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AIRLINE COMPETITION

-- Note by Mexico --

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English - Or. English

1. The airline industry is of high priority and great relevance to most countries. Its size and impact in economic development, business dealings, and bringing cultures together is undeniable. Nonetheless, such characteristics entail certain challenges to competition. Airline deregulation has represented important benefits for consumers; however it has been necessary to complement such policies with competition tools. This has also been the case for Mexico. Although progress is yet to be made, new laws and tools provide the necessary elements to foster competition.

2. This document presents Mexico's experience regarding competition in the airline sector. First of all, considering that air transportation is a global matter, we introduce the main features of this industry and highlight the areas where competition issues may arise. Second, we outline how sectorial regulators and the competition authority have intervened in the industry, and the progress that has been made in order to ensure competition. This is particularly in regard to access to infrastructure, mergers and competition between airlines as well as airports. Finally, we highlight the challenges that remain for competition and regulation which could be addressed under the recently approved Federal Law of Economic Competition (FLEC).

1. Main Features of the Airline Industry

3. We distinguish some sectorial characteristics that must be taken into consideration when analyzing the airline industry. These affect competition conditions in the market and indicate global challenges on the subject.

- **The airline industry is extremely complex.** It involves different services, stakeholders, and facilities. It also requires the participation and coordination of many government agencies ranging from sectorial regulators, to consumer protection agencies, security bodies, and competition authorities.
- **The airline sector involves national and supranational regulation.** It is both based on and ruled by international law. The Convention on International Civil Aviation (1944) prompted signatory states to cooperate for the development of international civil aviation. This has naturally derived in a permanent tension between priorities such as security, tourism, and social policies (e.g. employment policy), as well as others such as competition through open skies or foreign ownership allowance.

Over the years, the freedoms system established in the referred Convention has proven to be a major issue in the air transportation industry. According to it, each country has the right to decide the restrictions applicable to foreign authorized airlines on its airspace. Among such restrictions are capacity limitations concerning flights or seats, operating permissions for airlines, definition of routes' origin/destination, and fares' approval.¹

Agreements that allow commercial freedoms between countries are usually known as "Open Skies Agreements" (OSA's) and do not necessarily imply the acceptance of all the freedoms established in the Convention. However, they do usually allow the first five, these are: 1) the right to fly over a foreign country without landing; 2) the right to refuel or carry out maintenance in a foreign country without embarking or disembarking passengers or cargo; 3) the right to fly from one's own country to another; 4) the right to fly from another country to one's own; 5) the right to fly between two foreign countries on a flight originating or ending in one's own country.²

¹ González, A., Estudio sobre el mercado aéreo de transporte de pasajeros en Latinoamérica, Centro Regional de Competencia, 2013.

² Convention on International Civil Aviation (1944).

- **The airline industry follows a tendency towards deregulation in most jurisdictions.** In the United States, the deregulation process began in 1978 with the *Airline Deregulation Act*. Most OECD countries followed such tendency in the late 1980's.³ Nevertheless, experience has shown that liberalization is not enough to develop competition in this sector. Consequently, regulation has been designed in order to facilitate access to competitors, but competition rules have also been required to address issues raised by incumbents' strategic behavior.

In this industry, incumbents may have important advantages due to the common operation of hub-and-spoke systems, enhancement of customer loyalty through frequent flyer programs, reputation⁴, computer reservations systems, code sharing, or possible predatory behaviors, which could be used to prevent the entry of new competitors to or exclude competitors from the market.⁵

- **The industry's dynamic character must be acknowledged.** Both technology and innovative business models have derived into a quickly evolving sector⁶ with a high level of business adaptation.⁷ These changing strategies are more often than not "dictated" by the market itself. For instance, it is worth highlighting the significant impact that the introduction of low cost carriers (LCC) during the 1990's had on the airlines market. They became a major threat to the full service carriers and, in turn, pushed them to adopt new strategies such as the hub-and-spoke systems and the creation of new products. Strong economies of density are present in air transportation. This has fostered several degrees of cooperation between airlines.
- **The airline industry depends on access to airport facilities which can result essential for competitors.** It has been argued that due to high barriers of entry, the airline industry has a tendency to be an oligopolistic market.⁸ Some of these barriers include regulatory barriers, such as foreign ownership and domestic flight restrictions, and hub-and-spoke systems that can lead to intrinsic barriers to entry in the industry.⁹ As a consequence, airlines may have no incentive to lower prices. Additionally, access to airport facilities can constitute a significant barrier to entry.
- **Global strategic alliances and mergers have become a significant topic in the airline industry.** Alliances can be defined as mutual agreements between airlines, in order to share assets and provide services among them.¹⁰ All alliances advance some degree of cooperation. The first of these alliances, integrated by American and European airlines for transatlantic flights, led to the consolidation of the airline industry. This has been continued lately through airlines within each continent. Alliances may take different forms and include different code sharing, marketing and price cooperation, schedule coordination, and access to lounges and airport facilities.¹¹

³ Toshiyasu H, and Pilat, *Deregulation and Privatisation in the Service Sector*, OECD, 1995.

⁴ Idem.

⁵ Idem.

⁶ Truxal, S. *Competition and Regulation in the Airline Industry: Puppets in chaos*, Routledge, 2012.

⁷ Idem.

⁸ Nix, *Competition Law in a Liberalized Transatlantic Marketplace: The Case for Regulatory Convergence*, 2005.

