

TERRUM

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to the Mexican Rail Transport
Service Law.

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"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"

An Initiative of Amendments to the Mexican Rail Transport Service Law.

by Kendra Medina.

The legal framework in Mexico that is applicable to rail transport service has not been modified in two decades. To put it in perspective, both the Mexican Rail Transport Service Law (the “RTSL”) and the Mexican Telecommunications Law were approved and published in 1995. Since that date, the telecommunications industry has evolved and the legal framework has been substantially amended and supplemented with different kinds of rules and regulations. The monopoly that once existed for the provision of telephone service was eliminated by permitting the entrance to the market of several carriers under a scheme of concession titles and permits. After an adjustment period, the Mexican Antitrust Commission has had a significant involvement in setting up the rules to allow fair competition among the different carriers and the dynamics of the industry has led to a major reform that was just approved last year which, among other many things, aims to foster the development of infrastructure and networks that can be shared by all carriers.

In the case of the rail industry, although the market has been opened for a while now,¹ the legal framework applicable to the rail transport service in Mexico has not been amended or supplemented in any way since the RTSL was first issued. Similar to the way that telecommunication services in Mexico are provided, the provision of rail transport services is subject to a concession title regime. The concession title is granted by the Federal Government to Mexican corporations and it sets forth all the operational, legal, financial and administrative aspects that the concessionaire must comply with in the provision of the services. However, each concessionaire is allowed to freely set the prices of such services. This different from the telecommunications industry, and as a matter of fact, in view of the nature of the railway network, the current concession title regime had created a “territorial exclusivity” for each concessionaire in the provision of its services. In words of the congress committee that approved the initiative of amendments to the Mexican Rail Transport Service Law (the “Initiative”)² “The lack of interconnectivity between the different railway networks, caused by the absence of an agreement among the three main railway concessionaires, has led to very high cargo tariffs (known as TUCE) which have increased by approximately 200% within the last decades.”

In the context of the structural reforms regarding the financial, energy and telecommunications sectors (among others) that have been proposed by the Mexican federal government, agreed between the different political parties and approved by the Mexican Congress and Senate,³ it was only matter of time for the RTSL to be updated in accordance with these trending policies implemented by the current administration. The changes however are mostly to prepare the ground on which new competitors and investors in the rapidly growing rail sector in Mexico will be interacting.⁴

The Initiative proposes that the Federal Government grant concession title (or permits) for purposes of construction of infrastructure, only if these concessionaires or permit holders will allow third parties to use this infrastructure in exchange of a consideration. This will foster private investment by permitting the separation of types of investments in cargo and passenger railcars on one hand, and in railways, terminals and interconnection points on the other. Consequently, it is expected that by permitting private investment for the construction of

1.- The State-owned company known as “Ferrocarriles Nacionales de Mexico” was privatized between 1997 and 1998 and as a result, six private companies were formed to take care of the operation of the railway network, mainly to provide freight services.

2.- Published in the Congressional Gazette on February 4, 2014 (Year XVII, Number 3954-IV).

3.- Please see May and July 2013, and July 2014 Terrum editions.

4.- As part of the thirteen first decisions announced by the current President when taking charge of his office and of the 2012-2018 development plan for the transportation sector, the construction of railways that will allow the development of passenger train systems is included.

new lines and by allowing public bidding for new routes, the existing railway network will be considerably enriched and the quality and capacity of the rail transport services will be dramatically improved.

"The rights granted under a concession title as currently regulated, limit the rights of third parties to use a concessioned railway"

Most importantly, the initiative provides for the Secretary of Communications and Transportation Authority to set forth (as was done in the telecommunications industry) the basis for regulation of the interconnection tariffs as per request of any affected party based on the prior opinion rendered by the Mexican Antitrust Commission, whenever it considers that the registered tariffs are not being applied under the same conditions to all users of comparable types of service, and it establishes severe fines and penalties to those carriers that apply different interconnection tariffs from those authorized by the Secretary of Communications and Transportation (in addition to any other fines that the Mexican Antitrust Commission may apply), up to and including the revocation of the concession title.

It is also worth mentioning the inclusion of the "intra-railway substitution" concept. The intra-railway substitution concept will allow competing carriers that provide the same service to use the same railway. This way, the railway services will include the hauling of railway cars property of, or operated by third parties, within an open network of interconnected railways, which will lead to multiple routes and points of departure and arrival, all of which are very limited under the current legal framework. The rights granted under a concession title as currently regulated, limit the rights of third parties to use a concessioned railway (they are not permitted to operate their railway cars on a concessioned railway unless the concessionaire allows such use under its own terms and conditions, nor are the concessionaires obliged to haul these railway cars). Eighty percent of the existing railways in Mexico are operated by only 3 concessionaries that operate separately in different locations within a context of territorial exclusivity for each of them and with limited interconnection points among their different lines⁵. The articles that have been proposed for amendment in order to reflect the concepts above described, are Articles 6, 15, 21, 35, 36, 46, 47, 53 and 59 of the RTSL.

