual General Meeting of UBS in Basel on April 18, 2002, Marcel Ospel dedicated a few words to the Swissair debacle in his introductory speech.<sup>31</sup> He praised the “unbureaucratic” and “speedily” way in which UBS participated in the “rescue operation” to save at least one of the Swiss airlines. UBS had gone to the limit of what it could have justified to the attending shareholders. He also mentioned that all their efforts were based on fundamental economic considerations, but they still felt committed to their home market of Switzerland. However, he spent far more time explaining and justifying the compensation of his management team.<sup>32</sup>



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On January 24, 2003, the administrator unveiled to the press excerpts from a study report of 3,300 pages and a price tag of CHF 14 million ordered to auditing firm Ernst & Young (E&Y).<sup>33</sup> According to this report, on the fateful morning of October 2, SAirGroup still had at its disposal liquid funds for CHF 50 million and without “administrative deficiencies” even a further CHF 73 million would theoretically have been available. However, this statement disregards the fact that a transfer of funds from SAirGroup or SAirLines to Swissair would no longer have

been permissible as a result of the application for a debt-restructuring moratorium announced the evening before. In addition, by canceling the cash pooling facility, UBS had prevented the use of capital from other accounts for Swissair. The full Final Report stated that the question “whether bankruptcy law reasons (creditor preference) would have restricted the free availability” was deliberately ignored! The mentioned CHF 73 million consists of the USD 45 million held in an escrow account of SAirGroup (not Swissair, for that matter) with UBS, which were released by the Wiederkehr Forster law firm after long negotiations in the night from October 1 to 2, but which remained blocked due to the announcement of the application for a debt-restructuring moratorium and the resulting unclear legal

<sup>31</sup> Strangely enough, the written version of the presentation contained the chapter heading “Swissair commitment in the interest of Switzerland as a center of business” although none of the financial resources allocated were intended for Swissair!

<sup>32</sup> This is by no means surprising, as Marcel Ospel had an annual salary of CHF 12.5 million in 2001. In subsequent years his compensation amounted to CHF 12.6 million (2002), CHF 18.8 million (2003), CHF 21.2 million (2004), CHF 24.0 million (2005) and 26.6 million (2006). According to the Newspaper *Cash*, Chief Legal Officer Peter Kurer received an annual salary of at least CHF 6 million (2005).

<sup>33</sup> Neither the 3300-page “Detail Report” nor the 530-page “Final Report” are publicly accessible anywhere (e.g. in a library). In February 2003, the documents could only be obtained from the administrator by registered creditors on request for a fee of CHF 100 (Final Report) or CHF 200 (Detail Report on CD-ROM). The Final Report contains an Executive Summary of about 100 pages. A six-page abstract was provided at the press conference as an annex to the press release. The conclusions on the grounding of October 2, 2001 were summarized in 6 lines.

situation. E&Y believes that better cash management would have prevented a grounding. If this had been the case, would it not have been the task of the responsible cash management bank (i.e. UBS) to draw SAirGroup's attention to any "overlooked" funds? Only the unabridged version of the report revealed that a total of CHF 106 million was either blocked or in transit and thus not available to the SAirGroup. Regardless of the number of financial resources available, it is also unexplainably overlooked that the Phoenix term sheet stipulated a grounding as from the following day. Significantly, the report concludes that "according to the practice of using cash and cash equivalents in the Swissair Group before and after October 2, 2001, flight operations should not have been interrupted at least on October 2 for liquidity reasons alone". But that this was planned for the following day is hinted at with the word "at least". Moreover, the skyrocketing cash demand caused by the sudden demand for advance payments is inexplicably ignored in the conclusion. As a result of the announcement of the debt-restructuring moratorium, it was logically no longer possible to rely on any empirical values. Even Ancillo Canepa (then Head of Audit E&Y and later President of Zurich's Football Club, FCZ) contradicting declared at the media conference that the liquidity requirement had exploded on October 2! It is not understandable how E&Y was able to come to its contradictory conclusion; they lamented about the lack of information or estimates about the amount of liquidity that was needed. The report of the Parliamentary Commission of the Council of States already stated in this regard: "If it had been considered that 150 million Swiss francs were needed on October 4 to have the planes take off again and another 50 million the day after, with the daily costs of flight operations otherwise averaging 17 million Swiss francs, 4 or 34 million would not have been enough to maintain Swissair's flight operations on October 2.<sup>34</sup> Furthermore, the accusation that the debt-restructuring moratorium was neither prepared properly nor in good time can hardly be brought against Mario Corti if this solution was imposed on him the day before. This accusation applies to the architects of the Phoenix plan and not to the management of SAirGroup, who fought until the end to save the group. It should also be mentioned that E&Y's investigations were based exclusively on written documents, some of which were still "not completely available". Besides, no interviews were conducted with decision-makers: None of the parties had the opportunity to give their views. A survey of SAirGroup representatives was renounced on the grounds of the "lack of legal resources". In particular, neither a legal assessment nor an inspection in an auditing sense was carried out. Finally, it should be noted that E&Y was UBS's auditor at the time of both the grounding and the publication of the report and is still the auditor today. E&Y was therefore biased and could not take a neutral position. Could it be that the conclusions drawn on the grounding are some kind of courtesy report to avoid spoiling business relations with a key account?<sup>35</sup> Not even the State Prosecutor's Office in Zurich classified the E&Y report as neutral evidence.

Despite all these blatant weaknesses, the E&Y report was sold in the media by many as definitive proof of innocence. UBS media spokespersons already rejoiced even before the publication of the full report: "It is now apparent that UBS did not cause the grounding". Moritz Suter also used the report to clear himself of any guilt: "The report clearly stated that I had nothing to do with this grounding" and further shed poisonous arrows in the direction of Mario Corti with statements such as: "It is disturbing that the management and the BoD believed that they would receive money from the state and the banks if things did not go well. That was an arrogant attitude". Arrogant attitude? Maybe, but certainly not as sacrilegious as his, because: Was it not his Crossair who was saved from extinction thanks to a generous injection of capital?



Since then, the grounding has been perceived incorrectly and indiscriminately by the general public as an inevitable last act of years of mismanagement by Swissair executives...

It is also remarkable that Mario Corti's harshest critics always refer in good faith to the controversial conclusions of the E&Y report, but never mention the report of the Parliamentary Commission of the Council of States and its contrary conclusions.

<sup>34</sup> André Dose claims in *Sturmflug* that sufficient cash was available to continue flight operations "for at least several more weeks". Swissair could have continued flying until Crossair would have been able to take over its flight operations in a smooth manner. However, as is known, this coordinated takeover occurred only after 5 months, following the Federal Government's intervention with two bridging loans of CHF 450 million and CHF 1 billion. It is therefore completely mysterious how Dose arrived at his conclusion.

<sup>35</sup> E&Y has been the main auditor of UBS since 1998. According to the 2010 Annual Report, UBS and its investment funds paid E&Y a total of CHF 100.6 million for audit-related and other services. In the previous year, the figure was CHF 99.4 million.



### **Insertion: The Sudden Death of S. Airgroup**

*S. Airgroup (70) was one of the most successful entrepreneurs in his country for many years and was known and appreciated far beyond the country's borders. After his wife's death, he gradually lost his way and sought solace in alcohol. One day, drunk, he was involved in a life-threatening traffic accident. When he was struggling for his life in the hospital's ICU, his greedy sons were on their deathbed and discussed already how to use his inheritance. Since in their eyes there was no hope for the old drunkard, they agreed to stop any life-supporting measures after 3 days at the latest in order not to unnecessarily increase the hospital bill and thus indirectly reduce the hereditary sum. Marcel, who in contrast to his brother Lukas was decidedly against any extension, happened to be the chief surgeon of the hospital and stayed with his dying father until late into the night that day. When he was alone and unobserved, he stopped the necessary infusions.*

*The next day, S. Airgroup was dead.*

*Marcel was meanwhile on his way to a medical congress in the USA and could not be reached for a statement. One of his employees said on TV: "Our chief surgeon has more important things to do". Only when the media pressure became too intense did he admit having made mistakes (because he should have better masked active euthanasia): He should have stayed in Switzerland, especially for crisis management (because his hospital's reputation had suffered badly in the days of his public disappearance, losing many patients and thus severely diminishing the shareholder value of the private clinic).*

*The police investigation clearly showed that Marcel had deliberately interrupted the life-support measures but was discharged because of "emotional tension in the crime".*

*Months later, the results of the autopsy performed by an employee of Marcel's Hospital were presented to the media. The report clearly stated: "According to the way of life of S. Airgroup before and after the traffic accident, his heart would not have had to stop for reasons of the injuries alone, at least on the day of the accident". Euphorically Marcel publicly stated: "It is now clear that I did not cause the death!"*

*This is a fiction. Any similarities to real people are purely accidental and unintentional.*

In spring 2004, administrator Karl Wüthrich sued the auditing company KPMG. Specifically, it was a payment of 45 million CHF in consulting fees on September 25 and 27, 2001 after the latter insisted on immediate payment of all outstanding invoices. It can be assumed that the company had exploited its advantage in knowledge about the financial situation. In the meantime, a settlement has been reached between the two parties. KPMG repaid CHF 35.5 million and waived any further claims as a creditor (probate dividend). According to the CEO of KPMG Switzerland, the aim was to avoid constant negative media attention in this regard. Other consulting firms, namely Roland Berger, McKinsey and Financial Dynamics Business Communications, have been identified. Europe's largest bank, Deutsche Bank, was also accused by the administrator of exploiting insider knowledge. An action for annulment has been filed against them concerning transactions with a total value of CHF 107 million.



Foto © Keystone

In February and April 2005, SVP National Councillor Christoph Mörgeli accused former Federal Councillor Kaspar Villiger of his "rapid change of mind" (where, according to Mörgeli, he mutated from a categorical no to a decisive supporter of federal aid within a few weeks), that he was trying to save people close to him the embarrassment of a complete collapse of the national airline. His lucrative board mandates at Nestlé and Swiss Re had presumably been offered in return for his services. Kaspar Villiger strongly rejected these massive accusations at a press conference. He once more talked about the difficult days shortly before and after the grounding. He acknowledged that he had to make decisions under great time pressure and had to rely (blindly?) on the experts who drew up the business plan.

In May 2005, the administrator presented all claims to challenge in respect to creditor preference. Among other things, a claim became public to Crossair's successor Swiss, who received CHF 35.6 million through an unusual payment mechanism. By customary practice, the collection of mutual receivables was effected by direct settlement. Contrary to this practice, Crossair demanded payments from the interline and wet-lease agreement via the IATA Clearing House shortly before the grounding. In a previous circular to the creditors, the administrator mentioned Crossair's "precarious liquidity situation". After the grounding, the latter was not in a position to fly the routes on behalf of Swissair on October 5, 2001 without advance payment. Also, administrator Karl Wüthrich announced that he wanted to examine the sale of the Crossair stake to UBS and CS Group, as the use of the purchase price was primarily intended to maintain the airline-related ancillary businesses (SR Technics, Swissport, Gate Gourmet, Atraxis, etc.) and was therefore mainly in the interest of Crossair and its shareholders: The survival of the subsidiary companies was of crucial importance for the success of the Phoenix project.

At the beginning of November 2005, it became known that attorney Beat Saxer had legal claims against UBS assigned to him after liquidator Karl Wüthrich wanted to waive a legal dispute. This concerns a loan of CHF 30 million, which UBS withdrew shortly before the grounding. According to Saxer, UBS knew at that time that SAirGroup

would be liquidated. Saxer had already filed a supervisory complaint against Wüthrich in January 2005, as to his view Wüthrich was protecting former members of SAirGroup's Board of Directors.

At the end of November 2005, Crossair's successor Swiss and the administrator reached an out-of-court settlement. Swiss was prepared to repay a total of CHF 19.5 million to the administrator. This included the CHF 10 million made available by SAirGroup shortly before Crossair's grounding to bridge the acute liquidity gap. Besides, receivables from fees for the use of licenses and maintenance, VAT settlements, insurance fees, and costs for the Qualiflyer project were outstanding.