⁹ Bamberger, Carlton and Newmann, *An Empirical Investigation of the Competitive Effects of Domestic Airline Alliances*, 2004.

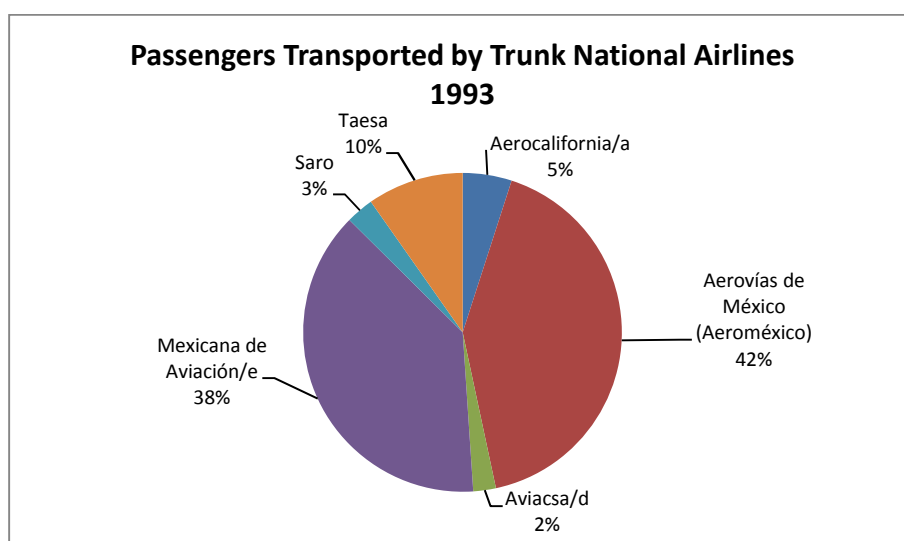
¹⁰ González, op cit.

¹¹ European Commission and the United States Department of Transportation, *Transatlantic Airline Alliances: Competitive Issues and Regulatory Approaches*, 2010. (Available at: http://ec.europa.eu/competition/sectors/transport/reports/joint_alliance_report.pdf).

4. In the following section we will detail how the airline industry has evolved in the Mexican market and the actions taken by the Mexican competition authority in order to promote competition in the airline industry.¹²

2. Competition and regulation in the Mexican airline industry

5. Until the late 1980's, the Mexican airline industry was strongly regulated and under governmental control. Since then, the airline industry has experienced many changes. At the end of the 1980's the two main flag carriers *Aeroméxico* and *Mexicana* were privatized. However, in 1993 they were legally merged and gained more than 70% of the market share.¹³



Source: Passengers transported in domestic and international flights, regular and charter services. *La Aviación Mexicana en Cifras, 1992-2013, Ministry of Communications and Transportation, 2014.*

6. Even though deregulation's aim was to enhance a competitive airline industry, the results were far from those desired. It has been argued that the absence of a developed Mexican competition system facilitated anticompetitive behavior and affected the structure of the airline market. It must be noted that the FLEC had not enter into force yet, nor the Commission was created until 1993.¹⁴

7. In 1994, control of both airlines was taken over by creditor banks due to inefficiencies, competition, and management failures.¹⁵ In the year 1995, the Civil Aviation Law was published as the main legal framework for airlines' operation. The same year the CFC received a request to authorize the creation of a new firm merging the operations of both airlines. The Commission decided that *Grupo Aeroméxico, SA de CV (Grupo Aeroméxico)* and *Grupo Mexicana, SA de CV (Grupo Mexicana)* should be

¹² Federal Competition Commission (CFC) until the constitutional reforms of 2013 in matters related to telecommunications and competition. Currently, the Federal Economic Competition Commission (COFECE).. Also referred as "the Commission" throughout this document.

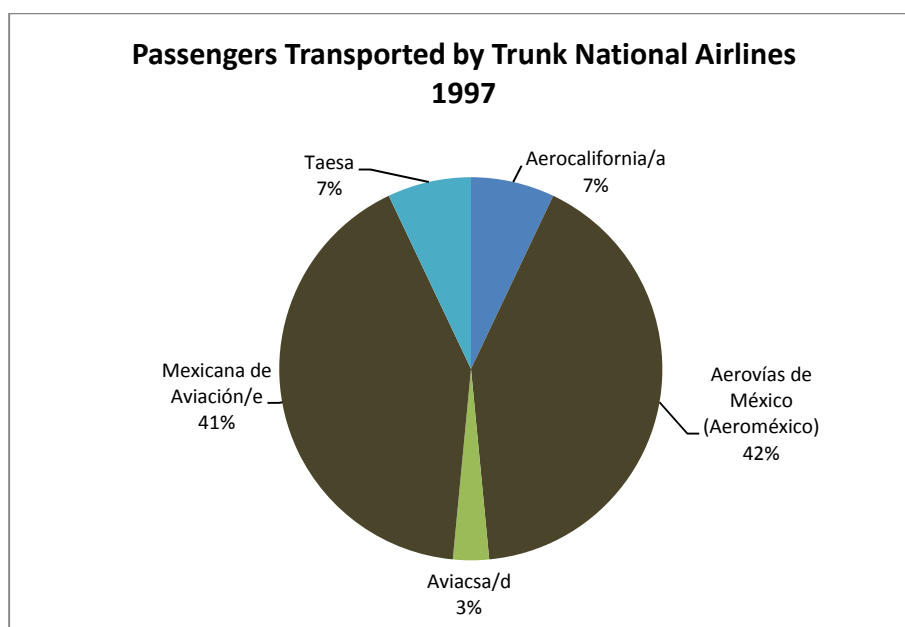
¹³ Avalos and Valdés, *Regulación de Aerolíneas*, CIDE, 2006.