It is expected that, as a result of these amendments, the competitive environment in the rail industry will be increased and more private investment for the construction of railways and acquisition of railway cars (particularly for freight) will be promoted. Although different in nature, but similar in concept, the telecommunications network in Mexico suffered from the same limitations when it was first opened to competition. It was a tough road for the new and small competitors, and although ten years later there are still certain conflicts and antitrust disputes, the balance has been positive and Mexico is definitively closer today to the objectives as originally formulated. Hopefully, the same will happen to the Mexican rail industry after the applicable legal framework is updated and prepared for a fully open market in the use of the railway network.

5.- *The Innitiative*, page 15.

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New Rules to Reshape Telecom & Media in Mexico.

In a ruling intended to break the existing virtual monopolies in Mexican telecommunications and television broadcasting, a recently created regulator issued tough new conditions for two of the country's largest companies, the wireless carrier América Móvil and the media company Televisa. The ruling promises to redraw the landscape of both industries as it takes direct aim at the core businesses of Carlos Slim Helú, whose control over telecommunications has made him one of the world's richest men; and Emilio Azcárraga, whose television channels play an outsize role in the country's politics. Televisa and América Móvil confirmed on Friday that they had been notified of the ruling. Both companies said they were studying the measures. *New York Times.* 07/03/2014.

Lemon Prices skyrocket.

Lemon prices have hyper inflated to never before seen levels. Problems with the agriculture and agribusiness regulatory rules and compromises, in addition to unfavorable weather have inflated the lemon prices by 143%. It is important to notice that the lemon is one of Mexico's most consumed goods. The prices in Mexico have reached such levels, that the price of a Mexican lemon is cheaper in places like Italy, Spain and even Australia. The Government has enacted a set of plans and provisions in order to prevent further inflation of prices by those that control the lemon distribution within the country. *CNN.* 21/03/2014.

Mexico publishes rule allowing cross-border potato trade.

The Mexican government published a final regulation regarding the cross-border trade of fresh potatoes, allowing shipments of potatoes between the United States and Mexico, which were expected to begin before June. The cross-border trade in fresh potatoes should benefit growers both in the United States and Mexico as well as consumers in both countries. Not only will the United States be shipping potatoes to Mexico, but Mexico will be shipping fresh potatoes to the United States. The value of annual fresh potato exports from the U.S. to Mexico could jump from \$30 million to \$100 million under the new agreement. *The Produce News.* 21/03/2014.

Incentives for lowering Bank Commission.

As part of the numerous legal, political and energetic reforms that the Mexican Congress has enacted as of January this year, Banco de Mexico (Bank of Mexico), as an autonomous organism in the administrative hierarchy in Mexico, has established that it plans to set up, along with the Comisión Nacional Bancaria y de Valores (The National Bank and Stock Commission) several incentives for commercial banks. These incentives will facilitate the process of credit card issuance among others, and will also facilitate access to credit by the general public. Commercial bank commissions are extremely high in Mexico, and the Central Bank is aware of it. Thus, incentives to lower commissions may be the catalyst to start the changes expected from previous reforms. *La Jornada.* 27/03/2014.

Mexico, China make inroads in Canada.

The U.S. is still the dominant supplier of fruits and vegetables to Canada, but the newest trade statistics show Mexico, China and a few other countries are growing their market share. Mexico's market share of Canadian vegetable imports rose from 18% in 2009 to 23% in 2013, according to Canadian trade statistics. The total value growth in Canada's imports of Mexican vegetables between 2009 and 2013 topped 60%. Fresh tomatoes saw a significant decline in the U.S. share of Canada's imports in the last five years, with an offsetting rise in Mexico's tomato value shipped to Canada. While the value of Canadian imports of U.S. tomatoes dropped 14% in those five years, the value of Canadian imports of Mexican tomatoes soared 57% in the same period. *The Packer.* 27/03/2014.

The project advances for the Inter Urban train, Mexico-Toluca: SCT.

Mexico's Secretary of Communication and Transportation, advised that in accordance with the schedule, the plan for the execution of the Inter Urban train Mexico-Toluca will continue. A plan that is unique in all of Latin America. In a statement published by the Secretary this Friday, the project calls for the construction of the railway, 4,634 kilometers in length, stretching from the west gate to the east gate tunnel. *El Financiero.* 28/03/2014.

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