On January 19, 2006, the movie **"Grounding - the last days of Swissair"** was released in Swiss cinemas, which is largely based on the book *Der Fall der Swissair* by then *BILANZ* editor-in-chief René Lüchinger, supplemented by additional research and testimonies, which are documented in the book *Swissair - Mythos und Grounding* with original documents. With almost 380,000 box office tickets, it was the best seller in Swiss cinemas. Already in the run-up to the premiere of this documentary thriller, heated



Photo © C-Films

discussions arose again concerning the question of blame but also concerning the portrayal of the actors. The Boulevard newspaper *Blick* complained about Mario Corti's "distorted" portrayal, which comes as no surprise after the newspaper launched a veritable malicious campaign against him in spring 2002 after it became known that his salary for 5 years had been paid in advance. *Blick* referred with big letters the distant relationship of the producer with Mario Corti (Peter-Christian Fueter's wife is Mario Cortis' cousin). André Dose explained on Swiss television that he would not watch the film because it was fictional and did not reflect reality at all. UBS spokespersons stated that the film does not represent reality. Although it makes use of real processes, "to a large extent it is a fiction". It was not specified that the fiction is primarily limited to the individual fates of the ordinary employees woven into the film. A somewhat less diplomatic statement was made by an unnamed UBS Board of Directors on *SonntagsBlick*: "The makers should finally stop saying they're showing the truth. UBS is not to blame for the grounding, but Mario Corti. He should never have stopped flying head over heels". This is like blaming the executioner for the death of the executed assassin! On UBS's internal intranet, arguments were made available to employees. One interesting comment was: "A temporary grounding of parts of the fleet was unavoidable. Mr. Corti should have said that at the press conference." Marcel Ospel presented similar arguments in an interview given to *Blick*. Commenting on the film, he said: "If it is suggested that UBS wanted to bring Swissair to the ground deliberately, this could not be true simply because UBS was Swissair's largest client". Swissair itself is to blame for the grounding. In the newspaper *NZZ am Sonntag*, he expressed his indignation at the film, which suggests any blame of UBS: "There is no truth in it. That is simply "fundamentally wrong". In various Internet forums, various people (bankers?) aired their anger under the protection of anonymity (see examples in the following text box).

#### Posts in the internet forum of [www.groundingfilm.ch](http://www.groundingfilm.ch)

"To all people who want to blame the banks (because they have no idea about the economy and are zealous followers) they must be told:

- 1: Switzerland would be nothing without the major banks
- 2: Without the major banks, which were not obliged to provide any support at all, Swissair would have gone bankrupt much earlier.
- 3: I hope that the director of the movie has to go through hell, the only thing this gentleman wants is to raise publicity with his movie to earn more money..... Let someone speak of money-hungry managers..."

© Schweizer, 22.1.06

"Just because Marcel Ospel was on a plane to New York the day before the grounding, there was nothing wrong with the company. On the day of the grounding, Swissair had CHF 200 million at its disposal at UBS. But this was probably not noticed by this very loser, Corti, who also collected 12 million in advance for his incompetence. Now this jerk is still presented in the film as a hero and UBS as the bad guys. This is unbearable and a nasty marketing strategy of filmmaker Michael Steiner."

© Chris, 24.1.06

The screenwriters, however, explained that all passages of the film are always authenticated by at least two independent sources. In an interview, author René Lüchinger confirmed that in the film "the central storylines, the interactions between Crossair, UBS, the Federal Council, and Mario Corti" fully matched his research. He also pointed out that the displayed actions were supported by documents and protocols. Marcel Ospel's role is also not exaggerated, because the portrayal of the consequence in which he acts is very true. Regarding the much-quoted E&Y report, he

pointed out that the numbers mentioned there are still controversial today. “In my opinion, it is irrelevant how much money was in each account. Everyone involved knew that the cash requirements would explode and that the liquid funds would be insufficient to continue flight operations in the long term”. A few days after the start of the film, experts debated the film in the discussion program *Club* on Swiss television. According to aviation journalist Sepp Moser, the film was a thesis film: It adheres to the “Gospel of Lüchinger” and everything that could have disturbed the “image of the saint” Mario Corti has been omitted. The film is extremely placative. It could be a promotional film for a politician! He also claimed that the day of the grounding was fundamentally misrepresented. Indirectly, he complained that he had not been contacted by the production team. Peter-Christian Fueter, the producer of the film, pointed out that not in fiction one becomes the hero and the other the villain - but in reality! He derived fiction from reality! In the run-up to the shooting, six assistants had held around 300 interviews with all those involved. All available documents, such as minutes of meetings of the Board of Directors, transcripts of all parties involved, no matter which side, were meticulously compiled. October 1 and 2 are fully documented and repeatedly confirmed. Sepp Moser condemned Mario Corti for his “incompetent announcement of marching to the bankruptcy judge”. Attorney Hans-Jakob Heitz and author René Lüchinger replied that at the press conference on October 1, 2001, everyone in attendance knew that a grounding would inevitably occur. Mario Corti had been urged to a debt-restructuring moratorium. Nobody could say he was surprised! It was unforgivable that at the most decisive moment lawyers were in charge, as their bosses had either flown away or delegated the responsibility. René Lüchinger concluded the discussion with the statement that the whole debacle had only produced losers and no winners. In particular, the illusion was destroyed that Switzerland could overcome such a crisis collectively.

Shortly before the film premiere, Karl Wüthrich, the administrator of the SAirGroup, surprised the public by philosophizing on blame and innocence in several interviews in newspapers and television, because he had the impression that the “matter was developing in the wrong direction”. The NZZ am Sonntag wondered whether he was following his secret agenda. The gifted self-promoter forgot that in his function as the representative of the bounced creditors he is merely an investigator and not a judge. His criticism focused exclusively on Mario Corti, whom he accused of a lack of crisis management. On several occasions, he referred to the controversial E&Y report.<sup>36</sup> Mario Corti immediately responded with a detailed counterstatement in which he pointed out, among other things, that all parties involved had been warned “explicitly and forcefully” that an announcement of a debt-restructuring moratorium would lead to an explosion in liquidity needs. He also added that “the shutdown of a highly complex airline, which was closely interlinked with many flight-related companies in Switzerland and worldwide, would also have required a lead time of several months”. It is no coincidence that airlines are always announcing drastic changes in the flight schedule at least one schedule period in advance, as bookings are not only made on the day of departure but are already possible 11 months before take-off.



Foto © Keystone



On March 31, 2006, after a long five-year investigation, the Public Prosecutor's Office III for Economic Crimes of the Canton of Zurich filed charges against 19 private individuals (former managers and board members of SAirGroup, but also an auditor from KPMG London and a Swiss attorney).<sup>37</sup> Paradoxically, the last Swissair captain (Mario Corti) saw most of the charges: he was accused of unfaithful management, damage to creditors, misinformation, and mismanagement. Among other things, he is said to have postponed the debt-restructuring moratorium and failed to initiate the proceedings in time.

However, in the same breath, the law firm Bär & Karrer is also accused of having known, thanks to lively contacts with the legal service of SAirGroup, that a debt-restructuring moratorium was being prepared and therefore vehemently insisted on immediate payment of open invoices. UBS or the other involved persons and institutions have not been charged: The offense of *failure to provide aid* (emergency assistance; especially in road traffic) contained in criminal law relates only to physical and not to legal persons and is therefore not punishable by law.

The complaint was initially rejected by the court as being incomplete, unjustifiably, and “alien to life”. A revised version of the complaint was filed on July 12, 2006. The second, improved statement of the claim still had a (too) narrow legal perspective: For example, the massive deterioration of the economic environment following the terrorist attacks on 9/11 was not mentioned with a single word - as if Swissair's struggle for survival had taken place in a vacuum at the time. In the new version, Mario Corti and Jacquelyn Fouse were blamed for the grounding: “Corti and Fouse have worsened the Group's over-indebtedness and caused its insolvency through mismanagement, in particular through inadequate capitalization, disproportionate expenditure, daring speculation and reckless granting of loans”. According to the complaint, it should have been confirmed by September 17, 2001 that no more funds were available to cover the short-term liabilities. A debt-restructuring moratorium should have been initiated immediately. The daily press subsequently published headlines such as “Was it Corti's fault?”

<sup>36</sup> Interesting in this context is the fact that Karl Wüthrich himself was employed at E&Y until 1993. His last position was Director and Head of Department.

<sup>37</sup> The former Chairman of the Board Hannes Goetz and “Sabena restructurer” Paul Reutlinger were not accused.



On the occasion of the fifth anniversary of the terrorist attacks in the USA, UBS Chairman Marcel Ospel was asked about his role in the grounding of Swissair. He fired uncharacteristically sharply at the Swiss government: the aggressive statements of the Federal Councillors had hit him very hard at the time. Moritz Leuenberger and Kaspar Villiger had publicly attacked a company and a business leader against their better judgment: "Unbelievable!" He skillfully used the altered public perception after the announcement of the criminal charges to wash his hands in innocence: On the day of the grounding, he left for the USA in the conviction that a solution had been found and that it would be implemented in an orderly manner. "If it had been foreseeable that those responsible would deliberately or negligently initiate a chaotic grounding, I would have postponed the trip by one day, for example"! Five years earlier, the departure was urgent and more important than the emergencies of the national airline and the Federal Council. His statement suggests that neither he nor his deputies were actively involved in the forced shutdown of the fleet, but that the airline itself deliberately initiated it. He concluded the interview by stating that the grounding of Swissair was not a consequence of 9/11 - "let alone my fault". Once again, there was misleading talk of Swissair's fleet being grounded, even though the economic decline of the parent company was meant.



Foto © SF DRS

Just in time for the 5th anniversary of the grounding, Swiss television broadcasted the second part of a two-part documentary on the decline of Swissair. This documentary film, which was announced shortly after the premiere of the movie "*Grounding - die letzten Tage der Swissair*", aimed to show a "different view of the grounding". In the run-up to the first airing, it was announced that the film proved that "there would have been enough money left on grounding day" and that an uncontrolled grounding could have been avoided. The newspaper *SonntagsZeitung* picked up on this core statement even before it was broadcasted and titled in the best tabloid manner: "Grounding lie: Swissair still had money"! This was justified by Marcel Ospel's unverified statement that on the day of the grounding "more than CHF 30 million were held in UBS accounts alone" and that "it was known" that around CHF 17 million per day would be required for the operation of the airline. Besides, attorney Georg R. Wiederkehr, acting as a trustee, had repeatedly tried unsuccessfully to transfer money (USD 45 million) from a blocked account, and finally, Mario Corti paid CHF 19 million to his subsidiary Gate Gourmet England in the afternoon. These "facts" could have been easily verified, but were woven into the documentary without serious verification and were the central theme throughout the entire film. Either the research was sloppy, or the following details were simply "overlooked":

1. On the morning of 2.10.01, the need for cash exploded due to the announcement of the debt-restructuring moratorium. Instead of around CHF 17 million under normal conditions, around CHF 150 million was required on October 2 alone. As an example, fuel supplier BP demanded immediate payment of all outstanding invoices (an unknown double-digit million amount) and strict advance payment of all deliveries.
2. Only CHF 3.3 million of the according to Ospel "ample available" liquid assets ("over CHF 30 million at UBS alone") were on Swissair accounts. The remainder was held in accounts of the parent company and could not be used for legal reasons (creditor preference) or technical reasons (previous cancellation of the cash pooling facility by UBS).
3. The USD 45 million on an escrow account of UBS were prepayments for aircraft orders for Flightlease (Pre-Delivery Payments). For legal reasons, this amount could not have been used for flight operations either, as the beneficiary was the sub-holding SAirLines, which, like Flightlease, was in liquidation. The Swiss bankruptcy law does not know any corporate bankruptcy. Each company within the holding is considered an autonomous entity.
4. The payment to Gate Gourmet England is irrelevant for Swissair's flight operations, as it was not triggered by accounts of Swissair but of SAirGroup (Gate Gourmet was part of the SAirRelations division). The money was urgently needed to pay supplier balances. In the event of non-payment, two ex-British Airways Catering companies threatened to relapse to BA at book value.

