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The new International Airport of Mexico City, a major infrastructure project: main concerns at a glance.
by Adriana Hernández

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

The New International Airport of Mexico City, a major infrastructure project: main concerns at a glance.

by Adriana Hernández

On September 3rd, 2014 it was announced by the Mexican government, the project of the new International Airport of Mexico City ("NAICM"), designed by the British and Mexican architects Norman Foster and Fernando Romero respectively. In its first stage, the NAICM will have three runways with a capacity to transport 50 million passengers, moving forward to its final stage with six runways and the transit of 120 million passengers per year. This projection shall be reached by 2060, having an overall increase of four times the capacity of the current airport¹. It must be said that in terms of investment, capacity and long-term impact, it is definitely one of the most ambitious infrastructure megaprojects within the country in the past decades.

"Up to this point, it seems that there is nothing but good news with the construction of the NAICM: sustainable technology, transportation network expansion, economic spillover and worldwide presence. Although, it shall be unavoidable to ask if there are really no downsides related to it? It is actually necessary to migrate operations from the current airport? What drives the government to propose a project of this magnitude in the first place?"

As stated by the President, Mr. Enrique Peña Nieto, "the construction of the new airport is an act of responsibility towards the Mexican people to boost the national development, a meeting point among compatriots of all regions and the most important entry gateway to Mexico"². Up to this point, it seems that there is nothing but good news with the construction of the NAICM: sustainable technology, transportation network expansion, economic spillover and worldwide presence. Although, it shall be unavoidable to ask if there are really no downsides related to it? It is actually necessary to migrate operations from the current airport? What drives the government to propose a project of this magnitude in the first place?

A growing air transport industry: an undeniable need of new infrastructure.

It is undeniable the significant growth of the air transport industry, including each and all the elements that comprehends it: air carriers, suppliers, airport infrastructure, international and regional associations, passengers, etc. In 2016, global air traffic passenger demand increased almost 6% in comparison to the previous year, in that sense it is estimated that by the end of 2017, the relevant figure will increase 7.4% approximately³. For Mexico, at the end of last year, there was a presence of 80 million passengers approximately; pursuant to it, the annual growth rates may exceed in a 10%⁴ due mainly to the opening of additional routes and the escalation in the seats availability.

Having these figures in mind, it shall be shocking that Mexico City, being the main hub of the country has been facing this exponential growth with the same international airport, inaugurated on 1952. Even after the construction of a second terminal, back then in 2007, the overall capacity of the International Airport of Mexico City ("AICM") is quite limited, specifically in terms of connectivity. The last resolution stating saturation conditions in the airspace in specific slots for the AICM, as provided by the Airports Law Regulation ("ALR"), was published on September 2014⁵. Pursuant to articles

1.- El proyecto del megaeropuerto. Undated. Available at: <http://www.elfinanciero.com.mx/pages/el-nuevo-aeropuerto-a-detalle.html>

2.- Para el 2020, nuevo aeropuerto. September 4th, 2014. Available at: <http://www.excelsior.com.mx/nacional/2014/09/04/979904>

3.- Annual growth in global air traffic passenger demand from 2005 to 2017. Undated. Available at: <https://www.statista.com/statistics/193533/growth-of-global-air-traffic-passenger-demand/>

4.- Transportará México 10 millones de pasajeros más en 2017. July 31st, 2017. Available at: <http://a21.com.mx/aeronautica/2017/07/31/transportara-mexico-10-millones-de-pasajeros-mas-en-2017>

5.- Declaratoria de saturación en el campo aéreo del Aeropuerto Internacional de la Ciudad de México Benito Juárez. September 29th, 2014. Available at: http://dof.gob.mx/nota_detalle.php?codigo=5361802&fecha=29/09/2014

99 to 103 of the ALR, after the entry into force of the resolution stating saturation conditions, the airport manager shall allocate the relevant slots applying specific rules for the first four years which include: a) the withdrawal of slots to air carriers that did not use them respecting the 85%-15% rule and b) the auction of new, withdrawn and waived slots based strictly of the economic proposal made by the air carrier.

The relevant legislation also provides that if after three years, the saturation conditions remain, the airport manager shall among other measures: a) withdraw during the first month of every year (starting the fourth year) a 10% of the slots allocated to each air carrier in the saturated hour(s) and b) assign the withdrawn slots through the relevant auction procedure. The foregoing measures, shall be applied in addition to the rules contained in articles 95 and 96 of the ALR.⁶ Even though the legislation is extremely clear about what actions does the authority shall adopt, there is no evidence of any measure taken in that sense by the AICM since the last saturation resolution issued on September 2014. The applicable legislation does not provide any specific pathway to be followed in the event the authority does not comply with it; pursuant to the foregoing, the appropriate way to challenge the omission of the authority, shall be through an amparo indirecto, although there are no public records of any similar action initiated by any individual or corporation.

