



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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Mediation in Mexico: A New Method of Solving Disputes.¹ | Antonio Vázquez.*

In this article we will describe a mechanism of solving disputes that in Mexico has become very popular over the past few years: Mediation.

First of all, we can describe mediation as a “private, informal dispute resolution process in which a neutral third person, the mediator, helps disputing parties to reach an agreement.”²

“...we can describe mediation as a “private, informal dispute resolution process in which a neutral third person, the mediator, helps disputing parties to reach an agreement.”

One important characteristic of the mediation procedure is that the mediator has no power to impose a decision on the parties; he only acts to help the parties to reach an agreement. The main reason for this is that if the parties reach an agreement by themselves, is more probable that they will voluntarily comply with their respective obligations than if a third party gives them a verdict that compels them to act in a specific way. (Like for example a judge in the case of a judicial procedure or an arbitrator in the case of a private arbitration).

Mediation is based in some general principles that we will briefly explain, in order to

understand its general philosophy:

a) The voluntary nature of the mediation: Mediation is a dispute resolution process that the parties should apply voluntarily. International experience has demonstrated that in those procedural systems in which the parties involved in the dispute are forced to use mediation as a prior stage to continue a litigation process, the mediation usually fails. As consequence, the chances of reaching an agreement in mediation are better if both parties have the desire to use mediation as a valid tool to solve their dispute.

Mediation is a flexible, non formal procedure to solve disputes. This is one of the main characteristic of mediation versus a legal procedure. As we know, procedures before courts and even arbitration are based on rigid procedural phases that must be followed. Mediation has its own methodology, but it is not conditioned to follow a specific calendar and if it is necessary, there is no problem of coming back to re-open points that has already been discussed, if the parties decide to do so.

b) The mediator should be a trusty, neutral and impartial individual who has control over the mediation process, but not the decisions of the disputing parties. Mediation provides a method for people with disputes or conflicts to exercise their own choices and discretion and to regain a sense of control over their own disputes. It is a mechanism by which the parties

* IN COLABORATION WITH ALEJANDRO LAVAT.

1.- Authorized as a private mediator in civil and commercial matters recognized by the Center of Alternative Justice of the Federal District and the Superior Tribunal of Justice of the Federal District since January 2010.

2.- Black's Law Dictionary, 6th Edition 1990. West Publishing Co. pg 981.

can be active participants in the decision making process and have direct involvement in the resolution of their conflict.

Mediation has been used in a successfully way in different countries since the 70's. The United States of America for example, was the first country to implement mediation as a way of solving family disputes. Canada also followed this mechanism in the 80's as a free method of solving family disputes. In Latin America, Argentina was the first country that introduced mediation in its judicial procedures as a compulsory phase.

“Surprisingly, Mexican courts have been one of the most important parties to push for mediation in Mexico.”

MEDIATION IN MEXICO.

In Mexico mediation has been used for the past decade, but it has become more popular and considered as a formal method of solving disputes for some years. Surprisingly, Mexican courts have been one of the most important parties to push for mediation in Mexico. The reason is that the volume of cases that are submitted every year before Mexican courts

has been growing consistently and there is no way that the courts can take so many cases every year. One of the choices that the judicial powers have implemented is to look for mediation alternatives. In fact, many local judicial powers created their own Centers of Alternative Justice (in which mediation is the method used for solving disputes). That was before mediation had been constitutionally recognized as a valid method. This new reality obliged Congress to amend our Political Constitution in order to add the alternative methods of solving disputes so as to give them a proper legal base. This amendment has been in our Political Constitution since June of 2008.³ However, the first Centers of Alternative Justice were created in 2001 and in some cases, even before this amendment became effective the local legislatures created their own local laws related to the organization and scope of respective Centers of Alternative Justice. In the Federal District (Mexico City) for example, the Law of Alternative Justice of the Superior Tribunal of Justice of the Federal District (Ley de Justicia Alternativa del Tribunal Superior de Justicia del Distrito Federal) (Law of Alternative Justice) has been effective since March of 2008⁴ and the Center of Alternative Justice (CAJ) has operated since September 2003, attending to family conflicts. In 2006 the civil and commercial areas were incorporated

3.- As consequence of this amendment, article 17 of the Political Constitution of United Mexican States now states: ““Article 17.