Even though Swiss television guarantees that the documentation is based on extensive research work (including the reports by E&Y and the Parliamentary Commission of the Council of States), it seems that important passages have been deliberately or unconsciously ignored. Unfortunately, the makers of the film missed it to persistently follow up on several contradictions and to ask uncomfortable questions. Marcel Ospel, André Dose, Moritz Suter, etc. were allowed to present their version without hindrance. Expert opinions - for example, specialists in Swiss bankruptcy law - were completely omitted. The search for the causes of the grounding was narrowed down to the simple question of whether Swissair still had sufficient resources available on that fateful day to get its aircraft into the air. This dubious journalistic approach is difficult to understand: If you cut someone's pressure hose during a dive it is pointless to debate afterward whether the oxygen in the diver's lungs would have been enough to reach the water surface. Decisive is the fact that without connection to the respirator the diver was doomed to die. The NZZ wondered whether Swiss television was trying to relativize the movie, which was not very advantageous for UBS's image, and whether the big bank had even tried to put it under pressure. The latter was vehemently denied by a media spokesman for Swiss television. The magazine *BILANZ* suspected that Otto Honegger, head of the documentary film department, with whom Moritz Suter had a long-standing friendship, wanted to give him a chance for rehabilitation. This was already the case years before when Swiss television broadcasted a documentary soap about Moritz Suter and his Crossair - shortly after Suter's reputation had suffered badly after a plane crash and months of image-

damaging wage disputes with his pilot corps. *BILANZ* also pointed out that the lawyer Georg R. Wiederkehr, who testified exclusively for this documentation but was otherwise bound by attorneys' secrecy, happened to be the brother of Alfred J. Wiederkehr, founding shareholder and long-standing Crossair Chairman of the Board of Directors.<sup>38</sup> Georg R. Wiederkehr was also in close contact with Moritz Suter and André Dose in the development of the "Swiss Air Lines" concept. Not surprisingly, of all the key players, only the protagonists from Basel have their say in the documentary. Neither the Board of Directors nor Mario Corti or Jacquelyn Fouse was able to counter accusations and allegations, as they were all legally unable to make any statements before the end of the court proceedings. Other key players, such as UBS General Counsel Peter Kurer, are not even mentioned in the documentary - they simply do not exist!

On January 16, 2007, the "Swissair trial", turned into a major media event, began in the multi-purpose hall in Bülach, which was transformed into a courthouse. Despite the great excitement of the public, one could not expect any historical investigation, since it was primarily about the assessment of various acts under criminal law - for example, whether Eric Honegger had made false statements in his tax return. The real cause of the collapse, however, was not the subject of the charge: the harsh Hunter acquisition strategy - as incompetence (or stupidity) is not punishable! Furthermore, only actions from late 2000 were sued - which is why, for example, the architect of the Hunter strategy, Philippe Bruggisser, was merely a secondary character in the criminal proceedings. Any compensation claims will only be examined in any civil lawsuit. Thus it was probably more of a trial for the gallery, a purely symbolic act.

The personal interrogation of the accused lasted for 3 weeks, with most of the persons summoned refusing to testify. A pleasant exception was Mario Corti, who, with his distinguishing manner and rhetorical skills, answered every question of the judge for hours and captivated the audience with charisma, modesty and charm. For him, the trial was more than just disproving the prosecutors' accusations - it was also about his reputation. He said that he was deeply disappointed by UBS CEO Marcel Ospel, who assured him his support under conditions before moving from Nestlé to SAirGroup. Despite agreeing to all the conditions, UBS withdrew shortly after Corti took office. Ospel's reaction came straightaway: In a newspaper interview he called the accusations of breaking words "embarrassing". He also recalled that UBS was not on trial - "and rightly so". In court, Corti made very firm statements about all the events that led to the grounding: "We all believed in a rescue. I don't understand why this weekend the reins were taken out of our hands and we were forced into a debt-restructuring moratorium and a grounding. The Phoenix project was a blatant insider deal cooked up in a small circle. The group had been strangled by the term sheet."<sup>39</sup> Remarkably, the key document "Term Sheet Phoenix" is not mentioned with a single word in the accusation. The spiritual fathers of this plan were neither interrogated nor consulted by the investigating authorities. It was also not examined whether this term sheet was a spontaneous flash of inspiration or outflow of earlier collusions. Corti also expressed disappointment about the role of the Federal Council: "When Mexico had to be restructured, the Swiss National Bank was also on hand with a bridging loan. I still don't understand why this was not possible for Swissair". UBS interfered in the ongoing criminal case by sending a 19-page supporting document to a handpicked group of journalists immediately after Corti's testimony. Even before the trial, journalists were called by very friendly, competent UBS representatives without being asked.<sup>40</sup>



Title page of Blick, January 31, 2007

To everyone's astonishment, Mario Corti - as the only one of the 19 defendants - was sentenced to jail (26 months - of which 6 months imprisoned) in addition to a large fine. Even the tabloid newspaper *Blick* wrote of an "absurdity".

Following the pleas of their defenders, Mario Corti and Jacqueline Fouse presented a position paper entitled "A restructuring was possible" at a spontaneous press conference. In this report they describe in detail what measures could have saved the Group and what would have been the main directions of restructuring. The basic idea was to preserve the economic value of the Group as a whole based on going concern values with targeted measures instead of driving the company into a debt-restructuring moratorium - with massive destruction of value and subsequent liquidation of the individual but associated components. In particular, they showed that - in addition to preventing the disastrous value loss of around CHF 17 billion - these measures would have required less cash compared to the Phoenix plan: By the end of 2001, SAirGroup would have had healthy liquidity and a viable balance sheet, without harming creditors and shareholders. Besides, there would have been no reputational damage, the bank debt would have been eliminated and the two brands Swissair and Crossair would have been preserved. For the implementation of this package of measures (recapitalization and sale of Swissport, Nuance and restructuring of Flightlease) only

<sup>38</sup> The Crossair 2001 Annual Report includes the following comments on his resignation from the Board of Directors: Alfred Wiederkehr was a "very important friend, partner and advisor" for Moritz Suter.

<sup>39</sup> Mario Corti literally: "I had always assumed two scenarios: A reorganization I believed in and a bankruptcy that would have destroyed the company. But never, never would I have dreamed that there would be a third option: Swissair was "strangled" by the creditors.

<sup>40</sup> In a Facts article, UBS press Chief Michael Willi explained how UBS had internally classified all journalists according to their importance after the grounding and tried to intensify relations with the "opinion-forming media people".

temporary and limited bridging financing would have been necessary - but such financing was not granted to SAirGroup by the major Swiss banks or the Swiss Confederation. Money did not flow until the group had already collapsed.

The sentences were opened on June 7, 2007: all accused were discharged. The accusation that Corti and Fouse had submitted the petition for a debt-restructuring moratorium too late could not be supported based on the files. In its justification, the court pointed out that for the first two days after the grounding alone CHF 197 million were required to maintain flight operations: "It, therefore, seems at least uncertain whether the amount of CHF 177 million stated in the accusation would have been sufficient to prevent the grounding; probably the grounding would only have been insignificantly delayed but not prevented". The court justified the acquittal as follows:

1. Until the end of September 2001, the accused believed in rescue - and also had a realistic basis for this belief
2. From the point of view of time, Cortis' restructuring concept seemed "plausible and realistic".
3. Various internal and external experts advised against a debt-restructuring moratorium until the end of September 2001.
4. Even if the debt-restructuring moratorium had come one or two weeks earlier, a grounding probably could not have been prevented.
5. Corti could not have foreseen that UBS would immediately terminate an important service of its cash pool on September 28, 2001 what significantly increased the liquidity requirements of the Swissair Group.
6. UBS claims that sufficient liquidity was still available to prevent the "orderly" shutdown on October 2nd. But Corti has argued "plausibly and transparently" that he would have needed 150 million liquidity for October 2nd alone - which, according to UBS, were no longer available by any means.
7. The Prosecution alleges that an earlier debt restructuring moratorium could have prevented a cash outflow of 177 million Swiss francs in the Group. This claim is not even vaguely proven. And even if it had been proven, a debt-restructuring moratorium would no longer have allowed funds from sister companies or the parent holding company to be moved to maintain the aviation subsidiary (and thus flight operations).

The state prosecutor's office refrained from advancing the verdict as the probability of success was too low. The Canton of Neuchâtel and the Belgian state appealed on a single charge ("billion-euro loan") but also lost before the High Court. Mario Corti was again fully acquitted.

In April 2008 - after almost seven years of waiting - some creditors of SAirGroup received their first dividend. Depending on the outcome of some pending lawsuits, the partial payment was between 2.4 and 9%. In the same month, Peter Kurer was elected Chairman of the Board of Directors at the Annual General Meeting of UBS to succeed Marcel Ospel. One year later he was replaced by Kaspar Villiger, who held this position until 2012.



In September 2009 it became known that Crossair's legal successor Swiss Air Lines had secured the trademark rights to the name "Swissair" from the administrator. Swiss did not have to pay anything for this, but it was agreed that it would waive claims in liquidation proceedings against SAirGroup companies in the order of CHF 7 million. Shortly after the grounding, the brand value was estimated at CHF 660 million by the world's leading brand consulting firm Interbrand. For decades, the brand was considered as one of the most precious in Switzerland. According to a Swiss press spokesman, the brand name would not be used commercially for the time being. All they wanted was to prevent someone else flying suddenly under the name Swissair. The flying club "Sportfluggruppe Swissair, SFS" in Hausen am Albis uses the Swissair logo to ensure that trademark rights are not lost. Besides, a 3-year license agreement was signed with Hopscotch Air, an air taxi company based on Long Island (New York), allowing it to use the name and logo on its Cirrus aircraft.

Shortly before he retired, Peter Siegenthaler, the departing Director of the Federal Finance Administration, was asked in March 2010 about his role in the Swissair grounding. He is convinced today that the grounding could not only have been avoided but should even have been: "By letting the money that flowed in the days after flow before. That would have been cheaper. But UBS, as the leading bank, was convinced that the new airline had to "rise from the ashes like a Phoenix". It required ashes first - "that's why the project was also called *Phoenix*". More than a year later, he commented in detail: "Phoenix" had two major weaknesses: "One was that no money would be available for the continuation of operations of the Swissair fleet from October 3 at the latest. This was a prearranged grounding. Secondly, the idea of transferring long-haul flights from Swissair to Crossair was based on unrealistic time frames. The grounding was a great disappointment because the federal government was always against it: "Federal Councillor Villiger tried to find a solution for continuing the operation, even with tangible financial offers. Also, the major banks guaranteed operation until at least October 3rd". The banks simply had not considered the consequences of a grounding.





On the 10th anniversary of the grounding, the national press and Swiss television were competing with each other on the subject. In the run-up to the anniversary of 9/11, the retired Federal Councillor Moritz Leuenberger was asked



about the Swissair crisis. He admitted that the Federal Council had been overwhelmed by the complexity of the problem at the time. When asked what mistakes the Federal Council had made, however, he answered lapidary: "There were misconceptions about the possibilities of the Federal Council. The Federal Council had nothing to say. Nothing!" At least they had learned from the crisis and were much more willing to take decisions when UBS was rescued years later: "During the decline of Swissair, we were three Federal Councillors who questioned why we should support the airline after the management had made such a mess. In the UBS crisis, we already had the experience of such a gigantic collapse. That's why we tackled the rescue package quickly". After a long absence, Mario Corti also had his say. The Confederation is partly to blame for the grounding, he said in a Swiss television program: "In the case of UBS, everything was done to save the Group as a whole and in the case of Swissair, nothing was done at the crucial moment". The Confederation quickly put together a rescue package of CHF 68 billion for UBS, while Swissair was refused a simple guarantee of CHF 1 billion. "If the guarantee had been given, the banks would have jumped up immediately." In the same program, economic historian Tobias Straumann from the University of Zurich also spoke: For him, it is also difficult to understand why the federal government did not want to give a guarantee before the grounding, but in the end spent more than one billion. His conclusion: "One should

have avoided the grounding". Contradictory statements about the recapitalization requirements of SAirGroup at the time caused some confusion. Peter Siegenthaler claimed that Mario Corti had proposed an amount of CHF 7-8 billion to the Bremi working group. Federal Councillor Moritz Leuenberger even mentioned that the federal government should have raised 8 - 10 billion at that time. However, a recapitalization requirement of around CHF 4 billion was presented at the end of September 2001. Together with the sale of assets (sale of the subsidiaries Swissport and Nuance), this would have eliminated the imbalance in the balance sheet. Also, the requested federal guarantee of CHF 1 billion would have ensured liquidity until the recapitalization had been implemented. Why do government officials suddenly speak of sums twice as high? Was it supposed to suggest to the public that reconstruction would simply have been too expensive at the time? In a guest commentary published by the Sunday newspaper *Der Sonntag*, Mario Corti wrote: "There is no doubt that a rescue of the Swissair Group was possible even after the tragic events of 9/11. The grounding and the resulting damage were by no means an inevitable natural disaster." Swissair was not a junk company but on the contrary a company with a healthy operative substance. The same applies to companies such as Gate Gourmet, SR Technics, Swissport, or Nuance, all of which have established themselves in the market and have given their new owners pleasing results. He concludes with a mixture of disappointment, bitterness, and anger: "The elites in business and politics have consciously accepted Swissair's collapse. My trust in certain representatives of the Swiss "elite" was destroyed thoroughly and probably forever. A piece of Switzerland had died with Swissair. Despite everything, however, he does not regret having moved from a secure position at Nestlé to leadership less Swissair: "For the cause and the many people who believed in it, I would do it again". In another article published by the daily *Tages Anzeiger*, he said that he could have resigned at the time like all the other members of the SAirGroup Board of Directors, but he had not done so out of a sense of duty and patriotism - and because he did not want to be a coward. "I took on this task because I assumed that the country's leading forces had the will to save Swissair. I was wrong".

