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Mexican Judiciary grants constitutional relief (*amparo*) to Delta Air Lines

The Mexican Federal Commission of Economic Competition ("COFECE") has authority to initiate investigations, either *ex officio* or at the request of the Mexican Executive Power, when it considers that there are elements to indicate that there are no conditions of effective competition in a specific market or in order to determine the existence of barriers to competition or essential facilities that may give rise to anticompetitive effects. When it determines the existence of essential facilities, COFECE has the explicit legal authority to regulate access thereto in order to eliminate anticompetitive effects: COFECE has authority to establish guidelines, prices or tariffs, and technical and qualitative conditions, as well as the timing for the implementation thereof.

The first investigation by COFECE on essential facilities focused on the air transportation services market at the Benito Juárez International Airport in Mexico City (*Aeropuerto Internacional Benito Juárez de la Ciudad de México* or AICM), which includes the airport services offered in such airport that are necessary for landing and/or take-off of aircraft.

The investigation began *ex officio* in February of 2015 and concluded with the issuance by COFECE of a resolution in June of 2017, whereby COFECE:

- (i) resolved that the infrastructure associated with the services of landing, take-off, use and control of platforms of the AICM constitute an essential facility;
- (ii) resolved that the AICM has substantial power in the relevant market which results in higher ticket costs and fewer route alternatives;
- (iii) resolved that the access scheme to take-off and landing schedules (also known as *slots*) creates inefficiencies and anticompetitive effects in the market of regular transportation of passengers to and from the AICM; and
- (iv) imposed various measures to revert such inefficiencies and anticompetitive effects generated by the rules of access and management of the infrastructure related to the take-off and landing services of the AICM.

Delta Air Lines, as an economic agent that considered its rights adversely affected by COFECE's resolution, filed a lawsuit for constitutional relief (known as *amparo*) with the Mexican Judiciary challenging the legality of the aforementioned resolution.

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The Mexican Judiciary not only granted constitutional relief to Delta Air Lines holding that that the aforementioned resolution will not be effective against the plaintiff, but it also held that the management and allocation of slots, as well as the enforcement of the regulation thereof, corresponds to the Mexican Ministry of Communications and Transportation (*Secretaría de Comunicaciones y Transportes* or SCT).

This judicial resolution is especially relevant since it limits the scope of the authority of COFECE in the context of a regulated sector such as air transportation services. This judicial decision establishes a relevant precedent for sectors regulated by specialized authorities that are investigated by COFECE.

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