

## **COFECE Filed a Constitutional Dispute against the Decree to Reform the Regulations of the Airports Law and the General Principles to Allocate Take-off and Landing Slots at Saturated Airports**

- *Certain provisions in the Decree to Reform the Regulations and the General Principles, both issued by the Federal Executive in September of this year, are contrary to the measures provided by the Commission to remedy the anticompetitive effects generated by the mechanism for the allocation of take-off and landing slots at Mexico City's International Airport.*
- *In this constitutional dispute, COFECE calls Mexico's Supreme Court of Justice to analyze the scope of its powers to regulate an essential facility, as established in article 28 of the Constitution, and determine whether the Federal Executive has rendered nugatory this constitutional power.*

**Mexico City, November 22, 2017.-** The Federal Economic Competition Commission's (COFECE or Commission) Board of Commissioners determined to file a constitutional dispute against the Decree to Reform the Regulations of the Airports Law (Decree) and the General Principles to Allocate Take-Off and Landing Slots at Saturated Airports (General Principles), issued by the Head of the Executive and the General Director of Civil Aviation at the Ministry of Communications and Transport (SCT), respectively. The decision taken by COFECE's highest body is based on the following facts:

Last June 26, when the Board of Commissioners finished processing file IEBC-001-2015, they determined that the landing and take-off services, and the use and control of platforms at Mexico City's International Airport (AICM or Airport) used by air carriers to operate at this aerodrome, are an essential facility and the rules for their access generate systemic affectations on the daily scheduling of take-off and landing slots – such as cancelations and delays of flights- with consequences to competition, including high market concentration, in a few airlines, elevated prices and restrictions to the expansion of regular public passenger air transport services, national and international. In said resolution, the Board of

Commissioners determined a series of corrective measures to regulate the allocation of take-off and landing slots.<sup>1</sup>

Last September 29, the Decree and the General Principles, issued by the Head of the Federal Executive and by the General Director of Civil Aviation of the SCT respectively, were published in the Federal Official Gazette (DOF).

Specifically, the content of the General Principles is contrary to the measures issued by COFECE. In fact, they are similar to the corrective measures presented by the AICM while filing for the early termination of the procedure, for which COFECE determined, [with the March 2017 resolution](#) that said measures were not viable for the elimination of anticompetitive effects identified during the investigation.

In view of this, COFECE's Board of Commissioners agreed to file a constitutional dispute, considering the following as indispensable:

- i) The analysis of the scope of powers conferred on COFECE under article 28 paragraph fourteen of the Mexican Constitution, by Mexico's Supreme Court of Justice (SCJN) regarding the regulation of an essential facility – in this case, landing and take-off services and use and control of platforms at the AICM used by air carriers to operate in this aerodrome – which establishes that: “the Commission will have the necessary powers to efficiently fulfill its objective, including ordering measures to eliminate barriers to competition and free market access; regulate the access to essential facilities, (...) to eliminate anticompetitive effects”; and that
- ii) The Supreme Court determines if the Federal Executive has rendered nugatory both the Constitutional attribution granted to the Commission to regulate the access to essential facilities, and the effects of the resolution issued in file IEBC-001-2015, by publishing the Decree and General Principles that, as established in said resolution, do not eliminate the anticompetitive effects identified by this Commission.

*See an analysis of the case in Spanish [Essential Facilities in the Market for Air Transport Services](#)*

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<sup>1</sup> Press release [COFECE Notifies Mexico City's International Airport \(AICM\) of Measures to Regulate Slot Allocation](#)

**MORE COMPETITION FOR A STRONGER MEXICO**

*The Federal Economic Competition Commission is entrusted with safeguarding competition and free market access. Through this, 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 businesses.*

