



# AIR TRANSPORTATION

## + **Lifting-The-Barriers Roundtable**

Preliminary Paper



**CIMB**  
ASEAN  
RESEARCH  
INSTITUTE

#### **About CARI**

The CIMB ASEAN Research Institute (CARI) was established in 2011 as a member of CIMB Group. CARI prides itself on being the first independent, transnational research institute dedicated solely to the advancement and acceleration of the ASEAN integration agenda. CARI was designed to pursue research and to promote thought leadership in support of an integrated ASEAN Community. CARI seeks pragmatic solutions and policy recommendations to address challenges in ASEAN integration and connectivity. CARI's headquarters is located in Kuala Lumpur but the institute has a regional presence.



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#### **About ASEAN Business Club**

A fully private sector driven initiative of ASEAN's leading businesses coming together to support economic integration while providing a platform for networking. The ABC creates an avenue for ASEAN's businesses to engage with global regional leaders. The club's vision is ASEAN: Open for Business.



#### **About The Centre for International Law (CIL)**

The Centre for International Law (CIL) is a university-level research institute at the National University of Singapore (NUS). It was established in 2009 in response to the growing need for thought leadership and capacity building in international law in the Asia-Pacific region. The present areas of focus are ASEAN law and policy, ocean law and policy, trade and investment law and policy, air law and policy, and international dispute settlement in these areas. CIL engages in research, training, counsel and consultancy on key international law and policy developments. It also organises conferences, workshops and seminars on international legal issues that have an impact on Southeast Asia and the Asia-Pacific region. CIL also collaborates closely with a network of partner and stakeholder organisations in Singapore and overseas to further the development of international law research and training in the region.

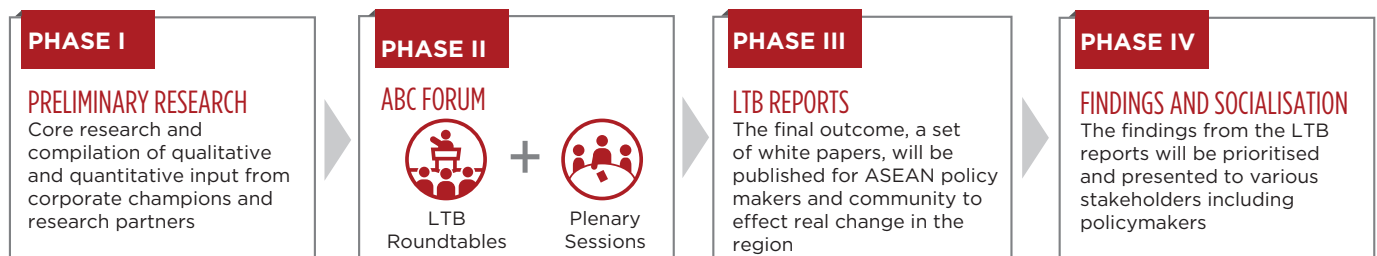
## PREFACE

The Lifting-The-Barriers Initiative (LTBI) is a year-long research exercise designed in conjunction with the ASEAN Business Club (ABC) Forum. The overall objective is to conduct sector based research with the purpose of identifying bottlenecks and barriers to trade and ASEAN economic integration.

The LTBI in 2013 and 2014 have yielded 13 reports for 11 sectors, namely 1) Financial Services, 2) Capital Markets, 3) Connectivity, 4) Aviation, 5) Infrastructure, Power and Utilities, 6) Healthcare, 7) Legal and Tax, 8) Automotive and manufacturing, 9) Minerals, Oil and Gas, 10) Retail, 11) Food and Beverage Industry. The LTBI 2015 continues to highlight five key sectors covered in 2013 and 2014, with the addition of the tourism sector which is one of the twelve priority integration sectors (PIS) of the ASEAN Economic Community Blueprint.

The Lifting-The-Barriers reports have been widely referred to by ASEAN policy makers and stakeholders. The ASEAN Chair of 2015, the Right Honourable Prime Minister Dato' Sri Najib Razak, publicly cited the LTB reports as being a useful guide for Malaysia's stocktake exercise to identify the gaps between ASEAN aspirations and the reality in the business sector, in anticipation of the pronouncement of the ASEAN Economic Community later this year.

