

# Big banks line up against Comair on SAA guarantees

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The High Court in Pretoria was the unlikely battleground over the government guarantees extended to the embattled national carrier, South African Airways (SAA).



The much-anticipated legal challenge to the R5bn guarantee that helped keep SAA afloat was finally set down before Judge Hans Fabricius, over three days last week.

JSE-listed Comair, the British Airways franchisee that operates kulula.com, wants the R5bn government guarantee "set aside".

The hearing had the trappings of a game-changer, with more than a dozen lawyers and high-profile advocates such as Jeremy Gauntlett and David Unterhalter representing each of the parties.

Comair's argument is the kind that appeals to free-market fundamentalists unconcerned with SAA's stated public role of flying where private airlines might be unwilling to venture. Yet, in support of this argument, the SAA has indeed gobbled up taxpayers' money.

Since the airline was hived off from Transnet in 2006 it has received R14.5bn in government guarantees, with the latest

R6.5bn guarantee having been granted in February by National Treasury, its new shareholder that took over from the Department of Public Enterprises.

Although Comair has been profitable in the more than 60 years of its existence, it argues the guarantees allow SAA to charge low fares with no regard for costs, making it difficult for other airlines to compete.

Comair competes with SAA in the domestic and regional market. Since 1991, when the state deregulated the aviation industry, 10 airlines have ceased to exist.

That the case was not heard before the competition authorities did not go unnoticed.

Comair has argued its action against the guarantees is not based on competition law but is a review application, which must be heard in the High Court.

The four commercial banks that granted loans to SAA on the basis of the state guarantee say Comair is challenging a nonexistent "creature".

The banks - Citibank, Nedbank, Absa and Standard Bank - are concerned that should the guarantee be set aside, this would place their loans to SAA at risk. This argument suggests the banks themselves do not believe SAA is good for the money on its own.

Citibank, in its responding papers, was the first to argue that no R5bn guarantee was given to SAA but instead the airline received a commitment of R5bn guarantee from the finance minister to the public enterprises minister in September 2012.

The bank also maintained that what does exist are four separate guarantees for four separate loans given to the national airline by four banks.

The other three banks soon latched onto this argument and filed court documents stating this position.

Comair has asked for more time to consider the argument, which has become the focus of the banks' case.

One loan received from Nedbank for R1.8bn has a corresponding guarantee. This is true for a loan to SAA from Absa worth R1.7bn and two from Standard Bank and Citibank for R1.5bn each.

Nedbank argued that there could be no government guarantee without, first, a loan offer from a bank for the finance minister to approve and then, as a next step, grant a guarantee for the specific loan.

If the banks are correct in their view of the guarantee, Comair would have to challenge the four separate guarantees given to banks.

However, not only has SAA drawn against all the guarantees, but it has used the loan money and is drawing down a subsequent guarantee for operations.

*Source: Business Day*