

COFECE-036-2017**COFECE notifies Mexico City's International Airport (AICM) of measures to regulate slot allocation**

- *The Board of Commissioners determined that landing and take-off slots and use and control of airport infrastructure are essential facilities. How they are accessed leads to inefficiencies and anticompetitive effects in the regular passenger transport sector.*
- *The resolution underpins the absence of effective implementation of current laws in regards to the allocation and monitoring of slots and related infrastructure.*
- *The Board of Commissioners establishes corrective measures to be adopted by AICM in terms of transparency, control and criteria for the monitoring of the use of slots with the objective of avoiding the degradation in quality of services provided by the airlines, in addition to increasing the possibility of new entrants.*
- *The benefits for the end-users will be the reduction in delays, cancellations and loss of connections, in addition to fostering increased supply and lowering air fares.*

Mexico City, July 3, 2017. The Board of Commissioners of Mexico's Federal Economic Competition Commission (COFECE or Commission) determined that the access to landing and take-off airport slots and use and control of platform services at Mexico City's International Airport (AICM or Airport) by airline carriers to operate in this aerodrome are essential facilities. Additionally, they determined that the rules for their access lead to systemic distortions in the daily scheduling of landing and take-off slots, such as flight cancellations and delays in addition to the high concentration of markets in few airlines, elevated fares and restrictions to the expansion of supply. These effects are significant because three quarters of national passengers and one third of international flight passengers use the Mexican airport as a place of origin or destination.

The resolution underpins the lack of consistent or clear regulation in airport operation, the absence of effective implementation of existing laws in relation to the mechanism used to allocate and monitor slots and related infrastructure, as well as the lack of a clear procedure for new entrants or for the incumbents to obtain more slots.

Based on the findings, presented in file IEBC-001-2015, the Board of Commissioners establishes a series of corrective measures to be adopted by AICM (*Annex*) with the objective of reverting these inefficiencies and anticompetitive effects.

The corrective measures indicated to the AICM include the following positive effects:

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1. Favor accountability of airport authorities and carriers by enabling public verification of the implementation of regulation, allocation and use of landing and take-off slots and the consequences of their misuse.
2. Increase certainty of carriers by defining clear rules in the criteria for the allocation, return, withdrawal, cancelation and auction of available landing and take-off slots as well as the unforeseen causes or circumstances, beyond their control, that relieve them of liability when delays or cancellations occur.
3. Stimulate competition by preventing airlines from accumulating more slots than those that correspond to them as per historic precedence (those that have a right to them due to previous use in past seasons), in a time slot if one of them holds more than 35% of these time slots. The criteria for breaking-ties by allocating slots to the carriers with 'grandfather' rights has been eliminated. It also allows airline carriers to temporarily or definitively transfer or exchange the right to the priority use of slots, under certain conditions.
4. Contribute to the punctuality of operations by prohibiting airlines from landing or taking-off without obtaining a cleared slot, except in the cases of emergency or force majeure.
5. Provide airline carriers certainty to plan and market schedules, by mandating that the assigned schedule is used according the international calendar of coordination activities.

The implementation of these corrective measure will allow for the Airlines that operate at AICM to comply with their obligations to the end-users in terms of the time and terms of service they committed to, with which they will diminish delay times. This will also increase the possibility of competitors to enter and expand in the market, which will result in more flights and lower rates.

It is important to emphasize that the guidelines mandated by COFECE are fully consistent with existing regulation at the time that this resolution was issued, therefore AICM is fully capable of complying.

Regarding inefficiencies generated by existing regulation as well as the omission by airport authorities in the implementation of said regulation, the following was observed:

1. Derived from mechanisms of allocation, more that 30% of daily flights at the airport find a slot at the last minute. The airlines that operate in this manner are at competitive disadvantage as they cannot market in advance (before the beginning of the season) because they do not know if they will have a specific itinerary to offer and therefore run the risk of operating at under capacity. In

practice, these carriers prefer to market flights without a previously allocated slot, lacking the certainty to operate or doing so with the knowledge that they will be delayed in comparison to the commercialized schedule.

2. Operation without an allocated slot results in the deferment of programmed operations thereby causing delays that are accumulated during the day and uncertainty for the rest of the airline carriers in the implementation of the allocated slots.
3. In terms of delays, notwithstanding having an allocated slot and a margin of tolerance of +/- fifteen minutes, airlines operate with large variations in time. According to the file, in 2014, Grupo Aeroméxico, Interjet, Volaris, VivaAerobus and Aeromar operated approximately 40% of the allocated slots before the beginning of the season with a variation in schedule greater than fifteen minutes.
4. AICM does not regularly provide the dates for the allocation of priority slots, returns or changes, consequently carriers have expressed their difficulties in planning their operations before the beginning of the season because they lack information.
5. Under conditions of saturation, airport authorities have the power to withdraw slots for several causes attributable to the airline carriers, among which, not operating in the schedule in a proportion equal or greater to 85% or doing so with delays over 15% of the time (85/15 criteria). Notwithstanding, slots have never been withdrawn under this criterion.
6. Airline carriers disclosed their uncertainty in the matter of the monitoring of slots for their next allocation. For example, they are not clear about the criteria used to compute the delays attributable to the airlines or other circumstances.
7. The above has generated excessive market concentration with negative impact on air fares. In 2014, two economic agents carried out 67.5% of the total flights at AICM. Conversely, on national routes where the number of participant airlines went from 2 to 3, the average rate per kilometer flown diminished by 30% this year.

