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Monthly Digital Publication by  
ABOGADOS SIERRA

## Is the government airline really the airline of "well-being" (as named by the president)?

- By Vera García

### APRIL NEWS ON MEXICAN AVIATION

#### 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 how high above them those rights would extend. They decided on, Ad coelum et ad inferos, meaning that their property rights would extend as high up as the heavens and all the way down to hell.

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May 15, 2023  
Year 17 No. 12

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## Is the government airline really the airline of “well-being” (as named by the president)?

by Vera García.

The president has expressed multiple times in his daily conferences the desire to create an airline operated by the former employees of Mexicana de Aviación (the “Airline”). The President said that many cities could not be reached by aircraft because airlines do not fly to cities that do not represent a profit for them. Also, has mentioned that the government is conducting economic analysis and assessing the conditions related to requirements for obtaining a concession to provide the public national air transport service<sup>1</sup>.

To accomplish his plan, on January 6, 2023, the state-owned company Olmeca-Maya-Mexica (“OMM”), controlled by the *Secretaría de la Defensa Nacional*<sup>2</sup> (the “SEDENA”), purchased assets of *Mexicana de Aviación*<sup>3</sup>, including its brand<sup>4</sup>. The Mexican government proposal is for the OMM to operate the Airline in addition to administrating some airports in Mexico, including, among others, the International Airport Felipe Angeles (AIFA)- the airport intended to serve as a base of operation of the Airline, the International Airport of Chetumal, the International Airport of Tulum and the Mayan Train<sup>5</sup>.

***“Modifying Article 29 of the Airport Law to establish that the state-owned companies will not be subject to the five per cent restriction established therein.”***

Last year, a previous edition of COELUM<sup>6</sup> addressed the specific legal provision that prohibits concessionaires or permit holders of air transport service from subscribing up to five per cent of the ordinary shares of the capital stock of a concessionaire company of an airport or its controller and vice versa established under article 29 of the Airports Law<sup>7</sup>.

More recently, on December 15, 2022, the president sent an initiative to reform specific articles of the Civil Aviation Law and Airports Law to authorize a state-owned company to operate both an airport and an airline simultaneously. With respect to these initiatives, on January 13, 2023, the Federal Economic Competition Commission (“COFECE”) issued an opinion on matters of free competition; in such opinion, the COFECE identified three main potential risks: i) advantages in airport services, such as less office space for other airlines and reservation of slots with higher demand for the Airline; ii) new tariffs for airport usage; and iii) cross-subsidies that could allow the Airline to reduce its tariffs based on the charges received from the airports infrastructure. The COFECE also noted that private airlines might experience unequal treatment regarding the requirements, revocation, and terms of their concession<sup>8</sup>. Therefore, recommended

1.- Official website of the President of Mexico (2022) The Government of Mexico is considering the creation of a national airline. Retrieved from <https://presidente.gob.mx/gobierno-de-mexico-analiza-creacion-de-linea-aerea-nacional/>

2.- Mexican Army and Air Force

3.- Mexican airline that ceased operations in 2010 and went bankrupt in 2014.

4.- El Universal. (2023). Government purchases Marca Mexicana de Aviación (Mexican Aviation brand) and other assets for 815 million pesos. Retrieved from <https://www.eluniversal.com.mx/cartera/gobierno-compra-la-marca-mexicana-de-aviacion-y-otros-activos-por-815-mdp/>

5.- Federal Official Gazette (2022) [Authorizing the establishment of a State Majority Participation Company named Grupo Aeroportuario, Ferrovial y de Servicios Auxiliares Olmeca-Maya-Mexica, S.A. de C.V., which will be part of the sector coordinated by the Secretary of national defense Retrieved from: [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5649068&fecha=13/04/2022&print=true](https://www.dof.gob.mx/nota_detalle.php?codigo=5649068&fecha=13/04/2022&print=true)

6.- [Miguel Arellano]. (2022). COELUM\_NOVEMBER\_2022\_8cb9de5c83.pdf [PDF document]. Retrieved from [https://asyv.s3.us-east-2.amazonaws.com/COELUM\\_NOVEMBER\\_2022\\_8cb9de5c83.pdf](https://asyv.s3.us-east-2.amazonaws.com/COELUM_NOVEMBER_2022_8cb9de5c83.pdf)

7.- Civil Aviation Law. (2018). Article 29. Ley de Aviación Civil

8.- Federal Economic Competition Commission (COFECE). (2023). [OPN-001-2023]