¹⁴ Idem.

¹⁵ Idem.

sold privatized to different owners. However it was until 2005 when *Grupo Mexicana* was sold, and *Grupo Aeroméxico* was sold in 2007.

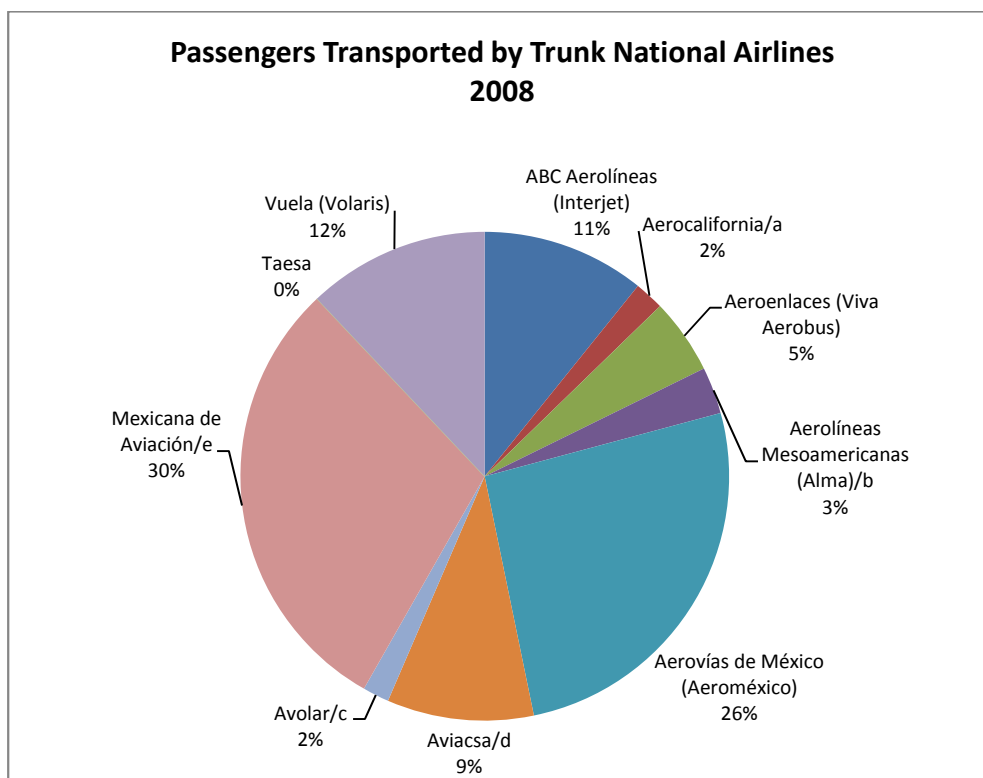
8. As it can be appreciated in the following graph, by 1997 *Mexicana* and *Aeroméxico* still had more than 75% of the market share. Despite of the existence of three more trunk airlines, the two main airlines did not face real competitive pressure.



Source: Passengers transported in domestic and international flights, regular and charter services. *La Aviación Mexicana en Cifras, 1992-2013, Ministry of Communications and Transportation, 2014.*

9. Since 2000, the Mexican airline industry has suffered several important transformations. The separated sale of *Mexicana* and *Aeroméxico* to independent buyers ordered by the Commission forced both airlines to compete. Few years later, both airlines lost their significant market share in domestic routes. During that decade the Commission strongly advocated for opening airline industry to competition. Additionally, the entrance of low cost carriers to the Mexican airline market changed the panorama. Starting in 2005, new concessions to low cost carriers (LCC) were granted to *Interjet*, *Volaris*, *Viva Aerobus*, *A Volar*, and *Alma*. By 2008, LCC had already obtained 30% of the market.¹⁶

¹⁶ Ros, A, A Competition Policy Assessment of the Domestic Airline Sector in Mexico and Recommendations to Improve Competition, CFC-OCDE, 2011.

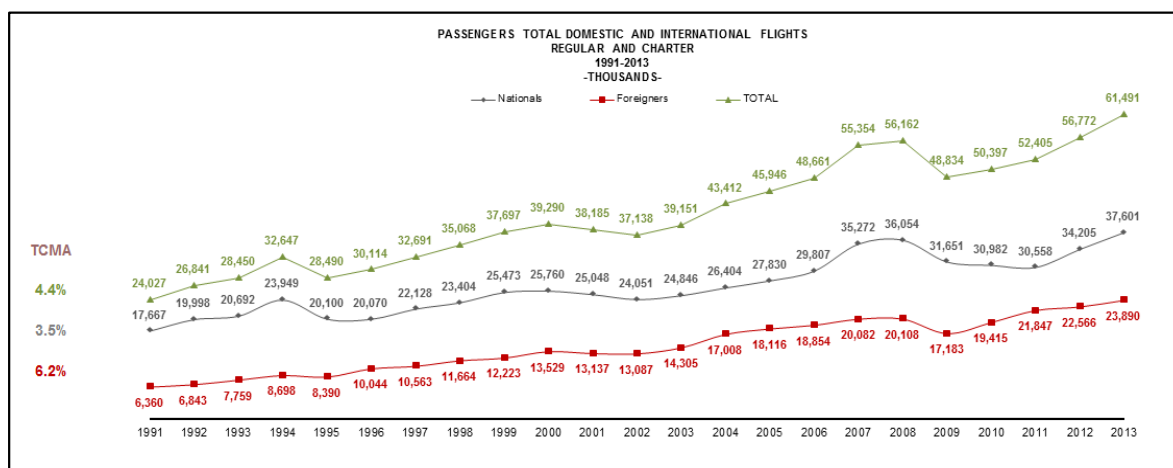


Source: Passengers transported in domestic and international flights, regular and charter services. *La Aviación Mexicana en Cifras, 1992-2013, Ministry of Communications and Transportation, 2014.*