No person may be served justice by itself, nor exercise violence to claim its rights.

All persons are entitled to be served justice by courts which shall be qualified to serve it within the terms stated by the laws, by issuing resolutions on an expedite, full and impartial manner. Your service shall be with no cost and, consequently, all judicial costs shall be forbidden.

Laws shall provide alternate mechanisms to resolve controversies. As regards criminal matters, they shall regulate application thereof, assure repair of the damage and establish the cases when the judicial supervision is to be required...”. (The underlined is not part of the original text., it is only used to emphasize the main idea).

4.- This Law was published in the Official Gazette of the Federal District in January 8th , 2008.

into the competence of CAJ and nowadays the center handles family, civil and commercial cases as well as criminal cases.

In the case of civil and commercial disputes handled by the CAJ, these have been increasing year by year: in 2007 for example, 474 cases were opened and in 2009 the total number of new cases, only in this area, was 3672. It is important to mention that according to the statistics published in February 23rd 2010 by the CAJ in the electronic page of the Superior Tribunal of Justice of the Federal District,⁵ 85% of the civil and commercial cases heard by the CAJ between September 2006 and December 2009 ended with the execution of an agreement between the parties. As you can see, mediation cases have been consistently increasing.

“One of the most important legal effects of signing an agreement before the CAJ as consequence of a mediation procedure, is that this agreement will be considered as *res judicata*.”

THE BENEFITS OF REACHING AN AGREEMENT AUTHORIZED BY THE CAJ.

One of the most important legal effects of signing an agreement before the CAJ as consequence of a mediation procedure, is that this agreement will be considered as *res judicata* and if one of the parties does not comply with the terms of the agreement, the affected party may enforce the agreement before the Mexican Courts as it would enforce

a final judgment. This effect by itself is a good reason for attempting to reach an agreement in a mediation recognized by the Law of Alternative Justice.

PRIVATE MEDIATORS CERTIFIED BY CAJ.

One of the main achievements of the Law of Alternative Justice is the recognition and authorization of a limited list of private mediators, who should be experts in law and should (i) receive a previous course from the Superior Tribunal of Justice in mediation matters and (ii) must pass the respective tests. All the agreements signed by the parties immersed in a dispute and which are derived from mediation before these private mediators will be authorized by the CAJ and therefore, will produce the same effects described in the previous paragraph, this means that the authorized agreement will be considered as *res judicata*.

As you can see, Mexican Law and the practice in Mexico is looking for mediation as a serious and legal way of solving disputes.

Low Cost? | Svein Azcué.*

A relatively new business haunts the open skies, with a promise of low costs and accessible traveling; with a new business plan and fare saver strategy, the baddest birds in the sky are now known as no-frills, discount, budget or low-cost airlines or carriers.

Background: In 1944, The Convention on International Civil Aviation was signed at Chicago ("Chicago Convention"), and it was intended to prepare a framework within which civil air transport could develop. It introduced nine "*freedoms of the air*" for the signing parties that granted the following rights or privileges for scheduled international air service: (only the first five "freedoms" have been officially recognized by international treaties. The International Civil Aviation Organization considers the rest "so called freedoms").

1. To fly across the territory of a state without landing.
2. To land in a state for non-traffic purposes. (refueling without boarding or disembarking passengers)
3. To land in the territory of the first state and disembark passengers coming from the home state of the airline.
4. To land in the territory of the first state and board passengers travelling to the home state of the airline.
5. To land in the territory of the first state and board passengers travelling on to a third state where the passengers disembark.¹
6. To transport passengers moving between two other states via the home state of the airline.
7. To transport passengers between the territory of the granting State and any third State without going through the home state of the airline.
8. To transport cabotage traffic between two points in the territory of the granting State on a service which originates or terminates in the home state of the foreign carrier or (in connection with the so-called Seventh Freedom) outside the territory of the granting State.
9. To transport cabotage traffic of the granting State on a service performed entirely within the territory of the granting State.