At Paradeplatz, at the main entrance to UBS's Zurich headquarters, activists laid a funeral wreath. "In Memoriam Swissair" could be read on the red and white stripes. The leader of the group, Hans-Jacob Heitz, attorney at law and representative of small shareholders at Swissair, explained that UBS received it because it had "pulled the plug" ten years ago.

In autumn 2016, 15 years after the grounding, former Federal Councillor Moritz Leuenberger recalled the events in a newspaper interview: "Emotionally I was very touched, like the whole country. With Swissair, a piece of Switzerland has disappeared with which everyone had a patriotic connection. Sure, big mistakes were made. But I don't like this polemic anymore. I



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have my point of view and was heavily involved at the time. Of course, the grounding was avoidable. However, I do not want to eat off the grass that has grown over the wounds.”

The Swissair liquidator tried to get money back into “Swissair in debt restructuring liquidation” through civil law proceedings against 14 former managers of Swissair's parent SAirGroup - but failed miserably. The decision of the Commercial Court of the Canton of Zurich of April 2018 dismissed an appeal by the liquidator and, in addition to the court fee of CHF 3 million, awarded the defendants compensation of CHF 4.5 million - at the expense of the distributable assets.

In spring 2018, former editor-in-chief of *Sonntags-Blick* Bernhard Weissberg held several consultations with key players of the Swissair crisis while researching for his master's thesis at the University of Zurich<sup>41</sup>. In a detailed interview, Peter Kurer recalls the negotiations at the time: “There was a war between the two parties, they hated each other”. Even the Federal Councillors were divided: “Leuenberger attacked Villiger and vice versa”. Kurer had personally urged Corti to announce at the press conference that “the fleet had to be taken down” but Corti had failed to do so either because of incapacity or egoistic motives! On the day of the grounding, when UBS was “working like crazy to rescue the company”, it seemed that Swissair could not find the shares that UBS needed and demanded. In the meantime, he added, Mario Corti was sitting in the studio of the Swiss television for seven long hours from 14:00 to 21:00 to tell his side of the story! Corti was still sitting in his office at Swissair headquarters that afternoon desperately trying to obtain cash. At the time, UBS had considered “putting Mario Corti under stronger trusteeship” - but this would have put UBS in institutional liability, so they did not dare to do. When asked whether UBS had underestimated the emotional aspects, Kurer responded as follows: “Banks act extremely rationally, we are technocrats. We underestimated the power of communication. On one hand, there was the problem with the public: we thought we had done something good: We saved the airline at the last minute!” But then Corti suddenly became the mastermind of the grounding according to Kurer: “What we hadn't noticed was that Corti had a hidden agenda and let Swissair slide into a grounding. On Monday everything still seemed to be fine, there was that press conference and 36 hours later we were confronted with a grounded fleet. And during those 36 hours, there was peace and quietness, and everyone thought the participants, including the banks, had done a good job”. He then lamented the lack of appreciation for UBS: “Then came the grounding, and everyone thought it was a mess, and Corti won the blaming game: Swissair was popular, which banks never are, nobody loves the banks”.

According to Kurer, the grounding could very easily have been prevented: “The Federal Council should have stood behind Swissair and given a state guarantee - that would have been enough. After Villiger's refusal on September 17, Corti should have gone to other Federal Councils and asked for help - which he didn't do. He did not use his network and did not listen to anyone”. It seems quite cynical today, that it is Peter Kurer that proposes this simple solution.

Peter Siegenthaler, then head of the Federal Finance Administration, was also interviewed. He had to admit that they were confronted with a great mystery after 9/11. Federal Councillor Villiger, his superior at the time, was convinced that the Government alone could not save Swissair because of its complexity. UBS believed Swissair must be “put on the ground” mainly for reasons of bankruptcy law. “That was UBS's firm conviction, but we, especially Federal Councillor Villiger, strongly advised against”. It was also the “Basel Clan”, which took the lead over the weekend and pushed through a forced shutdown of the fleet: “That is undoubtedly the case, there was a close relationship between the President of the Board of Directors of UBS Marcel Ospel and Crossair founder Moritz Suter - no question about that”. Peter Kurer was the actual “agitator” who, in his former function as Swissair advisor, was “not part of the solution, but rather part of the problem”. Siegenthaler was self-critical regarding the Government's role: “Perhaps we remained in an observer role for too long. It was hoped that the Chalice would bypass us and that it would not be up to the Government to intervene. In the end, we were confronted with the fact that there is no other way. If the decision-making process had been pursued more intensively since the beginning of 2001, then perhaps the final solution would have been somewhat better and/or there might have been other solutions. In reality, the scope for alternatives quickly became very limited”.

At a public panel discussion at the University of Zurich on August 22, 2019, on the occasion of the book presentation *How Swissair saved UBS*, Peter Siegenthaler openly admitted that the Government was overwhelmed by the complexity of the crisis: “We were simply overwhelmed at times!” He told his counterpart, Peter Kurer, that the *Term Sheet Phoenix*, “which you helped to construct, could not be implemented in such a way: It was unrealistic, underfinanced and based on wrong deadlines”. Kurer was not very impressed, because “we all knew that a grounding was needed, that's why it was underfinanced - that was done intentionally. We knew there would be a grounding, but we assumed that it would be managed properly”. In his usual intellectual manner, he summed up in a dry tone: “Swissair was a



<sup>41</sup> The Master's thesis as part of the postgraduate studies in Applied History under the direction of Prof. Dr. Bernd Roeck and supervised by Prof. Dr. Tobias Straumann culminated in the book *How Swissair saved UBS - Six Insiders talk*, in which all the discussion protocols can be found

run-down airline that was idiosyncratically driven up against the wall, as a worldwide unique case in the airline industry". The fact that in his former role as legal advisor to the Swissair Board of Directors he helped to build up the murky chaos of loss-making airline investments, and was thus himself at the wheel, was left unmentioned that evening.

Months later, Peter Kurer spoke again about the Swissair grounding during an interview with the tabloid newspaper *Blick*: "My role was a very limited one. I only represented UBS. My only task was to keep the financial damage to UBS to a minimum. I had neither the task nor the means to prevent the grounding. Others should have done that. It is a bit of a historical misrepresentation that some people still pretend that UBS is responsible for the grounding. It's rubbish." The famous quote with the pulled plug was made up: "I never said that sentence. The people who created that quote know full well it's not true." He also complained that books had been published in which UBS had been attacked: "There were simply various people who, in retrospect, portrayed us badly. The film *Grounding*, for example, was financed by Mario Corti's family. They had an interest in shoving the stinking fish into our pockets. We were naive and didn't realize what was going on for a long time." With this, he probably was alluding to the fact that a cousin of Mario Corti was married to the film producer. However, nothing is known about any financing of Corti. In summing up his career, he concluded, "I'm at peace with myself."

At the end of November 2019, the Federal Supreme Court dismissed the liability claim against 14 former Swissair and SAirGroup executives in the sixth and final lawsuit brought by Swissair liquidator Karl Wüthrich. Thus, 18 years after the grounding, 12 years after all the accused were discharged in Switzerland's largest economic trial and 11 years after Mario Corti was also found not guilty on appeal, a final verdict was reached. Court fees of CHF 3 million and additional trial compensation of CHF 1.8 million are borne by the creditors. The six lawsuits, all of which were dismissed, resulted in a cumulative amount of about 14 million in court fees and about 37 million in compensation - all at the expense of the creditors. The attorney fees of the claimant are however not included. The only winner of this mess was liquidator Karl Wüthrich, who received a risk-free and well-paid job "for a lifetime".

In July 2020, former Federal Councillor Kaspar Villiger was asked in a newspaper interview in the light of the worldwide coronavirus crisis, which was the most challenging challenge he had to face in his career. He assured that the collapse of Swissair had been the most complex. Interestingly, however, he pointed out that at the time it was not a question of saving a specific company under enormous time pressure but merely securing Switzerland's connections to the major economic centers. "Since practically the entire infrastructure was attached to Swissair at the time, this infrastructure was highly endangered. Finding and implementing a solution in a jungle of conflicts of interest between cantons, cities, trade unions, Crossair, Swissair, banks, politicians, and the media, and with an unbelievable amount of background noise, was an almost impossible task that cost enormous nerves.

In August 2020, the magazine *Schweizer Familie* interviewed Vreni Spoerry, a former member of the National Council and Council of States and member of the Swissair Board of Directors: "We had the assurance that Swissair would not be dropped. In the end, they abandoned it after all. At the decisive moment, the responsible persons at one of the major banks were not available. And as long as they did not pay, the other major bank did not pay either. The Federal authorities also behaved hesitantly. When asked why the Confederation rescued UBS years later, but not Swissair, she explained that the Federal Government, in contrast to the big bank, did not consider Swissair to be systemically relevant and that the financial damage had been assessed as manageable: "In the consciousness of the Swiss people, however, Swissair was also systemically relevant. The fact that it went bankrupt deeply hurt our sense of identity. What perished was the epitome of security, solidity, quality, and customer friendliness".



## 10. Analysis & answers to burning questions

### Is UBS the main culprit responsible for the grounding?

Provided one uses the term “grounding” in its original and not in its figurative sense, the answer is: Yes, without a doubt.

UBS is certainly not to blame for SAirGroup's decision to pursue McKinsey's hunter strategy. Nor is it in any way to blame that Philippe Bruggisser began to buy a portfolio of foreign companies with breakneck financial deals. It was also not UBS employees who steered aircraft into the World Trade Center and wiped out Cortis restructuring efforts in a single stroke, triggering an acute liquidity crisis. In short: UBS did not play an active role in the rapid decline of the Swiss aviation group. *However*, the reason why the entire Swissair fleet remained on the ground on October 2, 2001 can be attributed to UBS. This statement can be explained in the following 5 summarizing points in summary:

1. Unnecessary tightening of cash management through the cancellation of the cash pooling facility
2. UBS was the author of the term sheet, which restricted the use of the funds: The grounding was scheduled for 2-3 weeks from October 3 at the latest.
3. Refusal to participate in the bridging loan which would have allowed flight operations to be maintained
4. Delay in the settlement of the sale of shares on October 2 due to an exaggerated formalistic approach (especially the requirement “money only in exchange for the brand”)
5. Late transfer of the purchase price and any refusal to give advance payment or a loan - despite full knowledge of the acute emergency

UBS was always aware of the fact that a grounding was unavoidable without an immediate injection of liquidity on October 2. The enormous damage caused by this is disproportionate to the financial effort that would have had to be made to avoid a grounding on time.<sup>42</sup> It has recklessly neglected its corporate social responsibility and preferred profit-seeking goals to social ones. Great power always implies great responsibility. This responsibility has not been adequately fulfilled by UBS. It has deliberately accepted a great catharsis, whose purifying effect would make remediation measures easier to implement. Their strategy was to build a new, profitable company based on the principle of “burnt earth” without inherited burdens. However, the solution of social concerns (the fate of the employees) was confidently left to the Confederation. UBS praises itself in public as a „Good Corporate Citizen”<sup>43</sup>, but its business strategy concentrates exclusively on business aspects that maximize self-interest and seem to have no hearing or sense for the implications in public. However, the general public can expect a little more from a large corporation than the annual announcement of profit growth. It is not acceptable that companies with such great power and far-reaching capacity for action simply hand over social, ecological, and a whole range of other problems to the Government. Nowadays, the restriction to complying with regulations and optimizing economic efficiency is increasingly less legitimate. The lines of Marcel Ospel seem almost cynical when, less than three weeks after the grounding, he wrote in a foreword to a special report in the prestigious Financial Times on “Responsible business in the global economy 2001”: “At UBS, we take corporate responsibility very seriously and we always have. We have made corporate responsibility part of our culture and our identity. It is integral to our business model.” Just lip service? Marcel Ospel concludes: “A company that puts the interests of its shareholders first through good corporate governance will find its stock more attractive to investors”. Does this expose the real goals? Shareholder value above everything? Is it enough trying to create added value primarily for shareholders? UBS appears to interpret its social responsibility primarily as a mission to maximize profits.<sup>44</sup> Ethics is understood as a pure duty exercise to maximize shareholder value: Ethics is just good for business and just another instrument to increase profits - among others. Thus, company ethics degenerates into a mere reputation or public perception management, or in other words, an opportunistic attempt to secure stakeholder support. UBS's website contained a statement by Marcel Ospel: “For UBS, responsible corporate governance means that in addition to purely profit-oriented and legal or regulatory considerations, other factors can play a role in business decisions”. But not necessarily „must”.



