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Summary of 2024.
Presidential Succession and
Military Militarization.

By Viridiana Barquin

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Audio Message



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.

Summary of 2024 Presidential Succession and Militarization.

By Viridiana Barquin

As everyone knows, 2024 has been of special significance in Mexico due to the presidential succession that, for first time in the country's history, has been assumed by a woman¹. So, this last edition of the year, as it is already customary, will recap the most relevant aspects that had legal repercussion in the Aviation field in Mexico, provided that this 2024 is therefore worth of highlighting.

We will start with what to the airport system concerns, so let us remember that the previous airport project (intended to be the New Mexico City Airport (NAIM)² was cancelled by the ex-president Andres Manuel Lopez Obrador (AMLO) back in 2019, scrapped after a subjective and partial public consultation. Even though AMLO admitted that such cancellation had a high economic cost due to the contracts that had to be early terminated, the construction of the alternate airport now called Felipe Angeles Airport (AIFA)³ continued so that on December 14, 2020, the resolution authorizing the constitution of a Majority State Participation Company called "*Felipe Angeles International Airport, S.A. de C.V.*"⁴ (state-owned company in which the Ministry of National Defense (SEDENA) and the Army Bank (BANJERCITO) are the main shareholders), was published in the Federal Official Gazette (DOF), and on October 15, 2021, the Concession Title granted by the Ministry of Communications and Transport in favor of such Majority State Participation Company was published in the DOF⁵.

Although the original plan of both airports (NAIM and AIFA respectively) stated as its primary objective to solve the big saturation problem of the Mexico City International Airport (AICM) being almost impossible to satisfy at a 100% the growing demand for both passengers and cargo; what really draws a lot of attention in respect to the AIFA and the thereafter proposal given by the ex-president AMLO for the Mexican airport system is, the militarization of its operation, and then, through the constitution of state owned companies; i.e.,: (i) the Olmecca-Maya-Mexica Airport, Railway, and Auxiliary Services Group ("*Grupo Aeroportuario, Ferroviario y de Servicios Auxiliares y Conexos Olmecca-Maya-Mexica, S.A. de C.V.*" or "*GAFSACOMM*")⁶, and (ii) the Mexico City Airport Group ("*Grupo Aeroportuario de la Ciudad de México*" or "*GACM*")⁷ and the Tourist Airport Group of Mexico ("*Grupo Aeroportuario Turístico Mexicano*" or "*GATM*")⁸, the airport management model changed from concession vs direct allocation (assignment), so that such groups already operates, or, to better say, SEDENA already has under its control the airports that were under the administration of Airports and Auxiliary Services (ASA), plus some other including AIFA^{9,10}.

The ex-president assigned control of these airports to the Army Forces in a notable change from the historical management of air terminals in Mexico, but also an undoubted unilateral market concentration not authorized by the competition authority.

As we already developed in previous articles, this direct allocation and arbitrary government intervention represents a serious injury to the antitrust and free competition. For instance, certain amendments and additions to the Federal Law of Duties ("*Ley Federal de Derechos*"), modifying the rates to calculate the amount to be

1.- Claudia Sheinbaum Pardo, President of Mexico since October 1, 2024, from the same party as the previous president.

2.- The unfinished airport (NAIM) was planned to become the third largest in the world, transporting 120 million pax and up to two million tons of cargo per year. <https://www.elfinanciero.com.mx/nacional/2024/03/04/por-que-se-cancelo-el-naim-asi-acabo-amlo-con-el-proyecto-del-aeropuerto-de-texcoco/>

3.- IATA: NLU - OACI: MMSM

4.- https://www.dof.gob.mx/nota_detalle.php?codigo=5607471&fecha=14/12/2020#gsc.tab=0

5.- https://dof.gob.mx/nota_detalle.php?codigo=5632851&fecha=15/10/2021#gsc.tab=0

6.- State-owned company Holding of AIFA S.A. DE C.V, where SEDENA and the Army Bank are the main shareholders also. Constituted by resolution published on April 13, 2022 https://www.dof.gob.mx/nota_detalle.php?codigo=5649068&fecha=13/04/2022#gsc.tab=0

7.- https://www.dof.gob.mx/nota_detalle.php?codigo=5697793&fecha=08/08/2023#gsc.tab=0

8.- https://www.dof.gob.mx/nota_detalle.php?codigo=5664492&fecha=15/09/2022#gsc.tab=0

9.- <https://www.elfinanciero.com.mx/nacional/2024/09/15/militares-los-ganones-del-sexenio-de-amlo-cuanto-subio-su-presupuesto-y-que-aeropuertos-controlan/>