The LTBI has four phases, each playing a unique role in helping achieve the wider objective. Details of the initiatives are:



### Phase I:

Phase I of the LTBI involves core research and seeks to identify the existing barriers in each sector to assist in understanding the challenges faced by different segments of the industry. We also study the AEC obligations and impacts on businesses and the industry as a whole.

### Phase II:

Phase II convenes around the sector based “Lifting-The-Barriers Roundtables” at the ABC Forum. The roundtables serve as a platform for different stakeholders to deliberate on the future of their sector and of ASEAN as a region.

### Phase III:

Phase III consists of the production of the final outcome of this exercise, the Lifting-The-Barriers Reports, white papers delivered to the relevant regulatory bodies to effect real change and accelerate ASEAN integration efforts. This phase will consolidate materials from Phase I and Phase II. The Reports summarise the industrial insights and ideas discussed at the Roundtables.

### Phase IV:

Phase IV is the socialisation of key findings from the LTBI. This phase involves the distribution and presentation of the key findings to the relevant regulatory bodies as well as to other industry stakeholders. The 2014 LTB Reports were distributed to over 1000 companies and corporate entities as well as presented to various ASEAN government bodies and institutions.

### DISCLAIMER:

This is a discussion paper intended to inform and facilitate debate for the ASEAN Business Club Forum on the 14th of May 2014. It is not for submission, distribution or for any other purpose for which it was not intended. No citation or quotation is to be extracted from this report without the express consent of CIMB ASEAN Research Institute and the relevant Research Partner



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## 1. OVERVIEW – THE ASEAN SINGLE AVIATION MARKET (ASAM) AS ‘WORK IN PROGRESS’

The Association of Southeast Asian Nations (ASEAN) has laid down an ambitious 2015 deadline to establish an ASEAN Single Aviation Market (ASAM) among its 10 member states. ASAM’s goal is to liberalise air transport services in the region and to create a single integrated market for the airline industry. This is in line with the broader aim to create the ASEAN Economic Community (AEC) by the same 2015 deadline.

With the end of 2015 fast approaching, the reality is that ASAM is unlikely to be fully achieved in time (nor will the AEC, for that matter). For ASAM, much remains to be done for the economic integration of the aviation sector, while the work on technical integration is still at its early stages. It is thus likely that ASAM will have to be extended, or to have a second stage declared for the post-2015 period. In other words, ASAM remains a work in progress. This Report highlights the critical items that government and industry players must address as ASAM is further developed beyond 2015.

## 2. THE BIG PICTURE: THE CHANGING FACE OF ASEAN AVIATION

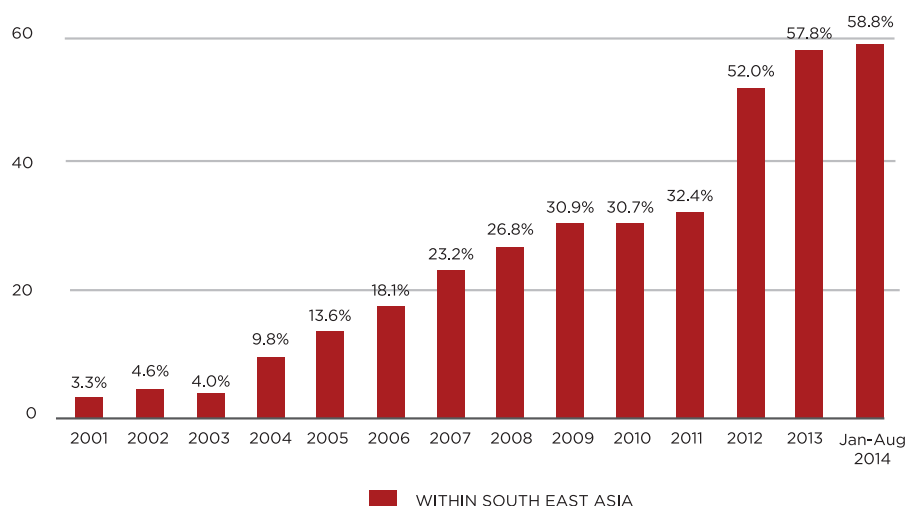
### Infrastructure and Human Capital Constraints