**Marcel Ospel,**  
President of the Board  
of Directors, UBS

<sup>42</sup> UBS apparently learned nothing from the chaos associated with the collapse of the Savings and Loan Bank of Thun (SLT) in October 1991. According to the newspaper NZZ, it is incomprehensible from today's perspective that none of the big banks wanted to take over SLT, because the “loss of image that the entire Swiss banking industry suffered as a result of the collapse of the small regional bank was disproportionate to the financial resources that would have had to be used to take over the ailing institution.”

<sup>43</sup> Corporate citizenship is the entire commitment of a company to society that goes beyond its actual business activities. It is the will of the company to behave responsibly towards its stakeholders (employees, customers, suppliers/service providers and shareholders) and - like a good citizen - to connect positively with the community in which it operates in as many ways as possible.

<sup>44</sup> Until 2000, the UBS website still stated the following principle: “By creating value for our shareholders, we also create value for all other stakeholder groups”.

It seems as if the major bank of Basel has completely underestimated the magnitude and the emotional avalanche that the forced grounding has triggered in the population and politics.<sup>45</sup> This alone does not give them a good testimony. As is well known, however, history is always written by the winners. To keep the damage to their image to a minimum, they have been desperately trying to push the blame off, because nothing is worse for a global corporation than permanently bad press. Since the targeted media defamatory campaign that has been conducted against Mario Corti since his terms of employment became known, he has been the ideal target for bearing sole responsibility for one of Switzerland's biggest economic debacle to date. People whose personal integrity and credibility have been destroyed cannot be believed anyway! The mud battle in the media, which was directed against Mario Corti at the beginning of 2002, fundamentally redistributed the roles in the Swissair drama: In a short time, UBS CEO Ospel mutated in public perception from a bogeyman to a responsible banker who went to the limits of his credit possibilities, while Corti was given the label of a shameless ripper.

### Peter Kurer: Key Player in the background



Foto © SF DRS

Before joining UBS, the later Chairman of the Board of Directors of UBS and Marcel Ospel's direct successor was undisputedly one of the three most renowned business lawyers in Switzerland, alongside Rolf Watter and Rudolf Tschäni. In the lucrative business of capital market transactions and mergers & acquisitions, he was regarded as the specialist par excellence. He began his legal career at the renowned law firm Baker & McKenzie. He later became a senior partner in the Zurich law firm Homburger. There he was involved in many important mergers in the 1990s: ABB, Novartis, Richemont, etc. He advised Swissair for 10 years on all sensitive legal issues. He attended meetings of the Board of Directors, discussed the consolidated financial statements, and, most recently, advised the Board of Directors on the looming lawsuits of responsibility. Among other things, he managed the purchase of Sabena

and prepared complicated contracts with put option clauses for the disastrous foreign investments. Even in the failed Alcazar project, he was already a mastermind behind the scenes.

In the middle of 2001, he unexpectedly joined UBS with a wealth of insider knowledge, which earned him the title of "Defecting Attorney" from his professional colleagues. Former colleagues openly spoke of the "betrayal of the client". His salary at UBS increased six-fold. Also, after just three weeks he became a member of the Group Executive Board - something no other lawyer at UBS had ever achieved before.

Former work colleagues describe him as an extremely ambitious and cynical lawyer who never misses out on any finesse in power gambling. An acquaintance calls him a "roughneck and the opposite of a lawyer who fights with a floret". Another confidante describes him as follows: "Kurer comes out of nowhere. He's asserting his interests. At all costs. If necessary, he intimidates his opponents. He is a master of power play".

He was the chief negotiator for UBS in the development of Phoenix. Piquantly, he sat opposite Peter Widmer, his former superior of the Homburger law firm, who represented the interests of SAirGroup. According to Widmer, he experienced "the worst hours of his professional life". During the negotiations, Kurer deliberately attacked the Swissair executives - and Mario Corti in particular - in a cutting tone. In the end, he waved Widmer out of the room with gestures. According to Kurer's ex-colleague, the entire power game was also "a personal thing: Kurer despised Corti. Furthermore, it is said that it was a special satisfaction to demonstrate his power to his ex-boss Widmer...

According to Kurer, "Phoenix" was nothing more than a successful "Merchant Banking Deal". In an interview, he proudly pointed out that "in no more than 40 hours" the complex transaction had been completed: "No other airline has ever been sold and transferred faster" ...

### What role played Moritz Suter?

Moritz Suter's role has remained a mystery to this day. In the airline industry, the successful entrepreneur has always been known as a smart rascal, a master of antichambering, and perfect in the field of public relations. Suter maintained personal contacts with all parties, which he cleverly tied to himself through flight privileges. In this way, he had created a close-knit and extensive network of grateful caregivers, which included journalists, representatives of the jet-set, local and national politicians. At the beginning of the 1990s, through indiscretions and deliberate media use, he brought down the groundbreaking merger project "Alcazar" and gained a reputation as a salary squeezer through his uncompromising stance towards his pilots. Because of his maxim "safety equals compliance with legal minimum regulations" he was highly disputed in pilot circles.<sup>46</sup> His long years of personal war with the Group CEOs (first with Otto Loepfe, then with Philippe Bruggisser) reinforced the suspicion that he was involved in the planned grounding. He has always denied any guilt. At the press conference on October 1, 2001, however, he

<sup>45</sup> Not surprisingly, a Corporate Responsibility Committee was established at UBS in 2001. This committee is responsible for discussing how UBS can best meet the changing expectations of its stakeholders regarding responsible corporate governance. The Chairman of this Committee was Marcel Ospel himself.

<sup>46</sup> Moritz Suter and his then Chief of Operations Crossair, André Dose, were accused of negligent manslaughter and assault in connection with the plane crash in Bassersdorf. Both were acquitted for lack of evidence. The crash in Nassenwil remained unpunished as the statute of limitations expired.

expressed his sadness about the tragic events with a whining voice and a bit too theatrically and even let himself be carried away by the improbable statement: "Swissair, whom I love from the bottom of my heart..."

Mario Corti, on the other hand, mentioned in an interview with the renowned NZZ that the Phoenix plan was a conspiracy and that he had not been involved in the plans of the major banks before the weekend. VPOD official Daniel Vischer bluntly said: "This is a coup by UBS and Crossair against Zurich and the old Swissair leadership and a deliberate action!" Swissair executives had the same opinion. For example, Ray Lyons, Head of the Swissair/Sabena Network Management, also frankly spoke internally of a "coup d'état by Crossair". It is a fact that the two Basel-based Moritz Suter and Marcel Ospel had been friends for a long time and were amongst the most important figures of the "Basel sleaze". Ospel was known for having a deep aversion not only against Credit Suisse, but also against the liberal party of Zurich. Besides, Suter's close friend and personal legal advisor Peter Böckli sat on the Board of Directors of UBS. Suter announced at an early stage that he had enough investors to divest Crossair. Suter's ominous phone call to his former protégé André Dose on the eve of the grounding, when the latter desperately tried to reach Ospel to prevent a disaster, certainly does not disprove any conspiracy theory. Was he trying to sabotage any efforts to prevent a grounding? In connection with the Swissair trial, a drafted letter was found in Suter's files - addressed to the Federal Council and signed by Marcel Ospel. In it, the bank boss advocates an airline led by Moritz Suter that "has nothing to do with influences that are already partially responsible for Swissair's debacle". Even Peter Kurer does not completely reject a "conspiracy theory" by suspecting that Marcel Ospel might have been inflamed by Moritz Suter. In any case, "it was an element that played a part". Peter Siegenthaler mentioned that bank representatives from Basel complained to him that the people of Zurich "had already used our excellent Bankverein to save UBS and now they are using our great Crossair to save Swissair". As a neutral Bernese citizen, he was often left behind with his mouth open in amazement observing the fights between Basel and Zurich.

Moneycab's business journalists concluded in an article that many signs indicated that a Crossair solution - without Swissair - had been planned by Moritz Suter for a long time. People close to Suter knew that he would do anything to prevent his lifework from crashing. Klaus J. Stöhlker, a well-known consultant, was in contact with business leaders in Basel and politicians from Moritz Suter's close entourage at the end of September. They told him at the time: "Soon we will teach the people of Zurich a lesson!". Sepp Moser, aviation journalist and close friend of Moritz Suter, said in an interview with the *Aargauer Zeitung* on September 25, 2001 that Crossair was effectively taking over Swissair. An astonishing statement at that time, since it did not correspond in any way to the known facts. He also said that the merger of Crossair and Swissair into *Swiss Air Lines*, which had been worked out by Dose/Suter, was the right move - but only if the Swissair Group "survives the next few days". In this context, the question arises as to whether and to what extent he was involved with in any secret plans?

It is also hard to understand why Moritz Suter left the scene and disappeared in those eventful days when the people's souls boiled. One would have expected a confidence-building and statesmanlike appearance in public from the "savior of Swiss aviation" and president of the new national airline. For *Moneycab* the reason was clear: "Because Suter secretly continued to speculate in a pure Crossair solution. Hence submerge and shut up." When "Phoenix+" was financed at the last minute, Suter fought with hands and feet against the plan to save 2/3 of Swissair. By pointing out failed mergers that had never been successful owing to different corporate cultures, he tried to dissuade the Federal Council at the last minute and keep it to a Crossair solo run.

In aviation circles, it was well known that Moritz Suter had always dreamed of operating wide-body aircraft with Crossair and entering the long-haul market. His many years of efforts to integrate the Group's charter airline Balair were, among other things, visible manifestations of his vision. The initial Phoenix plan would have enabled Suter to finally start intercontinental flights with wide-body aircraft by taking over Swissair's most important cash cow routes at clearance prices. Characteristically, Walter Vollenweider - a former member of the Swissair Executive Board - writes in his book *Business Class* on Suter's brief stint as Head of SAirLines: "Moritz Suter knew from the outset that he was not up to this challenge but hoped at the beginning that this position could allow him to realize Crossair's long-standing dreams". Was the grounding a consciously tolerated chaos to integrate the usable parts of Swissair (aircraft, personnel, etc.) more easily? Was this the opportunity to pick out bargains from the carcass at will, together with new personnel contracts "Moritz Suter style", the only airline in the world to become being able to delegate the reconstruction difficulties to third parties - at the expense of shareholders, bond-



**Moritz Suter,  
Founder of Crossair**

*René Lüchinger in the book  
„Der Fall der Swissair“:  
„The radar of his perceptions is  
narrowed to his Crossair. Swissair  
only appears as an inhospitable  
object, demonic and big for years,  
now weak and defenseless. And now  
he wants to take bold and assimilate  
what's left of it.“*

**Former President of the Board of  
Directors of Credit Suisse  
Rainer E. Gut in his biography  
„Die kritische Grösse“:**

*“Swissair's leaders were no match for  
Moritz Suter. They were fooled by  
played harmony and threatening gestures  
from Basel and were repeatedly tricked  
by the Crossair president through  
intricate and cunning maneuvers”.*

*“Suter was playing an insidious game.  
He wasn't just trying to torpedo the  
Alcazar project. His plans went far  
beyond this and ultimately culminated  
in the regional airline Crossair becoming  
Switzerland's national airline. This  
plan presupposed the demise of  
Swissair.”*

holders, and all other creditors? André Dose noted in Crossair's last annual report: "We were the only airline to carry out the massive (fleet) reduction without having to take over one franc of the old fixed costs".

Another spicy detail: Even before Moritz Suter was dismissed as Chairman of Crossair/Swiss, André Dose presented his new Management team: Of the 9 positions, all 9 were occupied by Crossair managers. Not a single former Swissair manager was considered, even though none of the young Crossair managers had experience in operating an intercontinental airline. It is obvious that Dose was influenced by his superior when choosing his team of direct reports. Did the composition of the management team mirror the original goal of the Phoenix plan?

One last bizarre anecdote: In his book, *Sturmflug* André Dose recalls his first thought on the disastrous 9/11: "This is probably the end of Swissair". In the same breath, however, he predicted only a "difficult time" for Crossair - and this despite Crossair itself having been struggling for some time and being overly dependent on Swissair. As early as the beginning of July he had already told his wife that the day would come when Swissair would no longer exist and in response to her surprise he replied: "You will see it". Mere foreboding or did he already know more?