10. The 2007-2009 economic crises caused many airlines such as *Mexicana*¹⁷, *Aviacsa*, *Aerocalifornia*, *Azteca*, *A Volar* and *Alma* to go bankrupt. Additionally, many actions were taken by the Commission in order to restore competition in this sector, including enforcement of competition law.

11. From 1992 to 2013, the participation of foreign airlines in passenger transportation has increased. In the graphic shown below it is possible to appreciate how the structure of the Mexican airline market has changed. In 1991, national carriers transported 17,667 passengers for domestic and international flights while international carriers accounted for 6,360 passengers. By 2013 domestic carriers had more than doubled this number and international carriers had more than tripled theirs, transporting 23,890 passengers. It also must be observed that in 1992, Mexico had only signed 26 agreements with other countries, while in 2013 there were already 48 signed agreements.

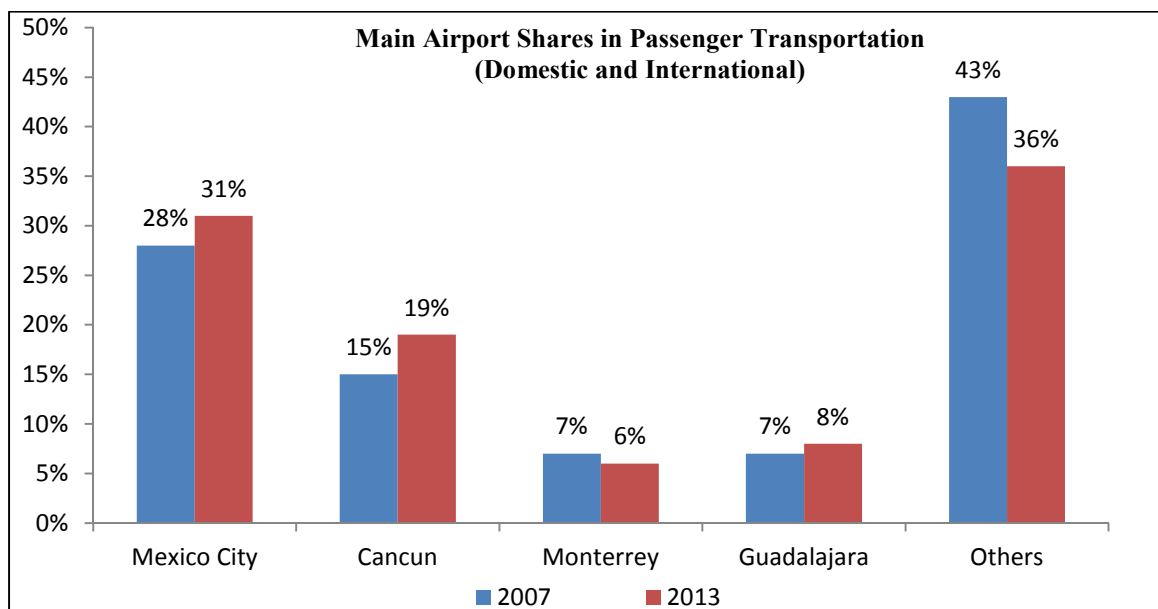
¹⁷



Source: *La Aviación Mexicana en Cifras, 1992-2013, Ministry of Communications and Transportation, 2014.*

12. Additionally, in 1998, there was an important structural change in airport regulation, as it was opened to private investment, establishing maximum fares in the provision of essential services and competition rules in auxiliary services. During the liberalization, four airport groups were created: *Grupo Aeroportuario Ciudad de Mexico (GACM)*, *Grupo Aeroportuario del Sureste (ASUR)*, *Grupo Aeroportuario Centro-Norte (GACN)* y *Grupo Aeroportuario del Pacifico (GAP)*, with its respective holding firms. A concession for 50 years was granted to each airport.

13. It is important to remark that even nowadays the main bottleneck to competition is the allocation of slots at the Mexico City International Airport (AICM). Even though the number of international airports has increased fivefold since 1992 (twenty new international airports have been opened) the AICM is the principal hub in our country.

