

Grandfather Rights or Use it or lose it Rule in  
the New Mexico City International Airport: Game  
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## 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.

# Grandfather Rights or Use it or lose it Rule in the New Mexico City International Airport: Game changing decision.

by Juan Manuel Estrada.

The increase on air traffic demand has been constant in the aviation industry for the past decade, averaging an annual growth rate of 5.5%, as announced by the International Air Transport Association (IATA) on its global passenger traffic report for 2015<sup>1</sup>. As a result of this growing demand, some airports around the globe have faced partial or complete congestion. Such is the case of the Mexico City International Airport (AICM), which was declared as “saturated” by the Ministry of Communications and Transportation (“*Secretaría de Comunicaciones y Transportes*”; herein after SCT) on September 29, 2014<sup>2</sup>.

*“The purpose of said investigation is to determine if the current slot assignment process entails the existence of commercial barriers to free competition with potential anti-competitive effects”.*

As a consequence of this “saturation” and in order to meet Mexico City’s growing air traffic demand, the administration of President Enrique Peña Nieto announced on September 2, 2014, the ambitious project of constructing the New Mexico City International Airport (NAICM). In addition to this measure, the SCT signed a Memorandum of Understanding (MOU) with IATA, in which said international association will provide both technical and operational assistance for the design and construction of the NAICM, as well as a full study of slot management in hence of ensuring that Mexico’s new airport is in compliance with global best practices stipulated within IATA World Slot Guidelines (WSG).

## COFECE and the fight for Competitiveness

As part of a strong scrutiny conducted on our national aviation industry, which arose from the denouncement of a North American Airlines before the Federal Aviation Administration (FAA), who alleged a lack of transparency in the assignment of takeoff and landing right (*slots*) in the AICM, the Federal Economic Competition Commission (“*Comisión Federal de Competencia Económica*”; here in after COFECE) initiated an exhaustive investigation with regards to the current process in which slots are being distributed in the AICM.

The purpose of said investigation is to determine if the current slot assignment process entails the existence of commercial barriers to free competition with potential anti-competitive effects.

All of this is relevant, and will gain more importance when slot allocation in the NAICM begins. In which a profound shake up will prove crucial to promote fair competition. In this context, I believe it is of the essence to analyze the implications of grandfather rights and their current role in Mexico’s slot allocation process, as well as the alternative of “use-it-or-lose-it” rule. In addition, the new scheduling process for the NAICM should comply with the four major pillars proposed by IATA in its General Scheduling Conference: certainty, flexibility, sustainability and transparency.

## Grandfather Rights in the NAICM.

Grandfather rights are an essential element in the slot allocation process in Mexico. Article 99 of the Rules for

1.- International Air Transport Association, Demand for Air Travel in 2015 Surges to Strongest Result in Five Years. June 27, 2016. Available at: <http://www.iata.org/pressroom/pr/Pages/2016-02-04-01.aspx>

2.- Secretaría de Comunicaciones y Transportes, Declara DGAC Saturación en el ACIM “Benito Juárez”. June 27, 2016. Available at: <http://www.sct.gob.mx/despliega-noticias/article/declara-dgac-saturacion-del-aicm-benito-juarez/>

the Airport Law (Reglamento de la Ley de Aeropuertos) provides that if a slot is used at least 85% during one season, it can be automatically retained for the next corresponding season.

This system, which is one of the original allocation process implemented by IATA, has been deemed as anticompetitive by several parties to the industry. The reason behind this statements consist in the fact that airlines that concentrate a considerable amount of slots (especially in congested airports such as the AICM) may operate flights to keep out of market and consequently avoiding the entrance or growth of competitors in such airports.

*“Use-it-or-lose-it provision improves slot use by pushing carriers to offer more services at competitive prices in order to avoid losing their slot”.*

The impact of this allocation process becomes tangible when we review the preliminary report issued by COFECE on such matter, which states that at least 65% of the slots in the AICM are currently in possession of two major national carriers<sup>3</sup>. Furthermore, said authority revealed that Aeromexico was granted more than 45% of the slots available in the AICM, percentage higher than its actual market share.

Furthermore, the study states that four out of ten assigned slots are not used by the two major national carriers (in non-holiday seasons). Which proves that such carriers are holding takeoff and landing right that they don't actually need in contravention to the actual purpose of Grandfather Rights.

### **“Use it or lose it” Rule**

As a measure to avoid unlawful hoarding of slots, international experience suggests that an effective slot assignment process that complies with higher competitive standards is essential. Therefore it is crucial that if a carrier owns a slot and does not use it to offer air transport services, but merely holds it to discourage competitors, then that carrier should be subject to lose its right. This is commonly known as the “use-it-or-lose-it” rule.

Use-it-or-lose-it provision improves slot use by pushing carriers to offer more services at competitive prices in order to avoid losing their slot.

### **Conclusion**

In conclusion, grandfather rights should be largely avoided when allocating slots in the NAICM. The imposition of this rights is without a doubt one of the biggest barriers that prevents the participation of new airlines who wish to begin or expand their services in airports such as the NAICM.

Major national carriers should continue to have certain benefits, however new rules should encourage slot circulation instead of its suppression in hence of promoting much needed competition amongst carriers.

3.- Grupo Fórmula, Aeroméxico e Interjet ocupan el 65% de slots en AICM: Cofece. June 27, 2016. Available at: <http://www.radioformula.com.mx/notas.asp?Idn=574408&idFC=2016>.