## What is the Federal Government's fault?

After the devastating events of 9/11, the SAirGroup contacted the federal government immediately - not to beg for financial resources (tax money) - but rather to obtain a federal guarantee that would have made it possible to raise capital outside the country's borders. Since the Federal Council could not/did not want to give any guarantee,



**Federal Council  
Moritz Leuenberger,  
Minister of Transport**

the SAirGroup was imperatively dependent on the cooperation of the major Swiss banks and at their mercy for better or for worse. Not until the damage was done was the federal government willing to provide several à fonds perdu payments, which had previously been rejected as a simple guarantee, not for an entire aviation group, but only for a sole airline! The statement made by Federal Councillor Moritz Leuenberger in the Council of States during the financing debate of "Phoenix+" is symptomatic: "Just a year ago I would have been convinced: If Swissair should ever collapse, we would certainly not pay any money from the Swiss Confederation. It was only when we saw what this collapse could actually mean for the whole country that we started to move".<sup>47</sup> Author René Lüchinger is convinced that Federal Councillor Villiger underestimated the seriousness of the situation. He had not realized the danger of a grounding for a long time: "The Gov-

ernment could have prevented a grounding until the end. But they were narrow-minded and disunited. I still don't understand it: Corti was desperate and showed it". The news magazine *Facts* concluded: "An early intervention by the Federal Council could have prevented the worst. In the same way that the German Chancellor Gerhard Schröder solves company crises by opening the state purse, Treasurer Villiger could have prevented a grounding with a state guarantee of over one billion Swiss francs". By way of comparison: In May 2005, when the pension funds of civil servants (SBB, Swiss Post, etc.) had a massive underfunding and needed to be restructured in the longer term, the federal government gave a state guarantee without hesitation.

In its conclusion, the Parliamentary Commission of the Council of States found that the Federal Council had particularly failed in the early detection. As neither the Federal Council (or the Federal Department of the Environment, Transport, Energy and Communications) nor the Federal Office of Civil Aviation had worked out crisis scenarios at an early stage, the Federal Council was condemned to react rather than to act.

The Federal Council's decision to support only the "Basel solution" was particularly decisive. On the weekend of September 22/23 2001 - one week before grounding - a crucial and far-reaching reversal of opinion must have taken place: On Saturday, at the crisis summit, the Breimi working group was formed to work towards a recapitalization of the group, but already on the following Monday, Federal Councillor Villiger mandated a report with such stringent cornerstones that the result was already predetermined. The report was completed in record time and already outlined the "Phoenix" plan. It is grotesque that the external expert opinion came to a firm recommendation as a consequence of the rigid guidelines, for example the categorical exclusion of guarantees and loans, and despite most of the information being missing, and even though no sound and fair assessment of the alternatives was possible in this short period of time. A participation in the capital or the provision of a guarantee to SAirGroup was excluded categorically by Villiger - apparently in the mistaken belief that the Federal Council's hands were tied in this respect. The question arises whether the Federal Council was influenced by a outside party on this Sunday and whether a new agenda was set on that day. Was BDO Visura's expert report merely a courtesy opinion intended to back up this new direction? How else can it be explained that this expert report was written in record time and none of the involved

<sup>47</sup> Even almost 10 years after the grounding, shortly before his resignation as Federal Councillor, Leuenberger repeated his basic position at the 4th Swiss Aviation Congress: "Until well into September 2001, i.e. also after 9/11, the Federal Council was convinced that Swissair could and must save itself. But when the grounding actually happened, I changed my mind in a single day, because only then did I see clearly what it would be like to endanger around 40,000 jobs, and what it would have meant if Switzerland had not been connected to the world for some time."



experts pointed out to the Federal Council its misinterpretation of the law? Is it a coincidence that UBS rigorously tightened up its cash management on the very same day that Federal Councillor Villiger ordered the report? Why were emergency loans granted weeks later, based on the same legal articles that had previously seemed to be an obstacle?

Even when the grounding was a fact and the disaster was already taking its course, alternative solutions were not examined - allegedly due to lack of time and resources (Quote Kaspar Villiger: "The people are all on the edge of



**Federal Council Kaspar Villiger,**  
Minister of Finance,  
later President of the  
Board at UBS

being overwhelmed). The Bremi working group had to stop its efforts before it could show first results. The remediation solution that SAirGroup had been commissioned was rejected before it was even considered. Alternative models were dismissed by the Federal Council as "dreams" and "illusions". On the morning of October 5, 2001, the Federal Council informed the media that only Plan Phoenix would be pursued and that no alternatives would be evaluated! Pascal Couchepin, who had an open ear for alternatives, allegedly had to give in after a heated debate in the Federal Council and publicly declare that his contacts had not produced anything tangible. In an interview he said: "The Federal Council has discussed various scenarios. However, it has concluded that the banking solution is the best one after all". A contradiction? On the one hand, there was no time and resources to examine alternatives, and yet they concluded that only the banking solution was best? It is a fact that Federal Councillor Villiger already considered the separation of Crossair as proposed by BDO Visura at the end of September and before the Term Sheet Phoenix was developed, as the only realistically feasible solution, and rated a re-

structuring of the group as unrealistic. Remarkably, Federal Councillor Villiger did not inform Mario Corti about this and led him to believe that the Group would not be abandoned.

In the meantime, many have realized that the founding of Swiss was a hasty decision - without careful consideration of alternatives. HSG professor Heinz Hauser explained in an interview: "If the Confederation had agreed after the grounding to guarantee new current expenses of Swissair for the coming 30 days, it could have developed a better-clarified strategy during this period". In an interview, ETH professor Bernd Schips also criticized the role of the federal government. In his opinion, the Confederation should have purchased the airline-related companies out of SAirGroup and thereby given Swissair liquidity relief. According to Bernd Schips, it was wrong to sell the Group companies in panic, especially during one of the weakest phases of global aviation.<sup>48</sup> Not only could Swissair have continued flying, but the almost invaluable brand name "Swissair" would not have been lost: "The major damage to Switzerland's image and its aviation industry caused by the grounding and the well-known problems with the integration of Crossair and Swissair could all have been avoided, as Crossair would not have been needed at all. The Confederation could have sold the airline-related companies profitably later, so to speak as compensation for the liquidity support granted to Swissair. In this way, the process of resizing the Swiss aviation industry would have been much more controlled than was the case. When asked why he had not been able to assert himself with this idea, he said in resignation: "Politicians had already taken a different decision - possibly because certain people had already jumped the gun. I believe the potential alternatives were not examined seriously enough at the time". Attorney Hans-Jacob Heitz, founder of the Association for the Protection of Swiss Investors and co-initiator of the alternative project "Globus", replied to the question why his project met with little response: "Quite simply: we had no strong lobby, neither in federal Berne nor on Paradeplatz" - where the headquarters of the major banks are found in Zürich. "Either there was a lack of will or courage, or the Federal Council simply had not understood the concept". Although the concept was already faxed to the Federal Council on October 17, 2001, Federal Councillor Villiger is said to have only learned about it on November 7 - and this even though the concept was already intensively discussed in the media. It is said that there was no paper in the fax machine of the Minister of Transport at the time.

It was also unwise to intend to merge the two companies Crossair and Swissair. Even André Dose writes in his book *Sturmflug* that the biggest mistake was "to build the whole project on Crossair". Instead, an "umbrella company" with two brands "Crossair" and "Swiss/Swissair" would have been better - in other words, a "Swiss Air Lines" solution, as the SAirGroup initially wanted to implement! Not only could the eternal dispute between the two enemy pilot squads have been prevented,<sup>49</sup> but also save two established brand names and avoid the expensive introduction of a new corporate identity, for which Swiss had to invest one-off implementation and development costs of CHF 180 million. At the very latest when Swiss was sold to Lufthansa, commentators were unanimous that politicians had invested too much money in an airline that was built up too quickly and on the wrong structures: Building the new airline on Crossair's legal framework was simply a strategic mistake!

<sup>48</sup> As proof that the subsidiaries and participations could certainly have been sold on better terms, Swissport (the world's No. 1 Ground Handler), was sold by the administrator to the British investment company Candover in February 2002 for CHF 580 million. Three years later, Candover sold it to the Spanish Ferrovial Group for almost double (CHF 1,002 million). The example of SR Technics is even more striking: While the two venture capital companies 3i and Star Capital paid CHF 618 million to the administrator at the end of 2002, the shares were sold to a consortium from the United Arab Emirates in September 2006 for a proud price of CHF 1.6 billion.

<sup>49</sup> A detailed description of the different (cockpit) cultures can be found in *Moos / Black Box Swissair*, S. 173 and following.

The collapse of SAirGroup revealed the significant weaknesses of the Swiss bankruptcy law, which has no regulations for Group companies. Isaak Meier, Professor of Debt Enforcement and Bankruptcy Law at the University of Zurich, assured that the fate of Swissair would by no means have been sealed on the day of the grounding if Switzerland had had a bankruptcy law based on the US model (Chapter 11): “Swissair could have been re-dimensioned and the healthy part preserved. It would not have been necessary to spend billions of euros in public funds and thus in taxpayers' money.” He doubted that the creditors would do better in the current liquidation under Swiss law than if Swissair had been rescued: firstly, the assets dividend is very small and secondly, thousands of jobs have disappeared, and wages have been cut drastically in some cases. The decision to send the Group into bankruptcy proceedings out of fear of creditor claims has been taken in haste. In the USA, several airlines came under creditor protection after 9/11, US Airways even twice.<sup>50</sup> It flew until 2015 when it merged with American Airlines - however, Swissair no longer exists. It took almost 10 years before a bill to revise the Swiss bankruptcy law was passed in parliament. Attempts were made to achieve a certain approximation to the American “Chapter 11”. The purpose of the revision was to make it easier to restructure companies in the future, instead of having them go under in bankruptcy. However, a specific law for large corporations was waived.

## Could Mario Corti have prevented the debacle?

In his book *Bruchlandung* Sepp Moser claims that Mario Corti only had a small, but a real opportunity to avoid the collapse. Corti had hesitated too long - numerous opportunities for radical restructuring had been missed.

Of course, it is easy to judge in retrospect, especially when one is certain that the terrorist attacks of 9/11 were imminent. However, it is appropriate to judge the decisions of that time in the context of the time. The SAirGroup at that time had profitable, market-leading subsidiaries such as Gate Gourmet (Catering), Swissport (Ground Handling), Atraxis (IT), SR Technics (Maintenance), Swisscargo (Cargo), Nuance (Tax-Free Shops), Restorama (Personnel Restaurants), etc., which accounted for more than half (56%) of Group turnover in 2000, but contributed practically the entire operating profit (94%; based on EBIT). This diversification strategy, known as the dual strategy, made it possible to smoothen the cycles of the highly volatile airline business and to mutually support the various parts of the Group. A blindfold sale of the silverware would certainly have strengthened the balance sheet, which was weakened by the Hunter strategy - but this would have decisively undermined the future earning power of the Group. A farmer who is forced to sell his best fields may have short-term liquidity, but in the long term, he is deprived of his most important sources of income. It is therefore a philosophical question: Do I sell, when it burns, the houses that do not burn? Or to put it another way: Should the healthy parts of a company be sold to save the "sick" parts? Or would it not be better to try to fill the biggest potholes to steer into a better future with the help of the remaining cash cows? No major European airline (Lufthansa, Air France/KLM, SAS, etc.) consists of a nude airline alone - all are large aviation groups and generate profit contributions to the cyclical airline business through their secondary airline-related companies. The chronic problems of the newly formed Swiss were attributable to the fact that it was only a single airline and not an aviation group. The following comparison serves as an illustration: In 2003, Gate Gourmet, Nuance, Swissport, SR Technics and EDS (Atraxis) generated a profit of approximately CHF 470 million, while at the same time the airline Swiss reported a loss of CHF -348 million. Nevertheless, in summer 2001 SAirGroup was forced to sell two subsidiaries (Swissport and Nuance). Together with drastic cost-cutting measures, this transaction should have restored the burdened consolidated balance sheet by around CHF 4.5 billion (the two companies had substantial hidden reserves; a sale would have liquidized book reserves). In April 2001, the Swissôtel hotel chain was sold for CHF 410 million as well as stakes in Panalpina, Swiss Global Cargo, Austrian Airlines, Galileo, and Equant. By the end of August 2001, approximately CHF 1.7 billion of assets had been divested. However, the events of 9/11 brought an enormous blow: on the one hand, the initiated sales negotiations stalled as potential buyers withdrew and, on the other hand, the terrorist attack nearly brought the inflow of cash from the airline's operating business to a standstill. In an industry where every percentage point of higher utilization can determine whether a company makes a profit or a loss, such a slump in earnings severely undermined its financial position, which could only have been bridged with accrued reserves. As is well known, however, such financial reserves had already been spent by SAirGroup for investments in dubious foreign investments!