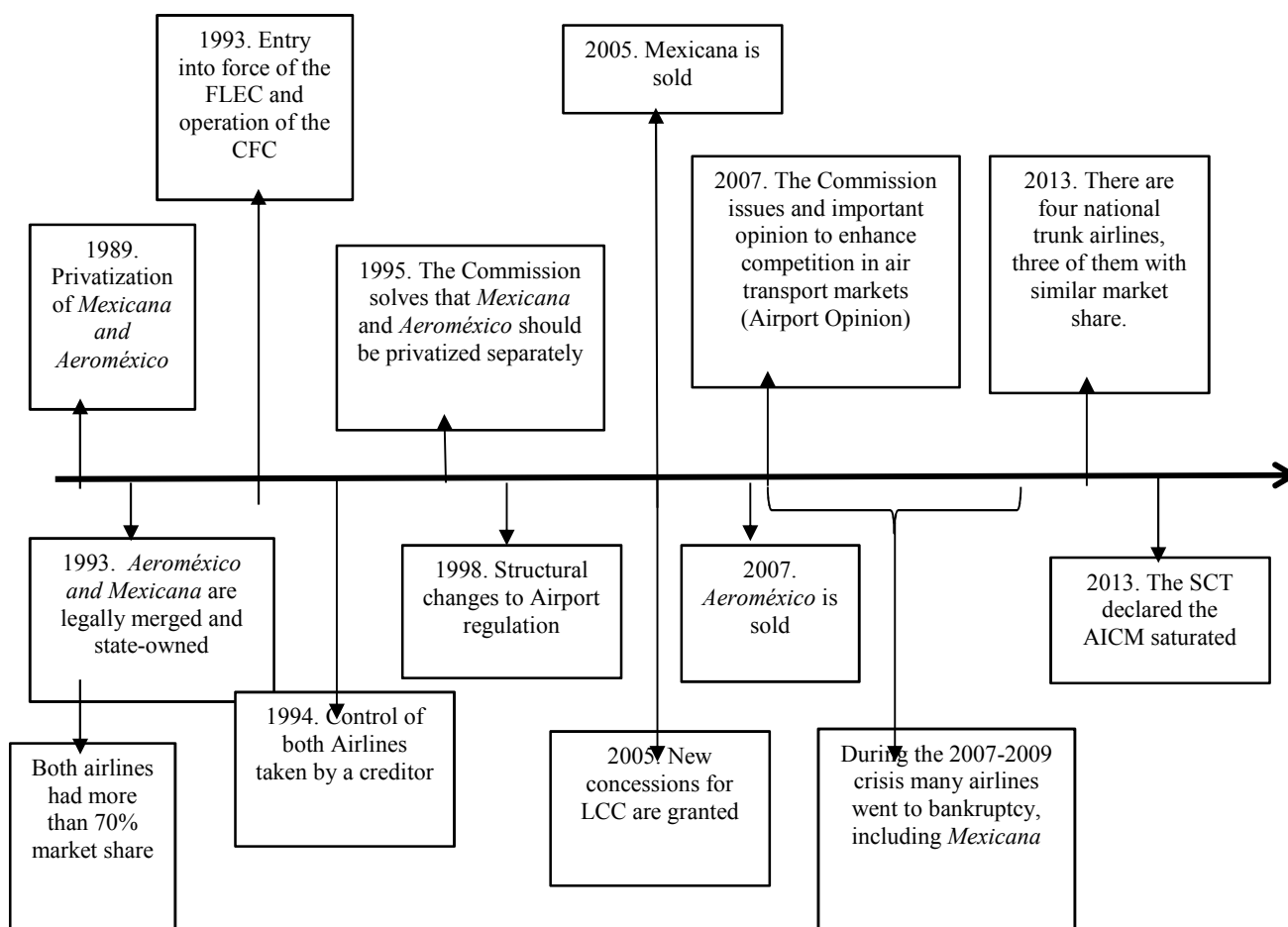


Source: *Airport Operational Statistics, Ministry of Communications and Transports, 2014.*

14. As shown in the graph above, the AICM accounts for 31% of passenger transportation shares, up from 28% in 2007. Although airports at Cancun and Guadalajara have increased their participation, Monterrey's share dropped 1% and other airports' accumulated participation dropped 7% in six years.

15. Indeed, saturation at the AICM is critical. Recently, on 17th April 2013, the Ministry of Communications and Transportation (SCT) issued a new Saturation Declaratory for the Airport which was published in the Official Gazette of the Federation (DOF).

Timeline: Evolution of the Air Transport Industry in México



3. Competition issues raised by the Commission

16. Since its beginnings in 1992, the competition authority took advantage of its different tools in order to promote a competitive airline market in Mexico. For instance, the Commission was an active advocate, especially in relation to access to infrastructure (airports) and issued many opinions addressed to sectorial regulators in order to eliminate regulatory barriers to entry in the air transport sector. Additionally, since 1995 the Commission analyzed both domestic and international mergers and alliances.

3.1 *Access to infrastructure*

17. The AICM's slot allocation process is one of the major bottlenecks for airline competition. As reported in 2010, public regulations have constituted a significant barrier to entry for new competitors since incumbent airlines are sometimes given preferential treatment to access slots through Grandfather Clauses.¹⁸

18. The Commission has expressed on many occasions the need to design and implement an efficient slot allocation model based on competition, in order to benefit consumers. The "grandfathering" system adopted can prevent the entrance of new competitors that may be efficient but have never operated in such airport.¹⁹ In this regard, the Commission issued several opinions remarking the importance of eliminating regulatory barriers to entry in order to ensure competition in the air transport market.

19. On **October 1st, 2007**, the Commission issued an opinion regarding competitive conditions at Mexican airports. The Commission recognized the airports' importance for ensuring competition in the airline market. It specifically noted that the saturation of the AICM constituted a barrier to entry for new competitors. The recommendations included:²⁰

- Improving the fare regulation scheme.
- Strengthening sectorial regulator independence and increase airport regulation transparency.
- Promoting an efficient slot allocation mechanism in saturated airports:
 - Strengthening the auction mechanism.
 - Appoint an independent third person responsible of the slot allocation in saturated airports, including auction procedures.
 - Substituting the SCT administrative authorization to operate new routes for a notice of operation.
- Promoting competition between airports:
 - Ensuring the concessions assignation is pro-competitive.
 - Gradually eliminating governmental participation in the Mexico Airport System
- Eliminating barriers to entry for competitors in cab services.
- Monitoring vertical integration between airports and airlines.