1. The dynamics of ASEAN aviation has changed significantly in the last decade and continues to evolve rapidly. According to calculations by the Centre for Asia-Pacific Aviation (CAPA), low-cost carrier (LCC) operations now account for more than half of all airline seat capacity (international plus domestic) in Indonesia (55%), the Philippines (51%) and Malaysia (51%). The next highest LCC penetrations rates are 38% for Thailand, 34% for Vietnam, 30% for Singapore and 20% for Myanmar.
2. Region-wide, the market share of LCCs on intra-ASEAN routes alone rose to 58.8% of all seats offered in 2014, up significantly from 3.3% in 2001 and 30.7% in 2010. The LCC share of capacity is expected to increase even more dramatically in the next decade, particularly for intra-ASEAN routes. As at early 2015, six of the world’s ten busiest international LCC routes are already found within ASEAN, with Singapore-Kuala Lumpur and Singapore-Jakarta being the top two.
3. In terms of actual seats offered, LCC capacity in Southeast Asia (for both intra- and extra-ASEAN flights) has increased eight-fold (800%) over the last 10 years, from about 25 million seats in 2004 to nearly 200 million in 2014. Over the same period, the full service carriers’ capacity grew by only 45%, or less than 5% per annum, from about 180 million seats in 2004 to 260 million seats in 2014. Tables 1 and 2 below show the top LCCs in ASEAN and their market penetration.

**Table 1. Southeast Asia’s top 10 LCCs ranked by seat capacity: 19-Jan-2015 to 25-Jan-2015**

Rank	Airline		Total Seats
1	JT	Lion Air*	1,083,194
2	AK	AirAsia	550,260
3	5J	Cebu Pacific Air	366,997
4	FD	Thai AirAsia	338,040
5	QG	Citilink	230,760
6	DD	Nok Air	218,204
7	QZ	Indonesia AirAsia	198,360
8	VJ	VietJet Air	156,060
9	D7	AirAsia X	122,148
10	TR	Tigerair	120,240

Note: Lion Air capacity data includes flights operated by regional subsidiary Wings Air  
Source: CAPA – Centre for Aviation & OAG

**Table 2. Low-Cost Carrier (LCC) Penetration (by % of seats) within ASEAN: 2001 to 2014**

Source: Airline Leader, CAPA - Centre for Aviation, November 2014

4. With such huge growth rates, ASEAN aviation now faces real concerns over congestion. These concerns affect all facilities ranging from terminal and runway capacity to airspace management. From the human capital angle, the challenge relates to the supply of pilots, maintenance crew, air traffic controllers and other technical experts. The airline industry projects that the Asia-Pacific region alone will require 185,000 more pilots and 243,500 maintenance personnel for the next 20 years. These pressures on infrastructure and human capital have been largely caused by the huge spike in flights made possible by the increasing economic liberalisation of ASEAN skies.
5. Recent huge aircraft orders by LCCs illustrate the problem. The ASEAN LCCs alone have more than 1,000 aircraft on order between them. New joint venture airlines like Malindo, Thai Lion Air, Thai VietJet Air and NokScoot have also ordered aircraft and started operations. As ASEAN airlines order more planes, the infrastructure and human capital constraints can only get more acute.
6. At the same time, the regulatory landscape remains highly fragmented. ASEAN member states continue to apply their own national rules over airlines and flights in their airspace. These rules and the way they are enforced typically differ from state to state, resulting in airlines having to adhere to multiple national standards, certifications and inspections. Regional co-operation in customs, immigration and quarantine (CIQ) procedures is also lacking, resulting in uneven enforcement. For the airlines, such fragmentation increases the costs of complying with the relevant rules.
7. In short, investments in infrastructure and human capital have not kept up with the economic liberalisation that has fuelled the aviation boom in ASEAN. Neither has there been convergence in national laws and standards to create a more integrated and cost-efficient regulatory regime. There must thus be greater investments in infrastructure and human capital to keep up with the additional planes entering the ASEAN market in the coming years. At the same time, technical or regulatory integration must take place in the subsequent phase of ASAM to complement economic liberalisation. Only then can there be true regional integration.