**Mario Corti,**  
CEO SAirGroup

Critics (UBS, Karl Wüthrich, and others) often point to the fact that SAirGroup repaid loans in the range of CHF 1 billion in the months before the grounding. A net CHF 777 million in short-term loans and commercial papers that could not be refinanced on the market were repaid - not voluntarily, however, but because all these loans were due and were not renewed by the banks. Cynically, this included a CHF 150 million loan from UBS that was not renewed. Failure to pay these receivables would have resulted in immediate default on the part of the Group. As a result of the clauses in the loan agreements, this would have triggered the immediate and premature maturity of other bank debts (cross-default). Given the Group's massive over-indebtedness, a reduction in dependence on bank loans

<sup>50</sup> In addition to US Airways, two of the largest airlines in the USA: Delta Air Lines and United Airlines.

urgently advisable. In addition to a reduction of the balance sheet and the sale of non-operating assets, Mario Corti's restructuring efforts also envisaged a reduction in net debt and an increase in equity.

Well-known MIT professor Lester Thurow wrote in his book *The Future of the World Economy* that Swissair (or SAir-Group) should have retired early from its core business and sold all landing rights. His thesis: By selling its assets and leaving the industry, Swissair could have survived and distributed a lot of money to its shareholders. Should SAir-Group have disposed of all airlines and only operated the lucrative subsidiaries? A tempting thought - albeit not quite a realistic one. Firstly, it does not consider the fact that landing rights are based on intergovernmental agreements and cannot simply be sold. He also fails to recognize the implicit dependence and interconnectedness of the ancillary companies with the Group airlines. The critical size and cost advantages of economies of scale required for global competition could only be achieved and sustainably secured by the basic capacity utilization of in-house airlines. Corti's strategy of focusing on the two core airlines Swissair and Crossair and disposing of all holdings in other airlines was nevertheless a step in that direction. This allowed him to stop the horrendous outflow of money into foreign countries.

Sepp Moser is firmly convinced that Mario Corti was the wrong man for the job: he had neither experience of aviation nor crisis management when joining the company and had never been CEO of a company before. There is no kerosene in his veins, only Nescafé! However, one should bear in mind that at that time the company was not looking for a CEO for an airline, but rather a clever financial manager who could resolve the mess of investments, financing commitments, and impenetrable leasing deals of the Group. Mario Corti did what no one thought was possible: He was able to release the troubled Group from its commitments in France and Belgium. The high exit costs seemed bearable. But then 9/11 happened. It is therefore not surprising that German aviation journalist Jens Flottau, for example, praises Mario Corti's work on the group's controls: "In his short term of office, Corti did everything right, he just wasn't fast enough to keep pace with the events. Controlling the Group has been a tightrope walk for months, with an equity ratio of 2.5 percent. Swissair Group had become vulnerable to even the smallest disruptions. A shock of this magnitude, such as the terrorist attacks in New York and Washington, could not be absorbed by the company".

## Has the Confederation committed a regulatory sin?

**17** renowned Swiss economists, with an unrestrained belief in the all-regulating market mechanisms, decisively opposed any state intervention before the decision of the National Council and the Council of States. According to their argumentation, "too big to fail" cannot be enough reason to throw market principles overboard.



There are undoubtedly regulatory principles - but also real political necessities, where it is appropriate to deliberately neglect such stubborn market principles. As the banks refused to accept any social responsibility, the Confederation was forced to act quickly. The intervention of the Federal Government was nothing more than the consequence of an extreme state of emergency. It was primarily an attempt to limit the damage, focusing on maintaining the airport infrastructure and protecting vital functions related to aviation. In this respect, the far-reaching consequences of not acting must be considered: The collapse of the SAirGroup would undoubtedly have meant a real implosion of the economic engine "airport", or to put it in Federal Councillor Moritz Leuenberger's figurative words: "If the tree Swissair falls, then it will carry away a large number of small trees and brushwood".

The flight-related companies would hardly have survived such a sudden structural rupture. Shortly after the grounding, a confidential study conducted by Credit Suisse concluded that 22,000 full-time jobs would have been lost at Swissair alone in the event of a "total bankruptcy", but 50,000 full-time jobs if the subsidiaries and suppliers were included. Besides, tax losses of CHF 1.2 billion and an equally high burden on unemployment insurance would have been incurred. The study concluded that the funds invested by the federal government were justifiable: "Extreme emergencies require extreme solutions"! Federal Councillor Leuenberger warned in parliament: "It is an illusion to believe that one can avoid the financial responsibility of the public sector with no decision!" Once again, however, aviation journalist Sepp Moser had a contrary opinion: In a simplistic calculation, he computed that the 35,000 additional unemployed (according to his estimate) could have been absorbed without problems since more unemployed people were counted throughout the country during the recession of 1997! Such a simplified argumentation is limping because it completely ignores the fact that such a sudden shock would have had devastating consequences for the Canton of Zurich and the entire airport region concerning its geographical, socio-structural and, above all, industry-dependent concentration. Despite state mitigation, the municipality of Kloten, for example, had to increase its tax rate by 15 percentage points after-tax revenues had fallen by a third. The number of welfare recipients doubled, and their costs tripled. The city finances got into a long-lasting imbalance. It was not until six years later that the city was back in the black, but already for 2010 the tax rate had to be increased by a further 10 percentage points, as all reserves had been used up in the years of crisis. Other airport communities such as Rümlang and Opfikon were also heavily affected. It is hard to imagine what would have happened if there had been a total collapse. Nine years after

the grounding, the number of passengers at Zurich Airport was still well below the level of 2000<sup>51</sup>. Also, for many years there were fewer direct and non-stop connections than during the Swissair era. There is no doubt that the total collapse would have been an unprecedented economic shock in terms of its severity and impact, which would have led to a severe recession for the Canton of Zurich and the Swiss economy. An econometric study calculated a direct burden on the economy of around -2.4% of GDP, which would have been equivalent to a massive economic recession.

The much-criticized financial injection from the Swiss Government was certainly an expensive but just one-off mitigation of structural change for services that tend to be underestimated in Switzerland. The numerous opponents should ask themselves why Switzerland spends more than CHF 4 billion a year on the protection of its agricultural heritage but not for a unique rescue operation for a fundamental economic pillar. Or why has the army been consuming billions of taxpayers' money every year for 60 post-war years? Why do we spend so much money on refugees? Why did we afford the Expo (cost CHF 1 billion)? Why did we build the NRLA, which cost CHF 22 billion, just to offer foreign transit traffic an alternative on the railways? The Lötschberg base tunnel alone, which many people have described as redundant and was built solely for local political reasons, costs CHF 4.2 billion - and this before any loss guarantees of about CHF 200 million per year for operating costs as of 2008. Why is the subsidy of the national railway not questioned for decades - but at the same time the collapse of the Swiss air traffic is applauded? Why, then, is there a completely contrary view to two fundamental pillars of public transport? When national airlines such as Air France and Lufthansa went bankrupt during the Gulf War in the early 1990s, they were not abandoned by their governments.<sup>52</sup> Or imagine Spain's Sports flagship institution *Real Madrid* suddenly going bankrupt because of mismanagement of his presidency - it would simply be unthinkable to bury this national symbol with its glorious history and unparalleled trophy collection and accept a cheap replacement in the lower leagues. Without a doubt, an entire nation and countless fans worldwide would do everything in their power to prevent this - because in this case, it is not just any ordinary football club - but rather an integral part of the identity of an entire nation!

Ever since people have been eagerly debating about aircraft noise at every garden party in Switzerland, air traffic has increasingly been perceived as a nuisance rather than an important service provider for tourism and the export industry. The enthusiasm for aviation in the post-war decades has turned into an apathetic lack of interest and in some cases even open rejection. Nonetheless, more and more people are calling for programs for aviation professions and technologies recognized at universities of applied sciences to counter the brain drain and immense outflow of aviation know-how that has been blatant following the grounding. The founding of the HSG Center for Aviation Competence (CFAC) at the University of St.Gallen or the aviation course at the Zurich University of Applied Sciences marked a modest start.

The end of Swissair was more than just a microeconomic case study. The Swissair Group did not die a natural death. It did not fail because of the fierce competition in the airline business or succumbed to competitive forces in the market: Neither Gate Gourmet was ousted from the market by LSG Sky Chefs, Swissport swallowed by Servisair-GlobeGround, nor were the losses of the all airlines so large that they could not have been compensated by the other parts of the Group. No, Swissair was the victim of a megalomaniac CEO (Bruggisser), who was backed for years by his supervisory board (Board of Directors), to lead one of the most respected aviation groups once called a "flying bank"<sup>53</sup> to the brink of ruin within a very short time by pursuing a completely failed acquisition policy. Lying in intensive care, it was finally given the deathblow either out of industry ignorance (at best), or as a result of a conspiracy in Basel (at worst).

To sum up, it can be argued that state intervention - despite all the populist obstructionism - can be right if the invested capital pays off economically. Especially when the economic costs of a total crash exceed the invested capital by far.

## Would Crossair have survived without Swissair?



Sepp Moser never tires of pointing out that Crossair was still "healthy" before it was converted to Swiss. This undoubtedly applies to the Crossair of the early 1990s - long before the hard-fought dispute with the pilot corps inflated the costs and the development of Basel Airport into an independent European hub began ("Eurocross") - near Zurich (only 1 hour's drive away): The new collective employment agreement with the cockpit crew, which was introduced only recently, provided a salary increase of 16% - 40% and an extended holiday arrangement of 2 weeks/year. To realize its daring vision of building a hub, Moritz Suter had ordered 75 new Embraer jets and signed

<sup>51</sup> In 2000, 22.7 million passengers took off or landed in Kloten. In year 1 after grounding, this figure was more than 20% lower: Only 17.9 million passengers continued to use the airport. It was not until 2007 that the 20 million mark was broken again. However, even in 2008 and 2009, the figures of 2000 could not be reached. Only in 2010, with 22.9 million passengers, was the number before the grounding finally reached again.

<sup>52</sup> One of the world's largest airlines, Air France/KLM, received a final US\$ 3.7 billion subsidy from the French government in 1994 to restructure its balance sheet with the approval of the EU.

<sup>53</sup> In the crisis year of 1991, when Lufthansa, for example, was on the verge of collapse, the Swiss Bank Corporation (today: UBS) certified Swissair's assets at CHF 5 billion (equity + hidden reserves).



a purchase option for another 100 (!) aircraft. Furthermore, in addition to building a headquarter in Basel costing CHF 200 million and an expensive new Y-finger dock for CHF 20 million, he was constructing one of Europe's largest business class lounges, which soon was obsolete due to underutilization. According to Crossair, the lounge was "Europe's most beautiful passenger lounge" and was setting a "new standard in passenger care on the ground". Nevertheless, when Swiss was launched, the public was left to believe that Crossair was a low-cost airline. Chairman Pieter Bouw emphasized in an interview that this was not the case at all. In addition to the increase in pilot salaries, "huge quantities of superfluous aircraft were ordered, and the airport was coated in gold". He added that the lounge had been completely oversized and, as far as the headquarters were concerned, it "did not exactly remind us of the headquarters of a low-cost airline".

According to insiders, the regional hub in Basel incurred a loss of CHF -50 million in the year 2000, which already rose to CHF -60 million in the first half of 2001. As a rule of thumb, each flight in Basel had an average profit margin of -33%. The fact is that even without the Swissair fiasco Crossair would have reported a substantial loss for 2001 - like in the previous year! In 2000, an EBIT of CHF -20 million was achieved and in the first half of 2001, the loss already amounted to CHF -18 million - before 9/11! Even before the terrorist attacks, Crossair's management forecasted a negative operating result at year-end. A consolidated loss of CHF -314 million was finally posted. As a result of the "construction costs" and sustained bankruptcy losses, the company's losses in the 2001 financial statements were cleverly masked by such "special charges" - which, according to André Dose, included in particular "lost wet-lease income on 19 aircraft". Cash flow had already fallen sharply in recent years: While in 1998 it was still CHF 163 million, two years later the company was barely able to generate funds in the amount of 73.6 million. The equity ratio had fallen annually from 37.5% in 1996 to 27.3% in 2000.