20. On **September 3rd, 2010**, the Commission issued another opinion recognizing that "without schedules for take-off and landing, it is impossible that an airline could supply a flight. That's why it is essential that allocations be made through efficient mechanisms."²¹ The Commission determined that

¹⁸ Competition Issues in the Air Transport Sector, Latin America Forum, OCDE, 2011.

¹⁹ González, op. cit.

²⁰ CFC, Opinion PRES-10-096-2007-182.

²¹ CFC, Opinion PRES-10-096-2010-184.

current slot assignment procedures affected and limited efficiency and recommended a procedure in order to balance supply and demand in competition conditions. Such procedures should be based on three main principles:

- Not to impose unjustified restrictions on routes authorizations, in order to prevent the introduction of artificial limitations to the supply.
- Not to associate (except in fully justified cases) the slot allocation to its usage to supply a specific route, in order to avoid artificially inducing the usage of an essential facility.
- Impose limitations on slot accumulation by schedule, in order to avoid an excessive concentration of this essential facility that could become an artificial barrier to entry.²²

21. Additionally, the Commission issued other opinions related to the discussion of airport laws and regulations.

22. On **April 5th, 2005**, in relation to an amendment to the Airport Law.²³

- The Commission considered that the proposal to amend articles 14, 22, 37 and 44 of the Airport Law would have a positive impact in free competition. However, it recommended to amend article 11 of the abovementioned law, in order to establish that SCT should require and consider the Commission's opinion when elaborating the public procurement basis for adjudicating concessions, and that a favorable opinion of the Commission was needed to participate in the tender.

23. On **November 30th, 2007**, in relation to an amendment to the Airport Law.²⁴

- The Commission expressed its agreement with the motivation of the reform. The proposal was intended to solve the problems pointed out by the Commission in its opinion issued on October 1st. 2007. Even though, the Commission recommended some changes to the proposed regulation to strengthen market efficiency in airline related service markets.

24. On **December 18th, 2012**, in relation to an amendment to the Airport Law Bylaw and other regulations.²⁵

- The Commission considered that the proposal contained rulings that could become regulatory barriers to entry the market, especially because the authority could mark the access of a competitor based on the financial viability of the project.

3.2 *Cooperation between Airlines and Mergers*

25. According to article 16 of the FLEC, mergers are defined as the fusion, acquisition of control, or any other act whereby companies, partnerships, shares, equity, trusts or assets in general are concentrated among competitors, suppliers, customers or any other economic agent.

²² Opinion PRES-10-096-2010-184.

²³ Opinion PRES-10-096-2005-032.

²⁴ Opinion PRES-10-096-2007-213.

²⁵ Opinion PRES- 10-096-2012-176.

26. In its merger analyses, the Commission analysis' aim is to consider the improvements in market efficiency. For defining relevant markets the Commission has taken into consideration a city pairs criteria.

27. In the year 2000, the Commission received a request to analyze whether *Aeroméxico* and *Mexicana* could be privatized as a sole company. The Commission opposed the merger and in its negative decision, the Commission identified many barriers to entry that affected the industry, such as:²⁶

- Civil Aviation Law and bilateral agreements subscribed by Mexico and other countries that prevented foreign airlines to offer domestic flights services in Mexican territory;
- Foreign ownership limitation established in the Foreign Investment Law, up to 25%;
- Barriers to entry for airport facilities (AICM);
- Difficulty to obtain concessions and permissions from the sectorial regulators;
- High exit barriers, and
- Structural barriers such as high costs to create airlines sunk costs, interlining and code sharing agreements.

28. In the year 2007, on a second occasion, the Commission rejected the merger between *Aeroméxico* and *Mexicana*. While analyzing the operation, the Commission noticed that the take-off and landing slots allocation regime was a significant barrier to entry for new competitors, considering that airport facilities were limited. It also recognized that the AICM was indeed saturated, as the SCT had pointed out in 2005, making access for new competitors very difficult. In its resolution, the Commission argued that such merger increased the possibilities that *Mexicana* could incur in anticompetitive conducts.²⁷ In this particular case, the Commission considered that the remedies proposed by *Mexicana* did not compensate the possible harm to competition that could result from the operation, and consequently, the merger was not authorized.

29. The Commission has analyzed many other mergers between airlines.²⁸ It is important to remark that on January 12th, 2012 a merger between Delta Airlines, Inc. and *Grupo Aeroméxico S.A.B. de C.V.* was notified. In this operation, Delta expressed its intention to acquire 3.5% of *Aeroméxico's* shares. The Commission authorized the merger subject to the condition of establishing firewalls in the Administration Board of *Aeroméxico* through the amplification of their "Policy of Information Exchange" to the Board Committees, and the signature of a commitment letter by the Board Members appointed by Delta to participate in *Aeroméxico's* Board.²⁹

30. One of the most significant issues addressed by the Commission has been the Airlines alliances. The Commission has analyzed many alliances and code sharing agreements under the merger law provisions. As the alliances do not usually involve any share transaction, their notification is not compulsory. However, in practice, many airlines have notified their alliances voluntarily. In all of these cases, the Commission has approved the transactions:

²⁶ Rios, op. cit.