### 3. TECHNICAL INTEGRATION: TOWARD AN ASEAN REGULATOR?

8. Harmonised standards and a single regulator have the advantages of increasing the reliability of monitoring and compliance, reducing duplication and costs, and enhancing the overall effectiveness of aviation regulation. In this regard, the ASAM project should steer the region toward creating a common ASEAN regulator to oversee technical matters. Obviously, the challenges are significant given the ASEAN member states' concerns over loss of sovereignty as well as the disparity in economic and technical capacities among them. However, progress can be achieved in a phased, gradual manner if there is political will among governments and strong industry-government co-operation. This paper seeks to highlight the important questions and issues that need to be addressed at the regional level.
9. The initial step could be to form a body or committee comprising the civil aviation authorities of the member states (with the Directors-General of Civil Aviation presiding over several sub-committees). This would be similar to the Joint Aviation Authorities (JAA) arrangement adopted in the European Union (E.U.) in the early stages of E.U. air transport integration before the JAA evolved to become today's European Aviation Safety Agency (EASA). A responsive JAA arrangement that directly involves the civil aviation authorities can complement and improve upon the current ASEAN procedure of negotiating through the ASEAN Air Transport Working Group (ATWG), Senior Transport Officials Meetings (STOM) and the ASEAN Transport Ministers Meeting (ATM).
10. In this early stage, the guiding philosophy would be that of "mutual recognition of equivalent standards". This means that the member states would continue to enact and apply their own national standards, but the JAA body would start working to harmonise these standards and to reduce their differences or variations so that they can be broadly equivalent (though not yet similar) across member states. The assumption here is that the member states would begin to align their standards accordingly and there could then be mutual recognition across the region. This does not mean that the JAA would begin enacting common standards for all states to follow – indeed, not being a regulator, the JAA would not have such a mandate (at least not in the initial stages). The standards are still national standards, but they would be broadly equivalent and aligned so as to allow for mutual recognition.
11. The above approach raises several critical questions on how the effort could best be structured and pursued. These questions are fundamental and will form the bases of discussion on how the approach can be started, and more importantly, how the system will eventually end up looking like. These questions are:
  - i. Should the ASEAN approach approximate a U.S. Federal Aviation Administration (FAA)-style of regulation or that of the E.U.'s European Aviation Safety Agency (EASA)?
  - ii. Should the initial JAA-style effort begin with a small core group of more advanced countries (e.g. Brunei, Malaysia, Singapore) seeking equivalence before extending it to the other states? If yes, this pre-supposes a broadly EASA-style approach of harmonising standards first among a core group of countries, and then allowing and expecting the other states to come on board (with sufficient technical assistance provided to the less developed states). The alternative is for the JAA body to develop equivalent standards at the outset for all member states to adhere to. This would be more complex and there would have to be a "lowest common denominator" base level to accommodate the differing capacities across the region.
  - iii. Beyond the structural question above, what "base" or "comparator" levels are we expecting the member states to peg their national standards to? Put another way, if we expect the certificates, licenses, permits and procedures of one member state to be recognised by other member states, these would all have to comply with minimum "base" standards developed by the JAA. Otherwise, we cannot ensure "mutual recognition", which can work only when there is "mutual confidence" in each other's standards. Here, we would expect the JAA body to develop procedures for the following related areas:



- a. Setting out the “*base standards or harmonised regulations*” against which the national standards would be compared for equivalence; (again, these “base” standards could either be developed for a core group of member states first or for immediate region-wide application);
  - b. The *implementation* of the national standards by individual member states in a manner that is consistent with the “base” standards or harmonised regulations;
  - c. The *monitoring* of this implementation to ensure consistency with the “base” standards or harmonised regulations; and
  - d. The provision for the JAA to recommend *corrective* measures and for the member states to adopt these corrective measures in the event of non-compliance with the “base” standards or harmonised regulations.
12. The next issue is to identify the specific areas or disciplines of technical regulation that the mutual recognition process can cover. Here, the issues range from relatively straightforward matters like air crew licensing to complex ones like air traffic control and airspace management. In the initial stages, the JAA body can target the following areas:

- a. *Crew/personnel licensing and training organisations.* For instance, if member states are in compliance with “base” standards on pilot training schools and certification, a pilot’s licence issued by one member state can be recognised as valid for the relevant duration by authorities in other member states. This would greatly facilitate the training and hiring of pilots across the region as well as elevate training quality. Practically, it would avoid the need for pilots to be certified by multiple states and facilitate hiring mobility across the region. The same approach could apply to cabin crew as well as aircraft engineers and maintenance crew.