The real start for nation-wide low cost air transport was the Aircraft Deregulation Act from 1978, which meant liberation of the market for flight routes and ticket prices between the states in the US, removing government control over fares, routes and the entry of new airlines into the commercial aviation market. In a similar way, the history of European low cost carriers began with the liberation of the market in the European Union ("EU"). A big step was taken in 1992 when the Netherlands signed the first open skies agreement with the US, granting both countries unrestricted landing rights on each others' soil. In 2001 the United States ("US"), signed

* IN COLLABORATION WITH JESSI SABA.

1.- Convention on International Civil Aviation, signed at Chicago, on 7 December 1944 ("Chicago Convention").

the Multilateral Agreement on the Liberalization of International Air Transportation (MALIAT) with Brunei, Chile, New Zealand, and Singapore. Later on 2002, the Treaty on Open Skies entered into force, with currently 34 States participating, establishing a program of unarmed surveillance flights over the entire territory of its participants. This treaty is one of the most wide-ranging international efforts to date, promoting openness and transparency of military forces and activities.

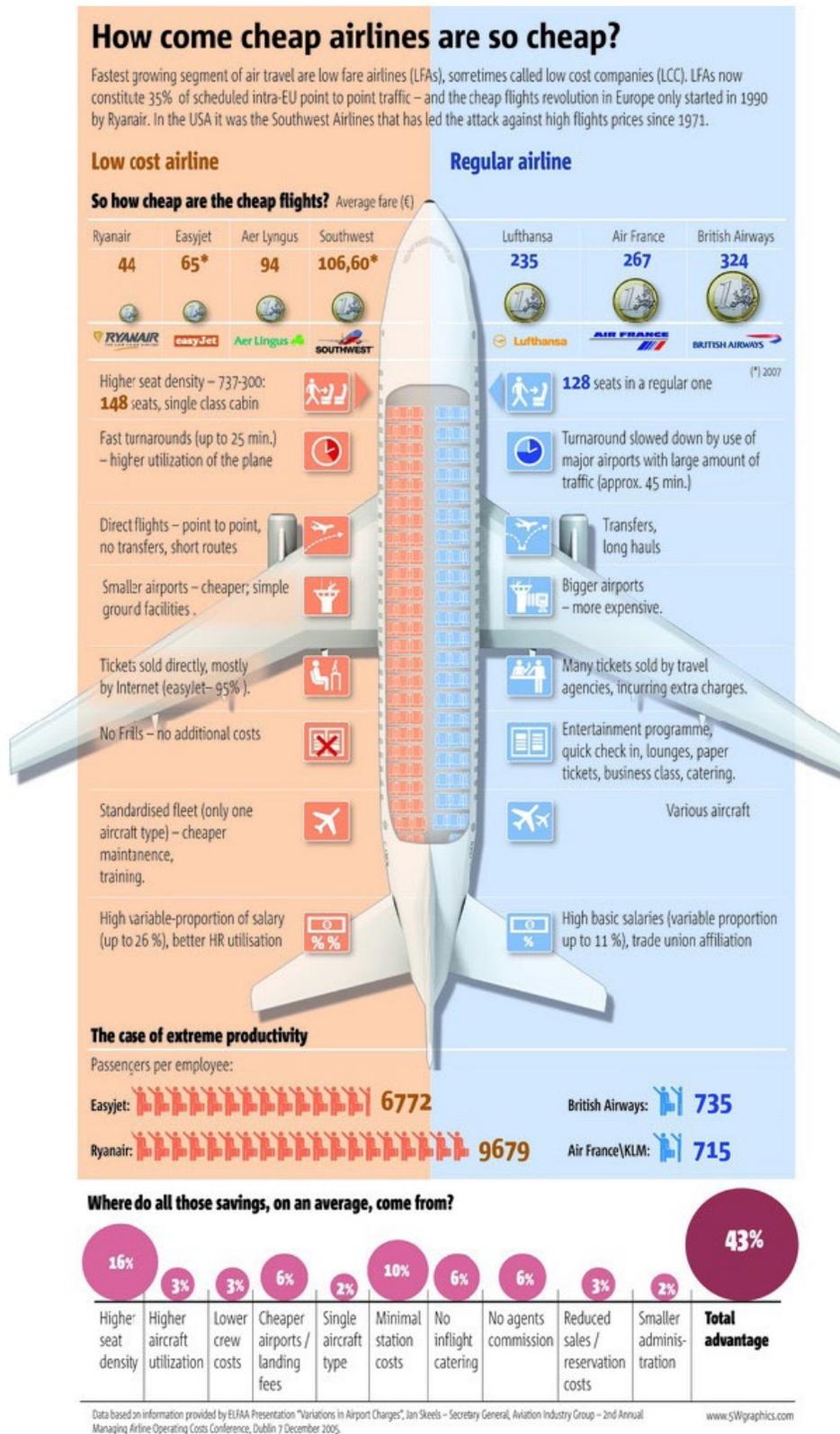
In recent years, the EU-US Open Skies Agreement between the European Community and the US was amongst one of the most significant open skies agreements, allowing any airline of the EU and any airline of the US to fly between any point in the EU and any point in the US, while not permitting EU airlines intra-US flights. As for Mexico, it is currently not part of any open skies treaty. Air traffic was once controlled by bilateral agreements between national airlines, but now under the open skies regime, it is legally permitted for airlines from other countries to offer connections between two countries which are both not their home country.