## **New Guidance on Oil and Gas Extraction at Federally Obligated Airports.**

As the number of airport sponsors interested in allowing oil and gas extraction activities on airport property continues to grow, the FAA wanted to provide this guidance for airport sponsors that have federal obligations. The FAA understands that many airport sponsors want to utilize oil and gas extraction as a source of airport revenue. Some of these FAA requirements, outlined in the new AC, include seeking and receiving FAA approval of Airport Layout Plan changes for on-airport development before drilling begins; ensuring the extraction does not create a hazard or conflict with current or planned aviation purposes; getting fair market value payments for the oil and gas lease and use of airport land; and using the revenue as outlined in the FAA's revenue use policy and grant agreements. [www.faa.gov](http://www.faa.gov) June 03, 2016.

## **Get Ready for New Pilot & Instructor Certification Standards.**

The Federal Aviation Administration (FAA) is launching exciting improvements that will enable testing and training standards for pilots to keep pace with today's operating environment. The FAA will replace the Practical Test Standards (PTS) for the private pilot (airplane) certificate and the instrument (airplane) rating with the new corresponding Airman Certification Standards (ACS). The ACS provide pilots, instructors and evaluators with a single-source set of clear, logical standards that tell them what they need to know, consider and do to qualify and pass both the knowledge and practical tests for airman certification and ratings. The ACS improves the PTS by adding the aeronautical knowledge and risk management elements that support each PTS skill task. [www.faa.gov](http://www.faa.gov) June 13, 2016.

## **Can Russia's MS-21 Crack The Airbus-Boeing Duopoly?**

The MS-21, which rolled out on June 8 in Irkutsk, is intended as Russia's second step in its return to the world stage of aircraft manufacturing. The MS-21 is now scheduled to make its first flight in early 2017. Pricing will be an important element. In order to compete in the global market, UAC assumes the MS-21 will have to entice buyers by offering a price that is 15% lower than its rivals are. Teal's Aboulafia questions how sufficient efficiency gains can be reached to allow for the lower price tag, "You'd have to be super-efficient" to lower costs that much, he says. [www.aviationweek.com](http://www.aviationweek.com) June 16, 2016.

## **Solar Impulse Takes Off on Transatlantic Flight.**

Solar Impulse cofounder Bertrand Piccard took off early from New York following in the historic tracks of Charles Lindbergh over the Atlantic Ocean. If successful, Piccard's transatlantic flight will go down in history as the first conducted without the use of any fuel. "With Solar Impulse, our aim is to encourage the deployment of clean technologies everywhere. If an airplane can fly day and night without fuel, everybody could use these same efficient solutions in their daily lives." Piccard said. [www.flyingmag.com](http://www.flyingmag.com) June 21, 2016.

### **Bombardier, Inc. Has a New Cost-Cutting Plan: Outsourcing.**

If current conditions persist, Bombardier, Inc. (TSX:BBD.B) won't be able to survive much longer. That's why this week the company's unionized workforce agreed to outsource some production to lower-cost countries. According to The Star, "Bombardier has made it clear to workers that it is struggling to be competitive with rival ATR, a joint French-Italian venture, whose turboprops are cheaper than the Q400. The company has landed few orders for the Q400 in recent months, so it wants to send work on the cockpit to China and the wing to Mexico, to cut costs." [www.fool.ca](http://www.fool.ca) June 22, 2016.

### **Brexit votes and the consequences it may give to British airlines.**

With the British sterling pound going in the worst downhill of their last 31 years it seems obvious that if they keep in that same direction people from the UK will have less acquisitive power and will spend considerably less in traveling. With that said it is still not clear which is Great Britain's new direction because the economic deals in trade are uncertain. This deals can go either way, they, (the EU and GB) could keep an open and free market which is not very likely, or it could go completely the other way which would be to close trade quite a bit and have a bad ending economically speaking. [www.flightglobal.com](http://www.flightglobal.com) June 24, 2016.

### **Boeing 737 Max set for flying debut at Farnborough.**

The Boeing 737 Max 8 will be doing flight displays from July 11th to July 14th. The first time the 737-8 flew was on January 29th earlier this year, the one flying on July 11th will be the fourth one to be doing its flight trial. Boeing is expecting to complete their certification in mid-2017 and will provide their first aircraft to southwest airlines later that year. [www.flightglobal.com](http://www.flightglobal.com) June 27, 2016.

### **No Brexit Fallout For Airlines—Yet.**

Lines will continue operating under the same regulations, at least in the near-to-medium term, despite the U.K.'s vote June 23 to leave the EU. There are three possible scenarios, John Byerly, the former State Department official who led U.S. negotiations on the open skies agreement, said. One scenario has the U.K. remaining a party to the open skies agreement, like Norway, if the U.K. and the EU agree. A second scenario would see the U.S. negotiate a separate open skies agreement with the U.K., one that would preserve the rights of access for U.K. carriers. The third, "most convulsive" scenario is also the most remote, Byerly noted. The current EU-U.S. open skies agreement did not supersede the former bilateral deals between the U.S. and the 28 EU member countries; those deals were suspended. Although the regulatory framework, for now, remains unchanged, the effect of the Brexit on travel demand could be felt soon. [www.aviationweek.com](http://www.aviationweek.com) June 27, 2016.

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