Overall, the demand for aviation professionals should be managed and met on a regional, rather than national basis. This way, manpower can be positioned anywhere in the region as market demand dictates, with commonly-agreed certification standards recognised by all ASEAN member states. This reduces costs for airlines, governments and the individuals concerned (e.g. trainee pilots) and increases efficiencies all around.

- b. *Safety and maintenance programmes.* Similarly, if member states enact and implement the “base” standards on aircraft safety and maintenance, an inspection conducted by one member state authority would be accepted by the other member states’ authorities to be adequate and valid. To begin with, a harmonised checklist of “ramp inspection” items and procedures could be developed for all member states when inspecting aircraft from fellow member states. A centralised information system could be set up to record and disseminate the results of such inspections. This information would be made accessible to all member states’ authorities so that there is immediacy and transparency in the system. Confidence in the process would then avert the need for subsequent multiple inspections by other member states.
- c. *Flight operations.* “Base standards” on operations could also be developed. These would include standards on the rules of the air (general rules, visual flight rules, instrument flight rules, flight plans, right-of-way rules, communication with air traffic control), procedures on pilots receiving meteorological information, flight crew duty times, communications and navigation equipment, maintenance, flight documents, responsibilities of flight personnel and the security of the aircraft against unlawful acts.
- d. *Air Traffic Management.* This is a complex issue that even the E.U. states have not yet managed to integrate into a single sky with a common regulator. However, initial steps can be taken to harmonise protocols relating to flight information regions (FIRs), better coordination in “handing over” control from one FIR to another, and emergency back-up air traffic control by neighbouring states when a member state’s system fails.

13. The above areas are not exhaustive and have been set out in broad terms. Obviously, the specific procedures for each regulatory category or sub-category have to be set out and agreed upon by member states in detail. The next question is the precise mode for agreement. Whether the JAA approach is adopted among a core group of states first or region-wide at the outset, a formalised legal agreement would be needed to set out the mutual recognition procedure. This agreement can contain technical annexes that lay out the specific “base”-level standards for each category of regulation. It is thus recommended that ASEAN member states discuss and adopt an agreement for the mutual recognition procedure in relation to certifications, licenses, permits, approvals and other forms of documentations.
14. It should be noted that many of the relevant standards have already been laid out by the International Civil Aviation Organisation (ICAO) in the form of Standards and Recommended Practices (SARPs) contained in the Annexes to the Chicago Convention on International Civil Aviation (to which all ASEAN member states are party). It is the *implementation* of these standards that typically vary across states. Of course, ICAO also allows states to deviate from the SARPs as long as these are notified to ICAO. The reality is that some states do not notify ICAO of their deviations, and disparities become common and entrenched. A regional effort such as that described above would be useful to lay down common standards and expectations on such matters.
15. In sum, for technical integration to be realised in the ASAM, it is recommended that:
  - a. A wide-ranging initial “scoping” study be conducted to compile the various national standards that are currently implemented in the member states and to identify the material disparities;
  - b. A Joint Aviation Authorities (JAA)-type body be established to begin the process of establishing “base” standards against which the national standards can be compared and re-enacted for equivalence;
  - c. A legal agreement be adopted to lay out the formal procedures for mutual recognition of certifications, licences, permits, approvals and other documentations that are aligned with the relevant “base” standards. Annexes to the agreement can lay out the specific categories/disciplines of regulation, including crew/personnel licensing and training organisations, safety and maintenance programmes, flight operations and air traffic management.
  - d. Procedures be established to ensure consistent implementation, monitoring of such implementation and the taking of corrective measures by member states in the event of non-compliance.

## 4. ECONOMIC INTEGRATION: UNFINISHED BUSINESS

### Market Access

16. The ASAM process of liberalizing market access for ASEAN member states' carriers into each other's market is currently limited to the so-called third, fourth and fifth freedom rights. The table below explains the relevant agreements that set out these rights and the member states that have accepted them.