Who and what are the Low Cost Airlines (“LCA”)?

LCA could be defined as airlines which operate on relatively short distances in a certain region without offering additional services that are assumed to have a lower operating cost structure than their competitors to make up for revenue lost in decreased ticket price. They have a specific business module with the following characteristics:

- A single passenger class (neither business nor first class).
- High seating density and load factors.
- Uniform aircraft types (commonly the Airbus A320 or Boeing 737 families, reducing training and maintenance costs).
- Direct booking (internet/call centers - no sales commissions).
- No frills such as “free” food/drinks, lounges or ‘air miles’ (some frills may be offered at an additional cost).
- Simple systems of yield management (fares increase as the plane fills up, rewarding early reservations).
- Use of secondary airports and early/late flights to cut charges and turnaround times.
- A minimum amount of optional equipment on board (in flight entertainment, seat recliners, seat pockets, window blinds, etc. (to keep the aircraft weight low thus saving fuel.)
- Unreserved seating (encouraging passengers to check-in early and quick boarding thus decreasing turnaround times).
- Point to point transit (no transfers, no delayed passengers or luggage).
- No refunds or transfers to later flights (missed flights).

The Graphic below will help to better understand the differences between a regular airline and a LCA:²



2.- Graphic obtained on <http://www.flickr.com/photos/metrobest/3491197426/sizes//in/set-72157617478192160/> as visited on february 17th, 2010.

The Low-cost model was pioneered in 1970 by Southwest Airlines in the US and was later copied by European airlines, allowing successful low cost airlines to become more profitable than established carriers. LCAs broke the traditional fare design which was to charge each passenger as much as they were willing to pay through fare conditions (i.e. must buy return ticket or stay overnight for discount) and different classes and amenities (business class may cost 5 to 10 times the economy price, but service costs around 25% more).

While the term low cost is often applied to any carrier with low ticket prices and limited services, regardless of their operating models, LCA should not be confused with regional airlines that operate short flights without service, charter airlines, or with full-service airlines offering some reduced fares.³ Mexico's law does not define or regulate LCA specifically, but its regulations may be stated through comparing them to its peers:

Charter airlines, also referred to as air taxis, perform flights that take place without a regular schedule, by a hiring arrangement with a particular customer with the main purpose of transporting holidaymakers to tourist destinations. Individual tickets are not sold directly to passengers, but through tourist agencies, companies or groups that charter the flight.