²⁷ CFC, File CNT-101-2007.

²⁸ CNT-85-2007, CNT-106-2007, CNT-602-2008, CNT-039-2010, CNT-004-2012 and CNT-023-2013.

²⁹ CNT-004-2012

- *Continental / United / Air Canada / Lufthansa*³⁰. The notified operation was an international joint venture in relation to transatlantic flights. The airlines did not modify the operations status in Mexican territory. It was approved by a majority of votes.
- *Delta / Northwest / Air France / KLM*³¹. The notified operation was an international joint venture for transatlantic flights. The effects of the alliance were non-existent in Mexico. The airlines did not modify the operations status in Mexican territory. It was approved by a majority of votes, as it was considered that the airlines were not competitors in direct routes.
- *British Airways (BA) / Iberia / American Airlines (AA)*³². The notified operation was a joint business agreement, between BA, Iberia and AA. It covered non-stop flights between Europe and North America. BA, Iberia and AA did not have coincidences in routes to or from Mexico. The airlines did not modify the operations status in Mexican territory. It was approved by a majority of votes.

3.3 *Competition between Airports*

31. Another issue where the Commission has played a significant role is in competition between airports. On October 21st, 2010, *Aeropuerto de Cancún, S.A. de C.V. (ACA)* and *Servicios Aeroportuarios del Sureste, S.A. de C.V. (SAS)*, members of *Grupo ASUR*, asked the Commission's opinion regarding its participation on the Public Tender for a new Airport which would be located in *Tulum, Quintana Roo* (Riviera Maya). In 2011, the Commission did not allow the participation of the ASUR airport group in the public tender for the "Riviera Maya" Airport in order to avoid an excessive concentration in the airport services market in the Cancun- Riviera Maya region. In its decision, the Commission considered the following:³³

- ASUR had direct participation in the airport industry and controlled nine airports in the southwest region in Mexico, including Cancun and Cozumel airports.
- The distance between both airports was too short (130 km approximately) which implied an overlap between influence zones of both airports, in this regard, passengers could consider them as substitutes, so they could be competitors.
- The Commission established that the existence of a unique economic agent in the relevant market and considering the important barriers to entry, such agent could have the ability to fix prices or to restrict supply, without any potential countervailing power in the short/ medium term.
- The Commission considered that it was not proved that the joint operation of the Cancún and Rivera Maya airports could generate efficiencies.

³⁰ CNT-064-2009.

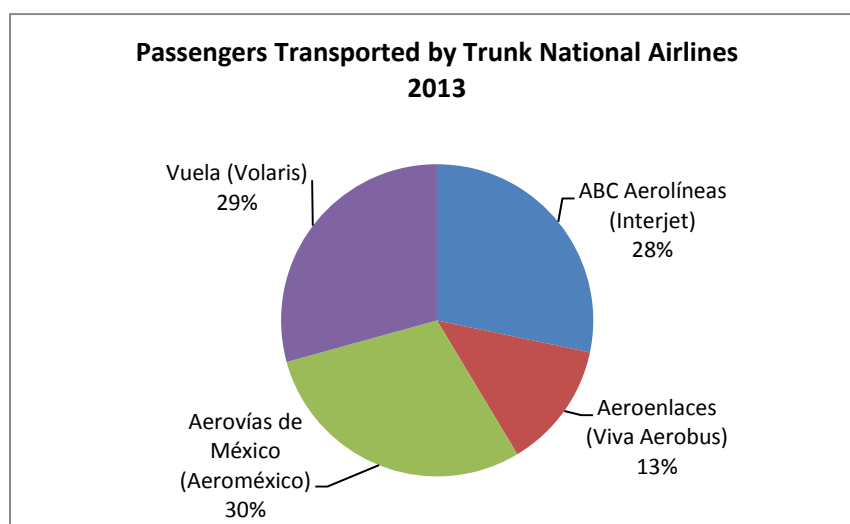
³¹ CNT-011-2009.

³² CNT-001-2011.

³³ CFC, File LI-004(02)-2010.

4. Regulation and Competition: challenges

32. The separation of the two main airlines in the country, along with the entrance of new competitors and progressive opening to international airlines, has stimulated competition in the airline market. In 1997, two airlines controlled more than 70% of the national and international passenger air transport market (national trunk airlines). By 2013, there were four national airlines competing in the market, three of which had similar market participation.



Source: Passengers transported in domestic and international flights, regular and charter services. *La Aviación Mexicana en Cifras, 1992-2013, Ministry of Communications and Transportation, 2014.*

33. As a result of competition, the sector has grown considerably in the last 11 years. According to the sectorial regulator, the SCT, airline transportation, including national and international airlines, increased 156% between 1991 and 2013. Also, the number of passengers in domestic and international aviation regular services grew from 26,841 in 1992 to 60,007 in 2013.

34. Competition and regulation are seen as complementary in Mexico. Regulation is understood as an *ex ante* tool, while competition is an *ex post* mechanism. The current law establishes different procedures where the competition authority and the sectorial regulators should coordinate their activities. Moreover, airline industry has always been a priority for the competition authorities in Mexico. The new Commission, COFECE has followed through on the matter and submitted for public consultation its Strategic Plan for the 2014-2017 period. In this document, transportation has been identified as one of the most concentrated industries.³⁴

35. It is still pending the publication of the definitive Strategic Plan which will include a sector prioritization. However, as it will be explained in the following section, the Commission is already aware that the new competition legal framework provides a significant opportunity for establishing a closer relationship between the competition authority and the air transport regulator in order to promote free competition in such industry.