In addition to the corrective measures mandated for AICM, as part of this resolution and in full compliance with its attributions, COFECE emitted recommendations to the Congress of the Union, the Executive Power and the Secretariat of Communications and Transport (SCT):

- Congress: reform article 63 of the Law on Airports with the objective of creating an autonomous body – technically and financially, that allocates, controls and monitors landing and take-off slots, according to international best practices.
- The Executive: incorporate the criteria on the misuse of landing and take-off slots to the Regulation of Airport Law to prevent airline carriers from operating without cleared slots as well as to incentivize the return of non-utilized slots. The Executive should also issue a regulation that prohibits official and general aviation operations at the airport, except for those related to the Presidential General Staff and to national security.
- The SCT: apply corresponding sanctions to the airlines that operate flights without having a cleared slot, as well as update the study on the saturation of AICM.

Regarding this study, even though the Airport Saturation Decree of September 2014 lays down a maximum limit of 61 operations per hour, the investigation found elements that prove that in 2014 there were time slots that exceeded the established limit. It is important to know the exact number of available landing and take-off slots.

Finally, COFECE considers that the preliminary drafts of the “Decree that amends the Regulation of Airport Law” and the “General Guidelines to Allocate Landing and Take-off Slots in Saturated Airports”, brought before the Federal Regulatory Improvement Commission (Cofemer), do not address competition problems identified throughout the resolution set forth herein.

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MORE COMPETITION FOR A STRONGER MEXICO

The Federal Economic Competition Commission is entrusted with safeguarding competition and free market access. Through these, it contributes to consumer welfare and the efficient functioning of the markets. Through its work, it seeks better conditions for consumers, greater output and better services and a “level playing field” for companies.

ANNEX: CORRECTIVE MEASURES

The corrective measures issued to eliminate competition problems related to landing and take-off slots at AICM are as follows:

i) Transparency and access to information

The Airport Administrator shall publish on the Airport's website, diverse information that guarantees access to information and transparency on the allocation, use and monitoring of landing and take-off slots.

ii) Criteria for allocating landing and take-off slots

The Airport Administrator will allocate landing and take-off slot seasons through a "series of slots".

iii) Criteria for use and eligibility for historic precedence

Historic precedence (grandfather rights) will only be recognized over a "series of slots" when the air carrier to which this was assigned, has complied with 85/15 criteria.

iv) Auctioning of landing and take-off slots

Auctions as a mechanism to allocate new, removed or given up slots.

v) Allocation of additional or different landing and take-off slots

The Airport Administrator will respond air carriers' requests for additional or different slots, giving priority to flights as follows: regular passenger flights, charter non-regular passenger flights, and finally, charter non-regular cargo flights.

vi) Refund or return and cancelation of landing and take-off slots

Cancellations will be considered as non-utilization under Criteria 85/15, except cancellations for reasons not attributable to the air carrier.

vii) Reasons not attributable to the air carrier

Air carriers shall not be liable for delays, cancellations and operations not carried out when proven it was due to unforeseen or unavoidable circumstances or

reasons beyond their control, or if the interruption of services was motivated by actions aimed at affecting services, such as strikes.

viii) Requests for landing and take-off slots

Requests for grandfathered slots by air carriers should be made based on a series of slots and be presented for each season in the scheduling period determined by the international calendar of coordination activities.

ix) Slot performance monitoring

The Airport Administrator will recognize the historic precedence of air carriers which have used “series of slots” in accordance with 85/15 criteria, based on the information provided by the Subcommittee on Delays on the slots assigned to the carriers and the results of the performance monitoring that reports cancellations, non-performed operations and delays attributable to the airlines.

x) Transfers and exchange of landing and take-off slots

Air carriers can temporarily or permanently transfer or exchange landing or take-off slots, accompanied by a payment, when the air carriers are up-to-date on their payments referred to in Article 96 of the Regulation of Airport Law, and when they have used these slots under 85/15 criteria during the previous equivalent season and notify the Airport Administrator of the transaction.

xi) Limits to “slot hoarding”

Slots cannot be allocated or transferred to air carriers that accumulate more than 35% of the total landing and take-off slots in the same time-slot.