Within Mexican Civil Aviation Law ("CAL"), charter flights are described as "non-regular air transport service" and are subject to a permit with certain requirements⁴ such as non scheduled routes and the limitation to be interpreted as a regular carrier. A "regular air transport service" however has different requirements⁵ in which main differences are the need of a governmental concession and the authorization of specific routes without the requirement of offering holiday packages.

As mentioned before, LCAs are not defined within Mexican Aviation Law or its regulations ("Mexican Law"), but they are considered as regular air transport service suppliers pursuant to

3.- Webpage: <http://www.discountairfares.com/> offers a list of all fact LCA and also the details of all fake, bankrupt, sponsored, merged or airlines that have disappeared.

4.- CAL, Art 23: The non regular air transport services include among others charters and air taxis.

In case of charter flights, the permit holders should consider the following:

I. Flights or flight packages that wish to operate are subject to previous authorization from the Ministry of Communications and Transport.

II. The services provided can in no way be interpreted or in fact be equivalent to regular air transport.

III. The services will be complementary to regular air transport services.

IV. In charter flight agreements executed with touristic companies, it should be stated that the air transport services will be commercialized as part of a service package in accordance to the applicable regulations.

The aircraft authorized for air taxi can be up to 15 passengers or 3,500 kg of load.

5.- CAL, Art 19: the regular national air transport will be subject to the following:

I. the concessions will contain specific routes with which the service will start and the conditions of the service.

II. In order to operate new routes than those authorized in the concession, carriers should request authorization of these to the SCT in which case they would be part of the concession.

III. The additional routes will be commercialized upon authorization and it must be operated within 90 days of such authorization. If a route is not operated by the established date it will be canceled without the need of a declaration by the SCT.

their specific routes and need for a governmental concession, but with a very different business plan than regular scheduled flag carriers.

As stated before, there are some basic principles in LCAs which include high seating density, direct booking, no frills, uniform aircraft and use of secondary airports, but in many cases normal airlines disguise their fleets with heavily publicized cheap fares with the claim of being low cost. Such is the case with Mexico's Volaris, Interjet, Click and Viva Aerobus which like many others, are now part of the LCA graveyard. i.e. AeroCalifornia, Aladia, Aviacsa, Avolar, Lineas Aéreas Azteca and TAESA⁶.

Mexicana's Click is an example of a sponsored airline that acts like a fake LCA and like Volaris and Interjet offer full service with reduced fares but that do not necessarily follow the low cost business plan. However as LCAs are not defined in Mexican Law, there really isn't a parameter these carriers should comply with. So if we try to find a legal base on which LCAs offer lower fares we could analyze article 42nd of the CAL which states "The SCT may refuse to register the fares set by the concessionaires or licensees, if these imply predatory, monopolistic, market dominance or unfair competition"⁷. This article implies the registration of tariffs in order to maintain a healthy competition, but a lower or higher cost tariff authorized for the same route may be considered as predatory or unfair to both an LCA or a flag carrier, hence the criteria through which the SCT authorizes these fares is not grounded in law therefore giving space for corrupt valuations and registration to take place which can impact the already wounded aviation industry.

Conclusion:

The future of LCA in Mexico remains uncertain as the market is still stabilizing from last year's aviation industry crisis caused by oil price increases, AH1N1 virus and the world economical crisis, new airlines arise and others die. With no specific regulations, the future of LCA lies on their business plans which are more like a company's business model than that of an airline and an open skies regime through which travel and transportation is made easier day by day by globalized countries.

6.- The webpage: <http://www.discountairfares.com/lcostgra.htm> offers a list of LCAs that merged, went bankrupt, disappeared or never started listed in what they define as LCA Graveyard.

7.- CAL, Art 42: Concessionaires or Licensees shall freely set tariffs for the services provide, in terms that allow the provision of services with satisfactory conditions of quality, competitiveness, safety and permanence.

International tariffs will be approved by the SCT in accordance with international treaties.

A tariffs must be registered with the SCT for its entry into force and shall be permanently available to users.