Unfortunately, the conditions have not changed a bit, the AICM has reached its maximum and it does not longer provide the required functionality. In the words of its General Director, Alexandro Argudín: “the airport reached a saturation cap and we will not allow additional operations. The operations growth rate shall report zero by the end of the year⁷. The scenario described is terrifying, to say the least. After such statement, it is natural to wonder if the construction of the NAICM, even though an essential one, is not an unfortunate late reaction of the government. A first approach, may show that the Mexican government instead of being proactive, is just having a reactive nature. Under such conditions, are all the fronts being considered and properly addressed?

What do the experts say? Recommendations made by the OECD.

The Mexican government requested the OECD to assist the state-owned entity Grupo Aeroportuario de la Ciudad de México (“GACM”, entity in charge of the construction of the NAICM) through consultancy and knowledge regarding better practices of integrity, transparency and public procurements in massive projects of infrastructure, as it is the case of the NAICM. For the international organization, the worldwide experience suggests that infrastructure projects are particularly prone to corruption, therefore a comprehensive strategy shall be adopted to prevent it⁸. On November 2015, the OECD made a total of 100 recommendations to the GACM in the study “Effective Delivery of Large Infrastructure Projects: the Case of the New International Airport of Mexico City”. Later on, on November 2016, it was published the first report of advances regarding the development of the NAICM and even though there had been actions towards the creation of an effective environment, there are still required major efforts to minimize any possible risk. Pursuant to it, the OECD suggested the GACM to target its resources to the attention of 16 recommendations which are focused on an overall integrity in terms of control, accountability and transparency of the allocated resources.

As per the above, it seems that the GACM has been taking into consideration the observations and recommendations made by the OECD. Despite the media scandal and rumors, the state-owned entity has assured that the project is moving forward in time and essence, as the constructive sequence planned by the relevant project manager⁹. Due to its corresponding schedule and deadlines, at this moment it is not possible to make any forecast about the final outcome of the project. Nevertheless, the main goal of this project shall be to benefit the country and its air transport industry, in terms of connectivity and efficiency.

6.- Airports Law Regulation. Available at: http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LAero.pdf

7.- El AICM frenará el crecimiento de los vuelos en este año. April 25th, 2017. Available at: <http://www.elfinanciero.com.mx/empresas/el-aicm-frenara-el-crecimiento-de-los-vuelos-en-este-ano.html>

8.- Firma del Acuerdo Inter-Institucional relativo al Nuevo Aeropuerto Internacional de la Ciudad de México (NAICM). December 9th, 2014. Available at: <https://www.oecd.org/centrodemexico/medios/firma-del-acuerdo-inter-institucional-relativo-al-nuevo-aeropuerto-internacional-de-la-ciudad-de-mexico.htm>

9.- Obras de NAICM, en tiempo y forma.- GACM. August 16th, 2017. Available at: <http://www.reforma.com/aplicaciones/articulo/default.aspx?id=1187318&v=3>

What about the local authorities?

On July 17th, 2017, the Mexican Antitrust Commission (“COFECE”), agreed that the access to the landing, take-off, use and control of platforms services in the AICM, currently generates inefficiencies and anticompetitive effects in the regular transportation of passengers’ market. Pursuant to it, COFECE issued a list of 13 corrective measures to assure better competition practices, including the lack of clear regulation regarding the slots allocation. As stated by COFECE, the AICM does not apply the instruments foreseen on article 99 of the ALR¹⁰. In response, the SCT on September 29th, 2017, published the “General basis for the slots allocation in airports with saturation conditions”¹¹ and a reform to several articles of the ALR referred as well to the slots allocation in airports with saturation conditions¹².

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Despite the positive overlook regarding the NAICM project, at the editing closing of this article, it was announced by the Superior Audit of the Federation (“ASF”) the detection of several irregularities in the NAICM’s hiring processes for works and services, for a total amount of \$234.7 million pesos¹³. The ASF reviewed a total of 88 agreements, and the discrepancies found were for a total of 1 million pesos on 2014, for 231 million pesos on 2015 and for 2 million on 2016¹⁴. Mr. Rafael Hernández Soriano, president of the Special Commission in charge of the follow up regarding the construction of the NAICM, expressed that the construction term must be extended along with an increase of the initial budget of 186,000 million pesos. “The fact is that the term and the cost are already above the plan”¹⁵. He even suggested to summon Mr. Gerardo Ruiz Esparza, Head of the Ministry of Communications and Transport (“SCT”) in order for him to clear any concerns, which are clearly out of the scope of the GACM’s authorities.

In the past few months, there has been a lot of controversy surrounding the SCT and the public works and infrastructure built (and just inaugurated) in different parts of the country. Faulty design, poor workmanship, low quality materials, corruption and even death, are some of the features analyzed, discussed and questioned by the experts and the mass media. Due to the foregoing, the current government will have to build its case and defend the continuance of the NAICM. It shall not be easy to convince not only the other authorities involved, but also the society that the NAICM is an essential project for the development of the country and that there has been honesty, transparency and due diligence within the relevant process. Regarding the new legal framework, it is still an early stage to make any statement/forecast, nevertheless it shall be acknowledged that the SCT is making a huge effort to develop a solid national air transport industry.