Although Crossair, as a regional airline in Europe, was not directly affected by the attacks of 9/11, it suffered a sharp drop of 9,000 connecting passengers and losses of several million francs in the first week alone after the terrorist attacks. Like its parent company, Crossair was in an acute financial emergency. This was confirmed by the administrator Karl Wüthrich. In Circular N°5 he referred to Crossair's "equally precarious liquidity position", which would not have been "able to operate the flights on October 5, 2001 after the grounding without advance payment from Swissair". In a later letter, the administrator wrote that on September 27, 2001, Crossair's liquidity was not sufficient to pay for three delivered Embraer aircraft. This bottleneck could only be overcome thanks to the transfer of CHF 10 million from its parent company. Crossair's Chief Financial Officer at the time lamented an acute liquidity shortfall and pointed out the airline's poor financial situation in his application. In his book *Sturmflug*, the then CEO Dose writes unequivocally: "We would also have had to massively cut jobs at Crossair because we were heavily dependent on Swissair and its passengers". Even before the grounding, Dose was sincere with his employees: "Without Swissair's long-haul network, Crossair would not survive in its current form". Crossair has benefited for years from the generous wet lease contracts with its parent company: around one-third of Crossair's flight operations were carried out on behalf of Swissair - and this without any financial risk! Of the approximately 1.5 million passengers transported, 1.1 million (more than 70%) were carried on behalf of Swissair. The sudden discontinuation of the wet-lease business resulted in a loss of CHF 20 million in monthly income - approximately CHF 240 million per year. Characteristically, the Crossair fleet - under the new name Swiss - was reduced from 82 aircraft to 24 in less than 4 years! Later, its regional fleet operating under the name Swiss European Air Lines numbered 20 aircraft before being renamed as Swiss Global Air Lines in 2015 and finally being dissolved and integrated into Swiss on April 1, 2018. Crossair also benefited from being able to "delegate" the underlying complexity costs of a network carrier to Swissair: It benefited from their sales organization, which sold connecting flights for Crossair worldwide. The 2001 Annual Report contained a clear reference to this: "The disintegration of the Airline Management Partnership



(AMP), the joint marketing organization of Swissair and Sabena, has brought the sale of Crossair tickets to a standstill in European countries". After decades of free-riding, Crossair first had to set up its global marketing and sales organization, which soon questioned the envisioned "cost leadership". A similar situation was observed in the freight department, which was previously negligible at Crossair (generating less than 1% of total revenue) and now suddenly had to market an enormous freight capacity to market worldwide. Yes, even yield management - the core area of every airline - was operated by Swissair for the subsidiary until the end of the 1990s. Former editor-in-chief of *Facts* and *BILANZ*, René Lüchinger is one of the few who has understood

these correlations. In his book *Swissair: Mythos & Grounding*, he writes: "For years, the Crossair founder planted the story of the low-cost regional airline in the minds of politicians and the public, even though the supposedly low costs are linked to the fact that the regional carrier is embedded in the Swissair Group. However, the seeds are sown, after Swissair's grounding the cost structure of Crossair is becoming the rhetorical Viagra of the then-lying aviation nation Switzerland, and Suter can rescue its 82-regional aircraft into the new Swiss airline and position its Crossair managers - unopposed".

Crossair had always specialized in well-paying business customers, which it was able to transport profitably for a long time despite its small aircraft thanks to paying low wages. These low costs could no longer be maintained since the new CLA of the cockpit personnel. While the relentless competition of low-cost carriers such as Ryanair, EasyJet,

and Air Berlin has caused enormous pressure on average earnings. The traditional airlines had to realize that for European traffic quality was no longer the main criteria, but rather the price! This is particularly the case when most business companies are restrictive about travel expenses and prohibit traveling in Business Class on short-haul flights. It is therefore naive to believe that Crossair, with its 50-seat aircraft, would have remained competitive in today's market conditions despite cost pressure from low-cost airlines and continuing yield decline. To operate a hub & spoke system with a regional fleet in today's nasty market environment is hardly imaginable given the cost advantages of the low-cost carriers, which limited themselves to direct connections, especially with the fleet size of 82 regional aircraft at that time. Why Swiss, despite the global economic crisis after 9/11, insisted on an unaltered large regional fleet for so long is inexplicable from an economic point of view. At the beginning of 2003, *BILANZ* wrote: "Suter's fleet, piloted by his pupil André Dose, is oversized and highly unprofitable". And: "Basel is clearly in the red as a departure or approach location". We can only speculate about the reasons for this stubborn behavior: On the one hand, Crossair's mentality of victory and supremacy over Zurich and the aversion of Dose to challenge his mentor's lifetime achievement may have had a strong influence. Only years later did Swiss managers publicly admit that the hub in Basel was completely oversized. When asked about the regional hub in Basel, Swiss sales manager Rudolf Schumacher explained, that the offer had to be adjusted to a size that makes economic sense: "The increased concentration on our hub in Zurich has contributed to a significant improvement in our result. With our 50-seat machines, we were no longer competitive in a tougher market environment. André Dose's successor Christoph Franz named the withdrawal from the 50-seater segment as one of the main reasons for the financial turnaround. Swiss CFO Ulrik Svensson articulated himself even more clearly in an interview: "We have decided that we are not going to run the 50-seaters anymore because it is impossible to make any money with them!" In his biography, Rainer E. Gut, a former member of the Swissair Board of Directors, recalls that the start-up difficulties of the "new Crossair" were primarily due to the massively oversized regional fleet: "Apparently, measurements were taken with two different yardsticks: Although Swissair's 26/26 aircraft had only accounted for around 70% of the national airline's fleet before 9/11, the number of medium and long-haul aircraft was considered excessive by various renowned or so-called aviation specialists, who never sharpened their pencils to criticize the takeover of 82 aircraft from Crossair's regional fleet. Crossair was probably the only airline in the world operating an undiminished large fleet after 9/11. To make the comparison: A few years later, in the first half of 2007, Swiss generated a net profit of CHF 295 million with 30 medium-haul aircraft, 21 long-haul aircraft and - notably only - 23 regional aircraft. This documented once again the whereabouts of Swiss' original problem: the oversized regional fleet taken over from Crossair."



Assessments of Crossair's profitability at that time can vary considerably depending on Crossair's or Swissair's perspective and are often influenced by one's regional background. It is, therefore, all the more interesting to hear the opinions of independent professionals: For example, Peter Siegenthaler, head of the Federal Finance Administration and ex-Swiss Board Member, replied to the question whether the Swiss Government was aware that Crossair had been sacrificed in favor of Swiss, that it was exactly the other way round! Because Crossair could not have survived on its own. In a radio interview, he pointed out that too many burdens were taken along when Swiss was founded. The establishment of the company based on the then regional airline Crossair had led to large-scale dimensions. The Chairman of the Swiss Board of Directors, Pieter Bouw, who, as former CEO of KLM in the Netherlands, was able to assess the situation impartially when taking office, asserted several times that "those who believe that Crossair has made profits in recent years with its activities in regional air transport are wrong. Crossair benefited from Swissair's wet-lease contracts. The Eurocross concept in Basel, on the other hand, was not at all profitable. At Swiss's last Annual General Meeting before the sale to Lufthansa, Bouw also reminded the shareholders: "Switzerland must face the realities of the aviation business: After the sinking of Swissair, Crossair could hardly have survived". German aviation journalist Jens Flottau articulated himself clearly in a commentary: "Moritz Suter's Crossair of 2001 would have no chance of survival nowadays." It was still based on a business idea that only worked in the boom times of the 1990s. ETH-Professor Bernd Schips, criticized the oversized regional fleet: "The necessary re-dimensioning was only carried out in the area of the old Swissair at the time, whereas Crossair remained largely untouched and had never actually been profitable since Swissair's acquisition in the early 1990s. Only in the years 1998 and 1999 were profitable thanks to attractive wet-leasing contracts, Contrary to the regional traffic, Swiss has hardly any structural overcapacity in the long-haul sector nowadays". According to Bernd Schips, "the biggest mistake" was the fact that the re-dimensioning initially only took place in the Swissair area. The Association of Commercial Employees made it clear: "Swiss has failed to adapt the size of the regional fleet of the former Crossair to the changing circumstances and to reduce it in good time". Pieter Bouw, in turn, explained in a flashback that the biggest mistake was made before the start of Swiss: "The Crossair people thought they would run the new company alone. But that was unreal-

istic. Crossair was a regional airline and it lacked the experience to operate an intercontinental airline.” Commenting on the size of the Swiss fleet, he said: “When it was launched in March 2002, Swiss was roughly the right size - apart from the regional fleet. This was taken over by Crossair as is and was therefore far too large. We should have reduced our operations in Basel much faster. We reacted a year too late.”

It is not surprising that the CS Group during the development of the “New Crossair” concept never doubted that in the event of a total bankruptcy of the SAirGroup, Crossair was also threatened due to the rapid domino effect. Crossair would in any case have needed a capital injection from the parent company towards the end of 2001! Federal Councillor Kaspar Villiger was also sure: “I am convinced today that Crossair would not have survived because without the government involvement it would no longer have had the feeder services to Swissair. It would not have survived and thus all companies at the airports would not have had a chance of survival”.

Last but not least: A study conducted by the University of Bremen concluded that the lack of genuine cooperation or integration of the regional subsidiary was one cause of the SAirGroup's decline: „In our view, the SAirGroup's top management's failure to coordinate the operations of its regional feeder Crossair - of which it owned 70% in fall 2001 - effectively with Swissair's own was the second key factor in the latter's demise. (...) Unlike all its main competitors, that succeeded to do so, Swissair, however, allowed Crossair a largely stand-alone operation in general - as regards maintenance, sales and marketing, ground handling IT, to name just a few areas - and to establish a geographical separate hub at its Basle home base. If anything, this cannibalization on the small Swiss home market only resulted in much lower load factors and revenues (yields) for both carriers due to their failure to fully exploit the potential economies of density and large scale of a joint operation”.

THE END

## List of abbreviations

9/11	Terror attacks in the USA of September 11, 2001
ACARS	Aircraft Communications Addressing and Reporting System
AG	(Canton of) Aargau
Alcazar	Project name (Spanish for fortress, castle); abbreviation for „Alone Carriers zig-zag at random”
AOM	Air Outre Mer
Art.	Article of law
BA	British Airways
bn.	Billion(s)
BoD	Board of Directors
BP	British Petroleum
CD-ROM	Compact Disc Read-Only Memory
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CHF	Swiss Francs (Currency)
CS	Credit Suisse
CSFB	Credit Suisse First Boston
DC-10	Douglas Aircraft Company 10
E-Mail	Electronic Mail
EBIT	Earnings before interest and taxes
EEA	European Economic Area
ETH	Swiss Federal Institute of Technology (Eidgenössische Technische Hochschule)
E&Y	Ernst & Young
FDP	Liberal Party of Switzerland (Freisinnig-Demokratischen Partei)
FedEx	Federal Express
HSBC	Hongkong and Shanghai Banking Corporation
HSG	University of St. Gallen (formerly Hochschule St.Gallen)
IATA	International Air Transport Association
IT	Information Technology
KLM	Royal Dutch Airlines (Koninklijke Luchtvaart Maatschappij)
KPMG	Big Dutch Audit company (Klynveld Peat Marwick Goerdeler)
Kt.	Canton (Member State of the Swiss Confederation)
LOT	National Airline of Poland (Polskie Linie Lotnicze)
LSG	Lufthansa Service Gesellschaft (Part of Lufthansa Service Holding)
LTU	Lufttransport-Unternehmen (German Airline)
m.	Million(s)
MCA	Maximum credible accident
MD-11	McDonnell Douglas 11
min.	minimum
NRLA	New Railway Link through the Alps
NZD	New Zealand Dollar (Currency)
NZZ	Neue Zürcher Zeitung – Newspaper from Zurich (in German)
Prof.	Professor
SAA	South African Airways
Sabena	National Airline of Belgium (Société Anonyme Belge d'Exploitation de la Navigation Aérienne)
SAS	Scandinavian Airlines System
SAir	Corporate name; mutilation of <b>Swissair</b>
SAirLines	Subgroup of SAirGroup (merger of all group airlines)
SDA	Swiss Telegraphic Agency (national press agency of Switzerland)
SP	Social Democratic Party of Switzerland
SR	Swissair (IATA-Code)
SVP	Swiss People's Party
TAP	National Airline of Portugal (Transportes Aereos Portugueses)
UBS	Union Bank of Switzerland
USA	United States of America
US\$	United States Dollar
ZH	(Canton of) Zürich



## References

For a complete overview of all sources, please refer to the original version in German