

# FECC recommends measures to promote competition for Mexico City airport slots

April 07 2016 | Contributed by [SAI Consultores SC](#)

## [Introduction](#)

## [Preliminary findings](#)

## [FECC recommendations](#)

## [Comment](#)

### **Introduction**

In February 2015 the Federal Economic Competition Commission (FECC) initiated an investigation to determine whether essential inputs or barriers to competition existed in the air transport services market at Mexico City International Airport. The investigation was the first of its kind undertaken by the FECC since its establishment under the new Federal Economic Competition Law (published in the *Federal Official Gazette* on May 23 2014).

On February 19 2016 the FECC Investigating Authority issued a preliminary ruling incorporating its findings and proposing corrective measures. According to the law, all economic agents with legal standing may challenge or support the preliminary findings and bring before the FECC any evidence to support their stance. Once the file is integrated, the FECC will have 60 days to issue its final resolution and recommendations.

### **Preliminary findings**

The FECC found as follows:

- The relevant market corresponded to the airport services of landing, take-off and platform control provided through the airstrip, taxiways, visual aids and platforms.
- The slots<sup>(1)</sup> at the airport constituted an essential input necessary for air transportation services – in particular:
  - the airport had market power in the relevant market;
  - it was not technically, economically nor legally viable to reproduce the essential input within the relevant market; and
  - the essential input was indispensable to the provision of air transportation services for passengers.
- The slots were not the property of the relevant airlines; however, airlines were susceptible to claiming 'grandfather rights' over slots.<sup>(2)</sup>
- The rules and mechanisms governing access to the essential input for commercial flights generated a series of anti-competitive effects in the investigated market, including:
  - high market concentration;
  - low availability of schedules, which inhibited market entry and expansion;
  - high prices; and
  - limited innovation in route offerings.
- There was asymmetric information regarding slot allocation, with uncertainty over the availability of slots and a lack of clear procedure for withdrawing slots.
- Certain rules favoured strategic behaviour among airlines, which had the effect of blocking competition.

### AUTHORS

[Lucía Ojeda Cárdenas](#)



[Felipe García Cuevas](#)



- Official flights further limited the insufficient capacity of the airport, since certain official flights were undertaken without previous slot assignment and during busy periods.
- The right to a slot was linked not to the airline's effective use of the slot, but rather to the date on which the airline commenced operations at the airport.

## FECC recommendations

In light of the findings, the FECC recommended that the airport:

- increase transparency, monitoring and control of slots;
- establish transparent procedures and criteria for the assignment of slots;
- apply grandfather rights on the basis that an airline that occupied a certain slot in the previous period has priority on its reassignment, provided that it effectively used the slot;
- establish new criteria for the categorisation of 'used and duly used slots' and 'not used or unduly used slots';
- create and maintain a reserve fund of slots comprising slots liberated as a consequence of:
  - the application of new criteria for the assignment and use of slots; and
  - revoking slots for non-compliance with the terms of use;
- allocate the first half of slots in the reserve fund to new competitors<sup>(3)</sup> and the remaining half based on mechanisms that reflect the economic value of the slot (which may consist of an auction of slots or the deposit of a guarantee to use the slots, creating a secondary market);
- prohibit the cancellation or assignment of a slot after the season has commenced, upon the risk of losing the rights to the slot, except in extraordinary cases beyond the relevant airline's control;
- establish an electronic platform for airlines to exchange or transmit slots (anonymously and for a fee), as long as the slots have been assigned and used for at least two years;
- promote normative changes in order to prohibit all official aviation operations at the airport, with certain exceptions (eg. presidential general staff and national security);
- promote the establishment of a technical autonomous body to exercise all functions related to slots at the airport; and
- monitor the results of these recommendations.

## Comment

The FECC recommendations constitute a major opportunity to promote regulatory improvements regarding the efficient use of slots at Mexico City International Airport, especially in the context of slot saturation. However, they also raise the following concerns:

- The proposal to establish a technical autonomous body to govern slots should be assessed further, since the airport is not an economic agent that competes directly or indirectly with other airlines. In this regard, the airport should have no incentive to favour one airline over another.
- From a regulatory and antitrust perspective, it is important to clearly outline property rights over slots.<sup>(4)</sup>

Moreover, perhaps due to the wording used in the Federal Economic Competition Law, the FECC's preliminary ruling defined the relevant market in the same way as the essential input, while it identified passenger air services as the 'investigated market'. This practice is questionable, since the relevant market would ordinarily be defined with regard to the products or services affected by the lack of essential input. In this context, it will be interesting to observe how the concept of relevant market will be treated in future procedures.

*For further information on this topic please contact [Lucia Ojeda Cardenas](mailto:loc@sai.com.mx) or [Felipe García Cuevas](mailto:fgc@sai.com.mx) at SAI Consultores SC by telephone (+52 55 59 85 6618) or email ([loc@sai.com.mx](mailto:loc@sai.com.mx) or [fgc@sai.com.mx](mailto:fgc@sai.com.mx)). The SAI Consultores website can be accessed at [www.sai.com.mx](http://www.sai.com.mx).*

## Endnotes

<sup>(1)</sup> Strictly speaking, the FECC characterised the essential input as the infrastructure for landing and take-off comprising the airport's airstrip, taxiways, visual aids and platforms.

(2) That is, the airline that occupied a certain schedule in the previous period has a priority over it on its reassignment.

(3) The preliminary ruling considered a 'new competitor' to be:

- an airline with no shares in a certain route (based on the number of operated flights in a season) and subject to the condition that, if a slot is assigned, it will commit to operate the slot for the following two equivalent seasons under the rules of use of slots; and
- an airline that has a share of 5% or less in seats offered on a route.

(4) In this respect, in other jurisdictions airlines appear to have property rights over slots. For example, in the United States slots are susceptible to sale; following the 2013 merger of US Airways Group Inc and American Airlines, JetBlue, Virgin America and Southwest Airlines all purchased slots from American Airlines, while Turkish Airlines purchased slots from Scandinavian Airlines-SAS in 2015.

---

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).