9.- Federal Economic Competition Commission (COFECE). (2023). [OPN-001-2023]

not to approve such initiatives based on the following arguments<sup>9</sup>:

- i. *"Allowing a state-owned company to operate an airport and an airline simultaneously could hinder proper indiscriminate access to airport infrastructure, to the detriment of efficient development of the air transport market":*
- ii. *"To establish differentiated treatment regarding the grounds for revocation and termination of concessions, permits for individuals or legal entities, and the allocation to state-owned enterprises":*

Despite the recommendations issued by COFECE, on April 20, 2023, most of the representatives of the lower chamber endorsed the president's argument that the reforms will provide more connectivity to the country<sup>10</sup> and passed the initiative to the representatives of the higher chamber. On April 29, 2023, the members of the representatives of the higher chamber of the president's party (who unfortunately have the necessary majority) approved, in a session that has been very controversial, twenty reforms to several laws, including the bases for constituting the Airline under the figure of direct assignment<sup>11,12</sup>, amending, among others, the following articles<sup>13</sup>.

- i) Modifying Article 29 of the Airport Law to establish that the state-owned companies will not be subject to the five per cent restriction established therein.
- ii) Modifying Article 14 bis of the Airport Law to include that the validity of the concession title will be indefinite and will only terminate when it is demonstrated that there is no longer a cause of public interest that needs to be safeguarded for reasons of national security.
- iii) Modifying Article 10 Bis of the Civil Law to authorize state-owned companies of the Public-Federal Administration to provide the national public air transport service. Also, the reform includes that the validity of the concession title will be indefinite and will only terminate when it is demonstrated that there is no longer a cause of public interest that needs to be safeguarded for national security reasons.

The reforms have raised significant concerns with respect to potential consequences. As mentioned above, the opinion issued by the COFECE highlights the potential risks of limited competition, unequal treatment, and potential monopolistic practices. The reforms could significantly affect various stakeholders, including airlines, passengers, the aviation industry and, in general, the population: i) the airlines may face challenges related to competition and access to the AIFA, as the SEDENA could potentially prioritize the Airline over private airlines regarding access to gates, landing slots, and other resources. This could reduce competition and potentially higher costs for the other airlines; ii) passengers might experience limited or reduced flight choices and potentially higher prices and lower service quality at AIFA; iii) the aviation industry may face market concentration, as OMM could have a dominant position in the market, impacting the competitiveness of other airlines and airports; and iv) total lack of transparency and control as the AFAC, administrated by a former member of the SEDENA, will grant the Airline operated by SEDENA the concession to provide the public national air transport service without clear mechanisms of transparency to operate at the AIFA, which is also controlled and operated by SEDENA.

We could conclude that whenever the president has an idea or project in mind, no matter how outlandish it may seem, it is highly likely to be executed due to the legislative power in the president's favour. It is hoped that the judicial power can still provide some checks and balances to this administration.

10.- Boletín No.4278 Comunicación (diputados.gob.mx)

11.- <https://www.canaldelcongreso.gob.mx/noticias/16513/Senadodapasoareformaaviacionmexicana>

12.- The next step is sending the reform to the President for his signature and promulgation as law. Once the President signs the law, it comes into effect after it has been published in the Official Gazette of the Federation.

13.- Boletín No.4278 Comunicación (diputados.gob.mx)

**AIFA studies project for a freight railway corridor towards Mexico City.**

A railway between the airports of Mexico City (AICM) and Felipe Angeles (AIFA) would help to depressurize the customs of Manzanillo, in Colima, and Pantaco, in the capital of the country, and at the same time would facilitate the migration in the processing of goods from AIFA, considered the director of the airport, Isidoro Pastor Roman. The project, suggested by the concern of the companies of the air cargo sector, has high possibilities of becoming a reality. It is currently under study to be presented to the President of Mexico, and according to Pastor, "there are proposals from some companies to build that spur to be able to handle cargo from those points". [www.forbes.com.mx/aifa-estudia-proyecto-para-corredor-ferroviario-de-carga-hacia-la-cdmx/](http://www.forbes.com.mx/aifa-estudia-proyecto-para-corredor-ferroviario-de-carga-hacia-la-cdmx/) 05/04/2023.