The SCT may refuse to register the tariffs set by the concessionaires or licensees, if these imply predatory, monopolistic, market dominance or unfair competition preventing the permanence of other concessionaires or licensees in the market, and may establish minimum or maximum fare levels, as appropriate, for the respective services in order to manage such levels in order to encourage healthy competition.

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Extract of Mexican Aviation News

[American Airlines opening three more routes in México.](#)

Starting on April 6th, American Airlines will add three more flights departing from Monterrey, Guadalajara, and San Luis Potosi to Dallas, Texas to get a total of 47 flights daily to 14 different cities. Also, with all the actual shared codes, the connections of the flights are going to be easier every day and as for México, the increase in cost will be minimum. El Universal. 03/February/2010.

[Recovery in the aeronautic sector starts; American Airlines heads it.](#)

After a decade of economical difficulties, the aeronautic sector begins to recover. American Airlines estimates for this 2010 to initiate the recovery process, with the new routes departing for Monterrey, Guadalajara and San Luis Potosi, to Dallas, Texas. The price of the fuel and its constant raise mark a hard time for the airline, so to face this problem American Airlines applied the Fuel Smart program and got savings for 220 million dollars. La Crónica. 03/February/2010.

[Mexicana increases the number of passengers by 10%.](#)

Mexicana is previewing an increase in passengers as much as in 10% for this year 2010. Mexicana has a lot of pressure to raise tariffs because the costs are increasing every day, but they are going to face this problem through efficiency in every aspect, and it's a fact, that the airline has not been profitable for the last two years. Milenio. 04/February/2010.

[No time for aeronautical politics.](#)

Last year many airlines were losing money, therefore they chose to go out of some routes, reason for which airlines need incentives that allow them to continue with their operations and to be more competitive. The Ministry of Communications and Transport has an interest on that issue, and they estimated that it will be solved in the course of the year and it will require the collaboration of airport groups that have very expensive services. The lower fares of air transportation become regular or expensive tariffs by the addition of applicable duties and taxes like TUA, VAT, and SENEAM, they should reduce costs. La Crónica. 15/February/2010.

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Extract of Mexican Aviation News

[Aircastle sues Viva Aerobus for its breach of two aircraft lease agreements for 2 Boeing 737-300 as national aviation disrepute grows.](#)

The bankruptcy of several Airlines in Mexico has implied a real challenge to the lessors in the recovery of their aircraft. The labor unions have, seized aircraft as severance payment. Mexico's reputation as a country could assume higher costs in the aircraft leased from foreign countries. In a unilateral decision, Viva Aerobus decided to cancel the aircraft lease agreement for two custom aircraft executed with the Irish lessor company Aircastle, the first unit was in operation with Viva Aerobus for only 3 months of the 5 year term agreed under the lease, the second unit, wasn't even accepted by Viva, claiming that due to the economical crisis it was impossible for them to honor their agreement. Shortly after finding out that Viva Aerobus had one of the best performances in its sector Aircastle decided to take this matter into court in august of 2009, demanding around 2.5 million USD. The trial is currently at its first stage, but the Mexican airline's claims that a damage clause was never agreed upon or included in the lease agreement. The trial will continue against Viva so we will have to wait and see what happens.

El Universal. 18/February/2010.

[2009 Gap Air Traffic Declined.](#)

Due to the economic crisis and alerts caused by flue A/H1N1 virus, GAP air traffic declined 13.3 percent compared with last year period. Milenio. 25/February/2010.

[World crisis had an impact in Iberia's worst loss in 13 years.](#)

Because of the global economic crisis the airline Iberia received its worst fall in 13 years, making last year the worst in its history caused by the decrease in business passengers. All of this loss caused a decrease in expenses including fuel expenses and causing a loss in revenue decline in its fleet and routes. Excelsior. 25/February/2010.

[Mexico needs an "flag carrier".](#)

The Minsitry of Communications and Transport is sure about the need of the country to have an "flag carrier" in order to compete internationally, also they supported that federal government does not opposed to the merger between Aeroméxico and Mexicana. This merger will allow a competition between Mexican airlines in order to offer a better service to national passengers. Milenio. 26/February/2010.

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