

COELUM

COELUM Pronunciation: 'che-läm, is Latin for air space or sky. The Romans began questioning the rights they had in the space above the land they owned and to how high above did that right extended to. Ad coelum et ad inferos, they discussed, meaning that their right of property would extend as high up to the heavens and down to hell.

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Antitrust Implications of Intercarrier Alliances. | Viridiana Barquín

Code sharing and other cooperative marketing arrangements can provide a cost efficient way for carriers to enter into new markets, expand their systems and obtain additional traffic flow to support their operations by using existing facilities and scheduled operations of other carriers. Such arrangements can also benefit consumers by increasing service options and enhancing competition between carriers, especially for traffic to or from cities behind major gateways.

Open Skies agreements grant the parties completely unrestricted opportunities for code sharing by the countries airlines since they may be entered between carriers of each country or between carriers of the same country. In order for a code share to take place, both airlines involved must obtain specific approval from the aviation authorities to conduct the code share in question.

Regarding the difficulties involved in opening up code share opportunities, some economies may view unrestricted code share rights as posing a competitive threat to their national airlines. We know that liberal code share regimes offer substantial opportunities for all airlines to serve new markets, increase traffic flow over their system, and make their operations more competitive and profitable but our discussion of code sharing would be incomplete without mention of antitrust issues, since a code-share alliance will result in two competitors joining forces, and there must be a public interest offset to this loss of competition which may include the ability to jointly set fares, set capacity, and pool revenues.

It is important to note that U.S. antitrust laws fully apply to international code shares, absent the grant of specific antitrust immunity by the Department of Transportation. The Department of Justice reviews each new code-share application and provides the DOT with its views as to whether the proposed arrangement would compromise competition in the markets involved in a manner that would

“Under Mexican law, the party of a code share agreement, as legal private entity, is not able to claim any immunity from suit, execution, attachment or other legal process.”

be contrary to those laws. The participants in the intercarrier “alliances” that have been arranged in recent years have requested immunity from U.S. antitrust laws in order to carry out a number of commercial functions, including the ability jointly to set fares, set capacity, and pool revenues. In making immunity decisions in alliance cases, the DOT focus is on the effect of the alliance on competition.

Under Mexican law, the party of a code share agreement, as legal private entity, is not able to claim any immunity from suit, execution, attachment or other legal process. No carrier is entitled to immunity on the grounds of sovereign immunity or other immunity or otherwise, in any legal action or proceeding in connection with the agreement.

As an example of the antitrust implications of intercarrier alliances, I will mention the announcement of the European Commission on April 20, 2009 that it has opened formal proceedings against members of the Star and Oneworld airline alliances. The Commission is assessing whether the members' joint activities related to managing schedules, capacity, pricing, and revenue management on transatlantic routes, as well as the sharing of revenues and the selling of tickets on these routes without preference between the carriers, could restrict competition. The Commission noted that it would take the consumer benefits conferred by these alliances into account during its investigation and that the investigation itself does not imply that the Commission has any conclusive proof that these cooperative arrangements have infringed EC competition law.¹

According to various news reports, the airlines appear to be taking the investigatory notice in stride. In a statement to Air Transport World, Oneworld Vice President for Communications Michael Blunt said the investigation "is no surprise" and that "it is the normal European process for addressing any agreement of this kind." Another story in the Wall Street Journal contained a similar sentiment from British Airways, which remarked that the investigation "is a normal part of the EU process of examining its immunity application with American Airlines and Iberia." American Airlines was also reported as calling the investigation "routine." Continental Airlines, expressed "confidence that the European Commission will reach a similar conclusion" regarding its cooperative arrangement with Star Alliance members, United, Air Canada, and Lufthansa.

The Commission's attitude toward international airline alliances has softened over the years. Since its 1996 announcement that it would open procedures to investigate six of the then-extant transatlantic cooperative agreements, the Commission has taken a "broadly positive approach to airline alliances to allow EU carriers to compete effectively on a global level. There is no immediate reason to believe this is no longer the case.

