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Competition Commission
Legal Opinion: Are the
current regulations
conferring exclusive
advantages that diminish
the jet fuel distribution
market?

by Carla Espinosa

APRIL NEWS on
Mexican Aviation

COELUM: Pronunciation: 'che-l&m, is Latin for airspace 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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Competition Commission Legal Opinion: Are the current regulations conferring exclusive advantages that diminish the jet fuel distribution market?

by Carla Espinosa.

Historically, Airports and Auxiliary Services (ASA)¹ was created in 1965 to manage and operate 34 national airports, as well as provide supplementary and auxiliary services in order to satisfy the increasing demand regarding air transport industry and during 1975 ASA assume the responsibility to supply jet fuel and lubricants²

For 30 years and until 1998 ASA was the central organism of an airport network acknowledged as being one of the biggest airport networks in Latin America.

However, the globalization process and its effects resulted in the structural reforms undertaken in Mexico during 2014, which include the Energetic Reform, specifically the new Fossil Fuels Law³ (*Ley Federal de Hidrocarburos*) and the Federal Economic Competition Law⁴ (*Ley Federal de Competencia Económica*). These legislations represent unprecedented opportunities to improve market competition conditions, specifically regarding the commercialization and distribution of fuels, de-regulation which have led to significant changes in the value chains of fossil fuels, through various stages, as a pursuit of an open market. Overall, the implementation of this package of structural reforms seeks to reach out a market structure which avoids and prevents the formation of any type of private or public monopoly.

Nevertheless, and contrary to the guiding principles and objectives of the energetic reform, the current model threatens this good intention of competition and free market participation.

Due to several factors, and despite the amendments to various regulations, ASA continues to be the sole agent that holds storage, distribution and supply of fuels in Mexico's airports. This *de facto* model finds its legal support within the transitional rule in Article 9 of the Airport Law Regulations, which states that ASA will continue to be the sole supplier and distributor of jet fuel to air carriers in Mexico. In consequence, any third party should refrain from providing such services unless the Ministry of Transport and Communications determines otherwise.

“This conduct had a far-reaching effect since the marketing of jet fuel represents 30% of the operative expenses of air carriers”.

ASA's exclusive regime restrains the participation of new providers within the market, and has a great impact on the conditions for commercialization and selling of jet fuels at a competitive price. This price gap, when compared with prices in the United States of America's market, has increased over the last years. If this scenario fails to change, ASA might have the ability to set prices or restrain supplies.

This exclusive advantage is particularly relevant because of its potential impact in the development of the New International Mexico City Airport, as suggested by the OCDE in its “Effective development of infrastructure megaprojects: NAICM”⁵, within this analysis the OCDE points out that internal regulations represent a limited framework of action, since the transitional rule in Article 9 of the Airport Law Regulations paragraph limits other participants to invest in infrastructure projects. Along the same lines, several international organizations such as the International Air Transport

1.- By its acronym in Spanish “Aeropuertos y Servicios Auxiliares”.

2.- Presidential decree that creates the “Airports and Auxiliary Services”.

3.- Presidential decree that creates the “Fossil Fuel Law and amend several disposition regarding Foreign Investment Law, Mining Law and Public and Private

4.- Associations Law”, August 11, 2014. Mexico City.

5.- Presidential decree that creates the “Federal Competition Commission Law”.

Association (IATA) and the Latin American and Caribbean Air Transport Association (ALTA) agreed that it is fully necessary to facilitate the development of clear pricing methods consistent with international standards in order to ensure present and future fuel supply, under competitive and appropriate costs in accordance to the International Civil Aviation Organization standards.

As a result of such throwback, Mexico's Federal Economic Competition Commission (COFECE)⁶ has issued a non-binding opinion⁷ addressing the de facto exclusiveness that "Airports and Auxiliary Services" (ASA) currently holds over the commercialization, storage and sale of jet fuel over the main airports in Mexico. This opinion is an effort to urge the compliance of the applicable legal framework, especially when it comes to competitive emerging markets.

"It should be pointed out that the opinion urges to carry out reforms on aviation and foreign investment matters as necessary and final actions to provide certainty to the participants of the jet fuel market, as well as to promote the entry of foreign competitors".

For these reasons COFECE submitted a list of comments addressed to the Ministry of Communications and Transportation and ASA wherein these two public organisms are strongly encouraged to enact the following measures:

- Abrogate the transitional rule in Article 9 of the Airport Law Regulations.
- Suppress ASA's exclusive regime.
- Amend the concessions granted to all airports to suppress the current regime.
- Promote the amendment of the agreements entered with air carriers.
- Launch a bidding process regarding construction, storage, commercialization or any other supplementary service in the NAICM.

Although this is a non-binding opinion, it carries important political weight. If COFECE's recommendations are complied, other commercial activities would also be favorably impacted, such as the development of new and more efficient infrastructure, for such purposes, this opinion has been formally addressed to the Ministry of Communications and Transport, ASA and the National Congress.

According to COFECE, these proposed measures not only encourage an effort to benefit distributors and air carriers, but also represent an attempt for air transportation market to become a preferred market for the final consumers, namely the passengers.

As good as it gets?

Despite the good intentions proven by COFECE'S opinion, CANAERO⁸ still believes that notwithstanding these measures are fully complied, still some obstacles may arise for the companies interested in commercializing jet fuel, since the proceedings to obtain the proper commercialization permits may become a truly challenging process.

Today, nearly four years after these structural reforms were implemented, though major changes have been accomplished, it becomes clear that there is more work to be done towards enforcing this open market vision implemented by Mexico.

6.- By its acronym in Spanish "Comisión Federal de Competencia Económica".

7.- Non-binding opinion "OPN-002-2018", March 8, 2018.

8.- National Air Transport Chamber "CANAERO" by its acronym in Spanish.