10.- Relevant data of the Resolution issued in the file IEBC-001-2015 by the Plenum of the Antitrust Commission. July 17th, 2017. Available at: http://dof.gob.mx/nota_detalle.php?codigo=5490456&fecha=17/07/2017

11.- General basis for the allocation of slots in airports with saturation conditions. September 29th, 2017. Available at: http://dof.gob.mx/nota_detalle.php?codigo=5499434&fecha=29/09/2017

12.- Decree by which are reformed, added and deleted several provisions of the Airports Law Regulation. September 29th, 2017. Available at: http://dof.gob.mx/nota_detalle.php?codigo=5499432&fecha=29/09/2017

13.- Expressed in Mexican pesos, legal currency in the Mexican United States.

14.- ASF detecta anomalía de 234.7 mdp en construcción del NAICM. October 4th, 2017. Available at: <https://www.eleconomista.com.mx/politica/ASF-detecta-anomalia-de-234.7-mdp-en-construccion-del-NAICM-20171004-0131.html>

La auditoría detecta irregularidades en construcción del NAICM. October 4th, 2017. Available at: <http://expansion.mx/economia/2017/10/04/auditoria-detecta-irregularidades-en-construccion-del-naicm>

NAFTA: How 'ghost' unions exploit workers in Mexico.

The Trump administration believes low Mexican wages make for unfair competition for their own workforce and lure in companies that instead might have set up in the United States. With the North American Free Trade Agreement (NAFTA) on the negotiating table again after 23 years, the Trump administration, when they are not threatening to pull out of the trade deal, is looking to even up the playing field. The focus on salaries is likely to continue into the second round of renegotiations taking place in Mexico itself from September 1st to 5th. <http://www.aljazeera.com/indepth/features/2017/08/nafta-ghost-unions-exploit-workers-mexico-170831110315826.html> 01/09/2017.

Mexico Plays the 'China Card'.

While his country is renegotiating the North American Free Trade Agreement, Mexican President Enrique Peña Nieto was in China to pursue his country's Plan B. Rumbblings of a free-trade deal between the two nations have grown since President Trump took office this year, but they've mostly been seen as political posturing. But with Trump threatening regularly to dump the deal—even taking time last Sunday, during Hurricane Harvey, to say he “may have to terminate” NAFTA—the possibility of Mexico opening up to China seems ever more real. <https://www.theatlantic.com/international/archive/2017/09/mexico-nafta-plan-b/538620/> 04/09/2017.

Mexico thanks the international Community.

On behalf of the Mexican government, Mexico's Foreign Minister, Luis Videgaray, expressed his appreciation for the many personal gestures of support and collaboration. According to a press release issued by Mexico's Ministry of Foreign Affairs, Mexico's Foreign Minister, Luis Videgaray, addressed the international community at the 72nd session of the United Nations General Assembly, Heads of State and Government to thank the exceptional solidarity with Mexico coming from all around the world after damage caused by a 7.1-magnitude earthquake on Tuesday, September 19. Mexico's Foreign Minister said in Spanish: “Today, Mexico feels embraced and it finds solace in a world which does not leave us alone in our tragedy. I would like to acknowledge the support of the United Nations Secretary-General Antonio Gutierrez and of the United Nations personnel that collaborates in emergency cases to provide immediate assistance.” <http://www.eluniversal.com.mx/english/mexico-thanks-international-community> 23/09/2017.

Mexico opens way for NAFTA talks to run into 2018.

Mexico on Wednesday opened the possibility that talks to revamp the NAFTA trade agreement were so complex that they could run into 2018, beyond an end-December deadline designed to avoid Mexico's presidential election campaign which kicks off in March. The United States, Canada and Mexico said at the end of a five-day session in Ottawa there had been progress made in the talks but acknowledged that much work remained to conclude the negotiations by the end of the year. <https://www.reuters.com/article/legal-trade-nafta/mexico-opens-way-for-nafta-talks-to-run-into-2018-idUSKCN1C22A3> 27/09/2017.

\$5 trillion question for Trump tax plan: How to pay for it?

The Trump administration argues that it can accelerate the economy's growth far beyond its current pace and, in doing so, generate enough federal revenue to cover the shortfall. Most economists have called that wishful thinking. That's why analysts say the government would have to help pay for the tax cut by slashing programs that serve the middle class. Or it would be forced to run the national debt up to dangerous levels, likely driving up borrowing rates for consumers and businesses. <https://www.cnbc.com/2017/09/28/5-trillion-question-for-trump-tax-plan-how-to-pay-for-it.html> 28/09/2017.

Earthquake will not affect the country's economic estimates: Meade

Ten days after the earthquake of magnitude 7.1 on the Richter scale that shook the center of the country, Secretary of Finance and Public Credit (SHCP), José Antonio Meade Kuribreña, said that economic estimates and targets fiscal consolidation. <https://www.elsoldemexico.com.mx/finanzas/sismo-no-afectara-estimados-economicos-del-pais-meade-259291.html> 30/09/2017.

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