In the case of Mexico, under the Federal Competition Law, pursuant Article 9, sections I, II and III, it is considered that there is the possible existence of monopolistic practices on code share agreements which consist of the reciprocal commitment of not competing on the routes of the participant carriers, discounting and mechanisms of price coordination. Several investigations have been sustained by the Federal Competition Commission in order to determine the alleged commission of the monopolistic above-mentioned practices.

Now the question would be how to meet a mechanism on which the development of the parties' obligations under a code share agreement may be accomplished on the basis of a strict compliance of the antitrust law.

"...code share regimes offer substantial opportunities for all airlines to serve new markets, increase traffic flow over their system, and make their operations more competitive and profitable..."

1.- <http://europa.eu>

The New Federal Law of Extinction of Ownership |

Juan Antonio Tiscareño.

In September of last year, President Felipe Calderon sent to the Senate an initiative of a new law, called “ Federal Law of Extinction of Ownership “ (the Law), the main objective of which is to seize illegal goods and assets acquired by the organized crime, and to weaken its financial capacity.

This new Law undoubtedly will have a significant impact and therefore it has caused great controversy and debate among legal experts. For that reason it is important to know some aspects of the initiative proposed by President Calderon.

On April 2, the Senate approved the initiative of the Law, and made important changes. The initiative is now in the Chamber of Deputies and it is expected that there are going to be substantial changes to the original drafts sent by the President.

In this context, it is important to stress that there have been substantial amendments to the Constitution of Mexico, so that this Law could be conceived and discussed. Specifically, article 22 of the Constitution was amended. This amended article identifies the essential characteristics of this new Law.

Those characteristics are:

- 1.** The extinction of ownership should be ruled by a judge, and not by any other authority.
- 2.** The extinction of ownership is autonomous with the criminal procedure under way against the alleged wrongdoer or suspect.
- 3.** The extinction of ownership proceeds in cases of organized crime, crimes against health (like drug trafficking), kidnapping, vehicle theft and illegal traffic of people, in respect of the following items:
 - a.** Those items that were instruments, objects or products of crime, even if there has not been a judgment rendered to determine the criminal liability of the suspect or suspects, but where there is sufficient evidence to establish that the criminal conduct occurred.
 - b.** Those items that were instruments, objects or products of crime, but have been used or intended to hide or mix with goods which are products of crime, if the requirements of the previous points are met.

- c. Those items that are being used to commit crimes by a third party, if the owner had knowledge of it and did not notify the authority or do something to prevent it.
- d. Those items used on behalf of others, but where there are sufficient elements to determine that they are a product of crime or organized crime and the accused in these crimes behaves like the owner.

“...this Law will have strong implications in the legal field, since any kind of goods may be affected in case a judge declares the extinction of ownership of the items in question.”

Any person affected could file the respective remedies in order to demonstrate the licit origin of the goods and good faith, and that they were unable to know about the misuse of their property.

As we can see, the Constitution establishes the general rules that will undoubtedly be taken into account in the final version of the Law.

An example in the aviation field

As stated in the preceding paragraphs, this Law will have strong implications in the legal field, since any kind of goods may be affected in case a judge declares the extinction of ownership of the items in question.

To explain a simple example. Suppose a company leases an airplane for cargo transportation, but instead of using it for that purpose the lessee uses it for drug trafficking. When the airplane arrives to the Mexico City airport, some drugs were found inside the airplane during a routine check. Based on the new Law, the lessor of the aircraft would have to prove that he had no knowledge of the illegal use of the airplane in order to protect his property, and would even have to prove that he was unable to know about the illegal use of the airplane, in order to prevent the confiscation of the airplane.

With this example we can understand the significance of the Law once it is approved. It is likely that the aircraft lease agreements will be modified in the future to suit the law.

In conclusion I think is very important to be attentive to the approval process of the Law, and in due course, a study the final version will be necessary to be properly prepared to deal with such cases.

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Extract of Mexican Aviation News

[CANAERO calls on the Ministry of Communication and Transport to sanction AVIACSA.](#)

The National Chamber of Air Transport (CANAERO) has called on the Ministry of Communications and Transport to apply the same rules as it applies to the rest of the companies in the airline industry. So far the Ministry has not sanctioned the airline despite the fact that Aviacsa still has outstanding debts to the authorities. This is troubling to companies that meet their payments. It has created totally unfair competition by giving Aviacsa several months' credit. This to a company which has not paid taxes in recent years. *Excelsior*. 24/April/2009.