**AMLO backtracks and removes cabotage from the aviation and airports reform bill.**

The National Chamber of Aerotransports (Canaero) warned about the consequences that could result from the initiative that seeks to reform the Civil President Andrés Manuel López Obrador informed that the air cabotage initiative was eliminated from his initiative to reform the Civil Aviation and Airport Laws sent to the Congress of the Union on December 15, 2022. The proposal has not been completely discarded, as the President explained that "it will have to be analyzed in greater depth in conjunction with workers and participants in the air sector." Experts had already assured that this measure would not lower airline ticket prices, however, it would put the national industry at risk. The federal government states that this new regulation would strengthen tourism, which is one of the main sources of income for the Mexican State. [www.forbes.com.mx/amlo-recula-y-elimina-el-cabotaje-del-proyecto-de-reforma-a-las-leyes-de-aviacion-y-aeropuertos/](http://www.forbes.com.mx/amlo-recula-y-elimina-el-cabotaje-del-proyecto-de-reforma-a-las-leyes-de-aviacion-y-aeropuertos/) 12/04/2023.

**Interjet workers fear that the sale of assets will affect their severance payments.**

The Federal Conciliation and Arbitration Board began the process of auctioning the assets of Interjet, once it was notified of the bankruptcy, dictated by the Second Judge in Mercantile Insolvency Matters; however, there is a risk that their liquidations will be affected, because they want to sell the assets in a single package and not in lots. At the auction, a bidder appeared to try to get one of the Interjet lots that are published; however, the auction was suspended, since "a legal bid had to be made for the total of the assets". This is a direct violation of the workers' right to receive payment, since it is highly unlikely that there will be only one bidder who wants all of the company's assets. An appeal will be filed against acts of execution prior to the next asset auction hearing to be held on May 31. [www.eleconomista.com.mx/empresas/Trabajadores-de-Interjet-temen-que-remate-de-bienes-afecte-a-sus-liquidaciones-20230417-0069.html](http://www.eleconomista.com.mx/empresas/Trabajadores-de-Interjet-temen-que-remate-de-bienes-afecte-a-sus-liquidaciones-20230417-0069.html) 18/04/2023.

**Nearshoring: 15 aircraft manufacturers evaluate relocation from Europe and the US to Mexico..**

Luis Lizcano, executive president of the Mexican Federation of the Aerospace Industry (Femia), stated that 15 manufacturers of aircraft, airplane and helicopter parts from the United States and Europe are looking to expand their operations in Mexico or come to the country to invest in production lines due to the nearshoring phenomenon. He also pointed out that the industry will benefit from the registration of technology patents, the construction of satellites and their launching into orbit, as well as from a greater participation in the production of parts for satellites and aircraft. He added that he would like the aeronautical industry to achieve the same maturity as the automotive industry in Mexico; however, while supply chains produce between 60,000 and 80,000 parts for an automobile, for an airplane there can be up to 6 million parts. [www.forbes.com.mx/nearshoring-15-fabricantes-de-aviones-evaluan-trasladarse-de-europa-y-eu-a-mexico/](http://www.forbes.com.mx/nearshoring-15-fabricantes-de-aviones-evaluan-trasladarse-de-europa-y-eu-a-mexico/) 19/04/2023.

**On time or nothing: AICM will not allow flights to take off after authorized hours.**

The Mexico City International Airport (AICM) will not allow flights to take off if they fail to comply with the assigned schedules, due to the persistence of airlines in selling flights at times that were not authorized. According to the AICM, in the first quarter of the year, 2,770 flights were intentionally made outside the schedule. The new protocol to be followed will be as follows: The Federal Civil Aviation Agency (AFAC) will notify that the flight plan, or the flight, is in an unauthorized schedule to the slot suggestion. If it verifies that the flight does not have schedule authorization, it will notify the airline that it will not be assigned a takeoff position. In this case, given the possible effects on passengers, the Federal Consumer Protection Agency (Profeco) will act according to its competencies and will apply the corresponding sanctions. [www.elfinanciero.com.mx/empresas/2023/04/25/a-tiempo-o-nada-aicm-no-dejara-que-despeguen-vuelos-fuera-de-tiempo/](http://www.elfinanciero.com.mx/empresas/2023/04/25/a-tiempo-o-nada-aicm-no-dejara-que-despeguen-vuelos-fuera-de-tiempo/) 25/04/2023.

*In this month extract was prepared by R. Nerio, J. García, P. Nava, F. Barraza, M. Basualdo, A. Ruiz.*



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