IATA bats for new international airport in Mexico.

The International Air Transport Association (IATA) has pledged its strong support to construct a new international airport in the Mexico City that was launched in 2014, to replace Benito Juárez International Airport. "The current airport is bursting at the seams. It serves 47 million passengers, which is almost 50 percent higher than its design capacity of 32 million. A new airport is vital to enable Mexico City to benefit from its ideal geographic position, which links North America and Latin America," said Peter Cerda, regional vice president for the Americas, IATA. <https://www.stattimes.com/iata-bats-for-new-international-airport-in-mexico-aviation> April 10, 2018.

Mexico, growth factor for US air sector.

The Mexican national market has experienced an increase of 49.6% in the last decade in direct routes with the United States. During 2017, 246 routes and 37.6 million seats were sold on trips between both countries, according to statistics issued by CAPA, Center for Aviation. Therefore, it has been estimated that ensuring the steady growth of the market in Mexico, has been determined as essential for the commercial aviation sector in the United States, said Peter Harbison, executive director of CAPA, within the American Aviation Summit held in Houston, Texas. <https://a21.com.mx/aerolineas/2018/04/17/mexico-factor-de-crecimiento-para-sector-aereo-estadounidense> April 17, 2018.

Mexico to sign bilateral agreements with Germany and the Netherlands.

Mexico's Secretary of Communications and Transports Gerardo Ruiz Esparza, speaking at Tianguis Turístico México 2018, stated (17-Apr-2018) President Enrique Peña Nieto will sign bilateral agreements with Germany and the Netherlands which intend to increase air connectivity between Mexico and its prospective partners. <https://centreforaviation.com/news/mexico-to-sign-bilateral-agreements-with-germany-and-the-netherlands-791217> April 17, 2018.

Airlines back creation of global drone registry: IATA.

The world's airlines are backing the development of a United Nations-led global registry for drones, as a rise in near collisions by unmanned aircraft and commercial jets fuels safety concerns. The International Air Transport Association backs efforts by the United Nations' aviation agency to develop such a registry, which could also help track the number of incidents involving drones and jets, said Rob Eagles, IATA's director of air traffic management infrastructure. IATA would consider collaborating with the International Civil Aviation Organization (ICAO) to use the registry for data analysis to improve safety. <https://www.reuters.com/article/us-iata-drones/airlines-back-creation-of-global-drone-registry-iata-idUSKBN1HO2M5> April 17, 2018..

Mexico's International Airports Introduce 'Border Control' counters to Improve Security and Efficiency.

Three international Mexican airports — those in Mexico City, Cancun and Los Cabos — have installed 100 new counters that are to use biometric technology which will capture fingerprints to verify the identities of the 8 million passengers anticipated in the fore coming years. <https://www.globalatlanta.com/mexicos-international-airports-introduce-border-control-kiosks-to-improve-security-and-efficiency/> April 19, 2018.

Strikes are no longer an excuse.

The Court of Justice of the European Union (CJEU) issued a ruling, which no longer considered strikes conducted by airline personnel as exceptional occurrences which exempts air carriers from compensating passengers in case of delays or cancellations. This new position held by the CJEU will prove to be a threshold for what the term exceptional occurrences encompasses within other legislations around the globe. <https://a21.com.mx/normatividad/2018/04/19/huelgas-en-la-ue-ya-no-son-excusa-para-no-compensar> April 19, 2018.

Mishandling fewer bags as technology improves: SITA report.

Airlines are improving their baggage management practices, with the rate of mishandled bags falling by 70.5 percent over the last decade to a record low as technology allows for better tracking. Delayed, damaged and lost bags cost airlines an estimated \$2.3 billion in compensation, transport and other imposts last year, the report from Swiss aviation technology group SITA shows, down 46 percent from a decade ago. <https://www.reuters.com/article/us-airlines-baggage/airlines-mishandling-fewer-bags-as-technology-improves-sita-report-idUSKBN1HQ0Y1> April 19, 2018.

NAICM will add 40 million passengers by 2024: Canaero.

The National Chamber of Air Transport (CANAERO) estimated that, by 2024, the New Mexico City International Airport (NAICM) will incorporate approximately 40 million additional passengers to the 90 million that the country's aviation industry currently serves. <https://a21.com.mx/aeropuertos/2018/04/20/naicm-sumara-40-millones-de-pasajeros-hacia-2024-canaero> April 20, 2018.

AeroExpo: Executive Aviation Lands in Toluca.

The 15th edition of AeroExpo, arguably the most important event for Mexico's executive aviation industry, took place in the Toluca International Airport and the Toluca Convention and Exhibition Centre between April 19 and 21. For three days, some 10,000 visitors had the opportunity to learn about the new advances taking place in Mexico's aviation sector. AeroExpo hosted over 150 exhibitors including aircraft manufacturers and their local representatives, parts and service suppliers, air taxi companies, pilot and technician training schools, fueling trucks and plane tractor distributors, aircraft brokers, fuel hedgers, executive and cargo airlines, airports and MROs. <http://www.aerospacemx.com/aeroexpo-executive-aviation-lands-in-toluca/> April 23, 2018.

New regulations for Drone operations in Mexico.

The Lower Chamber of Congress has approved amendments and additions to the Civil Aviation Law, which contemplated new registration obligations and economic sanctions for users of remotely piloted aircraft. The fines approved for those who put at risk the security of commercial operations range between 16 to 403 thousand pesos, according to the value of 80.60 pesos published in the Official Gazette of the Federation. In addition, users will face the revocation of the certificate, registration, authorization or license that has been issued by the authorities. <https://a21.com.mx/normatividad/2018/04/26/multaran-hasta-con-403-mil-pesos-usuarios-negligentes-de-drones> April 26, 2018.

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