[Changes in the airline industry and Viva Aerobus against link.](#)

2009 could mean a year of consolidation and change for Mexican aviation. With the impending suspension of Aviacsa, the likely departure of Interjet from Mexico City International Airport because of violations of airline laws, Volaris and its alliance with Southwest to fly to United States, AeroMexico and its structural changes, Viva Aerobus bringing in the technological and operational support of the British low-cost airline Ryanair and also obtaining permission to start routes from Guadalajara to compete directly with Link, 2009 promises to be a year of change. *Excelsior*. 24/April/2009.

[More than 738,000 air operations in 2008.](#)

The number of flights made by eleven national companies in international service, both passenger and cargo, was 100,562. While the flights by foreign companies from Mexico to international destinations such as Argentina, Peru, Guatemala, Chile, Canada, Spain, French, United States, Holland, Japan among others accounted for 182,765. *El Financiero*. 27/April/2009.

[Toluca Airport seeks to remove AICM participation.](#)

Toluca airport seeks to expand their operations by offering rates 25% lower than AICM. This strategy is to attract other airlines such as American Airlines and Delta. The expectation is that passenger traffic will increase significantly. Toluca will also offer the services of a British company to advise carriers on the facts and possibilities of operating from Toluca airport. Toluca Airport also announced the building of a second runway to be finished by 2012. *Milenio*. 27/April/2009.

[Airline and Airport stock values fall in Latin America.](#)

The shares of airport operators and airlines in Latin-American were dropping fast since Monday's news of the Swine-flu problem. A problem that has already killed over 100 persons and may turn into a major health alert. The greatest concern was that other countries might exclude Mexico from their immediate flight schedule, thus causing a reduction in flights destined to this city. This has just added to the current world financial crisis and the decrease in passenger traffic. This ultimately results in a decreasing value of aviation stocks. *El Economista*. 28/April/2009.

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Medical inspections for passengers at Mexico City Airport.

Passengers arriving and leaving Mexico City are being checked medically to catch any cases of the swine-flu and stop its spread to other countries. Passengers are also informed that this inspection will take place, not only in Mexico but in their home countries as a safety measure. No cases of the flu have been detected at the AICM. El Financiero. 28/April/2009.

Air passenger traffic reduced 12% on domestic airlines.

Reports indicate a reduction of nearly a million passengers for the first quarter of this year, due to the world crisis and the peso devaluation against the dollar. International traffic, reported a 9% decrease. The airline that was affected the most was AeroMexico, with a 17.8% fall in their passenger traffic. For the upcoming period even less traffic is expected due to the swine-flu virus. It is expected that a recovery might occur in the last quarter of the year. Milenio. 28/April/2009.

Possible fusion between Mexicana and AeroMexico.

Adolfo Crespo, Corporate Director of Grupo Mexicana, revealed there are negotiations going on between Mexicana and AeroMéxico to establish the conditions under which an alliance or fusion could happen. The world economic recession, the low demand for domestic and international flights and the fact the market in which both airlines operate is actually over served have caused "the need of consolidation to be more urgent". Milenio. 29/April/2009.

Market competition to take preference over possible fusion of airlines.

Eduardo Pérez Motta, a commissioner of the Cofeco declared that for fusion between Mexicana and AeroMéxico to occur, market competition must not be affected. While the airline industry in the past two years has had a difficult time dealing firstly with the increase in fuel prices and lately for the loss of demand market, competition has been positive because new investors have been able enter the market and a larger part of the population is now able to use airline services. There is still much left to do because there are still expensive fares, inefficiency and a relative small number of companies in market. Milenio. 30/April/2009.

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As we proudly initiate the fourth year of this publication we want to insert a note of appreciation to Alec McNish who has been patiently correcting our many short comings in our attempts to write in English. Alec has done a great job and we are deeply thankful for its continuing contribution.

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