10.- 20 airport allocations have been granted, herein listed for reference purposes: - 12 airport allocations to "GAFSACOMM" and 8 airport allocations to "GACM" and "GATM". See Coelum June 15, 2024 by Paulina Nava, "Intervention of the Federal Economic Competition Commission (COFECE) in the Mexican Aviation Industry". https://asyv.com/wp-content/uploads/2024/06/6_24_Coelum.pdf

paid for the use, enjoyment or exploitation of federal airports, establishing a distinction between the holders of assignments and concessionaires, thus for exactly the same use, enjoyment or management of federal airports, the concessionaires must pay 9% of their gross income from complementary and commercial airport services, while the state-owned companies will only pay 5%¹¹. Moreover, the amount collected from the fee paid by each passenger for the concept of airport use (TUA) goes actually to SEDENA's budget "for the strengthening of the airport system under its coordination". That is, the assignees will pay a lower amount and, in addition, will receive all the resources obtained from the concessionaires, strengthening the participation of the government vis-à-vis private individuals in the airport sector.

Such amendments then create an even larger gap that not only discourages investment in the aeronautical industry, but also imposes new burdens and obstacles on those who are already in it and, of course, creates barriers to free competition, which unfortunately also applies to the second topic that we are addressing which is the creation of the state airline that the ex-president carried out through the acquisition of the Mexican Aviation brand "Mexicana de Aviación"¹². Despite of being favored over other private Mexican carriers, the new state-owned airline, according to the results provided by SEDENA after an order issued by the National Institute of Transparency and Access to Information (INAI), it will only achieve a break-even point in terms of income, although not profits, by 2029, and will supposedly begin to be profitable by 2033¹³. And in the meantime, "the differences for the first years will be covered by the Ministry of Finance and Public Credit," says the document.

Unfortunately, we cannot conclude that all such amendments to the Mexican airport system made by the ex-president and of which the current President is giving continuity, has proven to give the promised transparency, nor the AIFA has proven to be the solution to the AICM saturation problem¹⁴, and much less the state owned airline proves to be a profitable model in terms of cost benefit but on the contrary it only reports heavy losses that lead to interpreting it more as a political tool only. Let us remember that since the beginning of the operation of the state-owned airline at the end of last year, flights have taken off with one passenger only¹⁵.

And while this waste of resources occurs, a little over a year after recovering the Category 1, the "2018-2024 Government Management Report",¹⁶ shows that the Federal Agency of Civil Aviation ("AFAC"), failed to comply with the annual program of technical-administrative inspections, essential to guarantee safety conditions in air operations being that the limited economical and personnel resources represented more than 50% of the observations of the United States Federal Aviation Administration (FAA) in the previous downgrade to category 2.

For all the above considerations, unfortunately we cannot conclude that there are fair conditions in terms of free competition so that the consolidation of an airport policy is far from being achieved for this year-end which certainly represents a challenge for 2025. We will see how all these new schemes will progress, which we will be analyzing in future editions.

11.- <http://www.ordenjuridico.gob.mx/Documentos/Federal/html/wo90880.html>

12.- "Aerolínea del Estado Mexicano, S.A. de C.V." also owned by the Olmeca-Maya-Mexica Airport, Railway and Auxiliary Services Group started operations on December 26, 2023

13.- <https://home.inai.org.mx/wp-content/documentos/SalaDePrensa/Comunicados/Nota%20INAI-022-24.pdf>

14.- Although on November 23, 2024, were announced the winners of the project for a makeover of the AICM only in relation to the building façade, counters and boarding halls, corridors, baggage carousels, etc., (in preparation of the 2026 World Cup), but nothing in relation to the airport's capacity.

15.- Substantial evidence proves the absence of public utility, general interest, social interest protection, or national security to justify the constitution of the state-owned airline but also its continuation pursuant the Civil Aviation Law. See Coelum February 15, 2024, by Vera García, "Can Amparo be utilized to seek the Suspension of Aircraft Operations"

https://asyv.com/wp-content/uploads/2024/03/COELUM_FEBRUARY_2024_1352a14634.pdf

16.- "Informe de Gestión Gubernamental 2018.2024" <https://www.gob.mx/agn/documentos/informe-de-gestion-gubernamental-agn-2018-2024>

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Viridiana is a partner in the transactional group of the firm and her practice focuses on cross-border transactions dealing with leasing, financing, sale and acquisitions, antitrust, and corporate matters, having represented foreign companies in the structuring and negotiation of a range of commercial agreements and numerous disputes resulting in the successful repossession of assets through settlement and alternative methods of dispute resolution. Viridiana is ranked in Chambers Aviation Mexico.

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