³⁴ COFECE 2014-2017, Strategic Plan.

4.1 *The regulatory challenge*

36. Aviation has been regulated in Mexico since the 1940 Law of General Means of Communication. However, it was not until 1995 when the specialized law, the Civil Aviation Law and the Airports Law, was issued. Current Mexican legal framework for the aviation industry is set by different laws and regulations: Law of General Means of Communication, Civil Aviation Law, Airport Law, Regulation of the Civil Aviation Law, Regulation of the Airport Law, and Regulation of the Mexican Aeronautic Registry. Additionally, further laws such as the FLEC, the Federal Consumer Protection Law, Foreign Investment Law, and other security and tax regulations, are applied to the sector.

37. There are still important aspects of regulation to be addressed. According to the OECD Services Trade Restrictiveness Index (STRI)³⁵ published in May 2014, air transport has the highest degree of restrictiveness out of 18 sectors analyzed. The main restrictions identified are: restrictions to foreign entry, barriers to competition (especially in allocation and trade of slots), horizontal restrictions to the movement of passengers, and other discriminatory measures.³⁶

38. In Mexico, regulation is restrictive in relation to airlines' foreign ownership. According to article 7 of the Foreign Investment Law, foreign ownership in airlines is limited to 25% (for national transportation, aero taxi transportation and specialized air transportation). It is worth mentioning that such restriction is the biggest among the Member countries of the Regional Competition Center of Latin America (CRCAL).³⁷ And in comparison with most of the OCDE members (2013), it has one of the highest restrictions, along with United States of America and Canada.³⁸

39. Additionally, it must be remarked that Mexico's "open skies" policy has also been very restrictive. Even though many individual agreements have been signed with different States granting some reciprocal rights to operate in their airports, the commercial freedoms accepted have been very limited, mainly thirds and fourths.³⁹

40. Furthermore, airport operation in our country is characterized by high concentration. The five biggest airports transport 64% of the passengers market in 2013. The AICM itself has 31%, followed by Cancun Airport with 19%. There are still pending to be adopted some of the recommendations issued by the Commission in October 2007, especially in relation to the implementation of an efficient slots allocation mechanism in saturated airports, the strengthening sectorial regulator and the transparency improvement in the concession granting procedures.

³⁵ Services Trade Restrictiveness Index, OECD, 2014. (Available at: http://www.oecd.org/tad/services-trade/STRI_MEX.pdf). "The STRI indexes take values between zero and one, one being the most restrictive. They are calculated on the basis of the STRI regulatory database which contains information on regulation for the 34 OECD Members, Brazil, China, India, Indonesia, Russia and South Africa. The STRI database records measures on a Most Favoured Nations basis"

³⁶ Idem

³⁷ Gonzalez, op. cit. The countries are Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Honduras, Mexico and Peru

³⁸ There were analyzed Australia, Austria, Belgium Canada Chile, Denmark, Finland, France, Germany, Ireland, Italy, New Zealand.

³⁹ Idem

4.2 *Improving legal framework for collaboration*

41. The law establishes different collaboration mechanisms between the competition authority and the sectorial regulators, among others:

- Tariff regulation. The FLEC, the Airports Law and the Civil Aviation Law establish that the COFECE's opinion should be taken into account before activating or eliminating fare regulations.
- Public procurement. The COFECE has the prerogative to issue opinions related to public procurement guidelines.
- Opinions. COFECE can issue non-binding opinions related to new regulations, laws, and public policies.

42. Moreover, the recent constitutional amendment set forth that the COFECE will have the necessary powers to reach its aims, including the power to order measures to eliminate barriers to competition, regulate essential inputs access and order divestitures of assets, in the necessary proportions to eliminate anticompetitive effects.

43. On May 2014, the new FLEC was published, and it will enter into force on July, 2014. The Law regulates the Commission's powers and establishes a new and closer relation as well as coordination between the competition authority and the sectorial regulators. The most significant change in the relationship between sectorial regulators and competition authorities is the inclusion of a new procedure to identify essential inputs and eliminate barriers to competition. During the process, COFECE can request a non-binding opinion from the sectorial regulator. As a result, the Commission could impose remedies such as recommendations to public authorities, issuing guidelines to regulate essential inputs or mandate a divestiture as a last resource. The resolution should be later notified to the sectorial regulators.

5. **Conclusion**

44. The airline industry's basic features provide certain tensions regarding competition and regulation. Nevertheless, cooperation between competition authorities and sectorial regulators is not only possible, but highly desirable. Since the 1990's, the competition authorities have worked to achieve equal conditions in the industry through opinions and resolutions regarding free market participation, access to infrastructure and effective competition.

45. According to the aforementioned, the air transport industry has significantly evolved. Until 2005, there were two main competitors. Currently, there are four national trunk competing airlines in the national market, three of them with similar market shares. The entrance of LCC has had significant impact in Mexico. However, the industry remains restrictive as regulations continue to impose several barriers to entry and airport concentration is high. Slot allocation at the AICM continues to be one of the industry's main bottlenecks.

46. There is now a new legal framework in matters of competition in Mexico. We can expect to strengthen what we have achieved in the past and face the challenges that remain. In addition to the aforesaid, international forums can provide substantial lessons for better practices in this industry.