**Table 3. ASEAN Multilateral Agreements on Liberalisation of Air Services**

Multilateral Agreement	Scope	State Parties
<b>2009 Multilateral Agreement on Air Services (MAAS)</b>		
Protocol 5	Allows unlimited third & fourth freedom between capital cities (A's carriers between A's capital and another capital) <i>E.g. Thai Airways' (TG) Bangkok-Hanoi &amp; vice versa</i>	All <u>except</u> Philippines
Protocol 6	Allows unlimited fifth freedom between capital cities (A's carriers from A's capital to C's capital via B's capital) <i>E.g. TG's Bangkok-Kuala Lumpur-Singapore &amp; vice versa</i>	All <u>except</u> Philippines
Protocols 1 to 4	<u>Limited impact</u> : allows unlimited third, fourth and fifth freedom between and among secondary cities in "sub-regions" (growth areas) straddling borders of neighbouring states. <i>E.g. the Cambodia, Laos, Myanmar and Vietnam (CLMV) Agreement and the Brunei, Indonesia, Malaysia and Philippines East ASEAN Growth Area (BIMP-EAGA)</i>	All 10 member states
<b>2010 Multilateral Agreement for the Full Liberalisation of Passenger Air Services (MAFLPAS)</b>		
Protocol 1	Allows unlimited third & fourth freedom between all cities (A's carriers from A's non-capital to B's capital, A's capital to B's non-capital & A's non-capital to B's non-capital) <i>E.g. TG Phuket-Manila, Bangkok-Cebu, Phuket-Cebu</i>	All <u>except</u> Indonesia and Lao PDR
Protocol 2	Allows unlimited fifth freedom between all cities (except capital-capital-capital) <i>E.g. TG Phuket-Ho Chi Minh-Cebu, Phuket-Ho Chi Minh-Manila, Phuket-Hanoi-Cebu, Phuket-Hanoi-Manila, Bangkok-Hanoi-Cebu, Bangkok-Ho Chi Minh-Manila, Bangkok-Ho Chi Minh-Cebu</i>	All <u>except</u> Indonesia and Lao PDR
<b>2009 Multilateral Agreement for the Full Liberalisation of Air Freight Services (MAFLAFS)</b>		
Protocol 1	Allows unlimited third, fourth and fifth freedom between designated points <i>E.g. THAI Cargo's Bangkok-Clark, Bangkok-Vientiane-Hanoi routes</i>	All <u>except</u> Indonesia
Protocol 2	Allows unlimited third, fourth and fifth freedom between all points with international airports <i>E.g. THAI Cargo's Bangkok-Singapore, Bangkok-Singapore-Manila routes</i>	All <u>except</u> Indonesia

17. As highlighted in the previous Lifting-the-Barriers Report for Aviation in 2013, it is absolutely critical that all ASEAN member states accept all the above agreements in full. At present, ASEAN airlines face capacity limits when operating passenger flights to the Philippine capital, Manila, from their own respective capitals. Similarly, flights to non-capital cities in Indonesia and Lao PDR also face capacity constraints. As for all-cargo operations, flights into Indonesian points remain restricted.
18. Even if all the ASEAN member states were to accept all the above agreements to accord each other's airlines unlimited third, fourth and fifth freedom rights, slot constraints at congested airports (principally Jakarta Soekarno-Hatta Airport and Manila Ninoy Aquino Airport) remain a huge problem. In other words, the above ASEAN agreements do not cure the slot problem which is an infrastructural constraint that member states must separately resolve.
19. In addition, even if all the ASEAN member states were to accept all the above agreements, their airlines will still have to begin and end their flights in the home state's points. For instance, a Thai carrier will not be able to station planes in Indonesia to connect Jakarta and Manila. At best, it can only connect Jakarta and Manila with operations beginning and ending in Bangkok, one of its home points. For instance, it can operate a Bangkok – Jakarta – Manila – Jakarta – Bangkok route, which is a fifth freedom operation that enjoys traffic pick-up rights in Jakarta both ways.
20. Even then, such fifth freedom operations are controversial in ASEAN because the Thai carrier in this example would be servicing a “V”-shaped geographical route, as opposed to a linear or straight line route. The practical effect of this is that all the passengers getting on board in Bangkok will likely be bound for Jakarta (and will disembark there). At Jakarta, a full new load of passengers will be taken on for Manila. This effectively turns the operation into a “seventh freedom” operation, i.e. the right of a carrier to carry traffic between two international points outside its home base. Yet, such operations are permitted by the ASEAN agreements which specify that there are no directionality or capacity conditions on fifth freedom flights. As they are wholly consistent with ASAM's liberalising spirit, all member states should give approval when any ASEAN airline requests authorisation for such operations.
21. The “seventh freedom” must be addressed explicitly in the post-2015 period and allowed to flourish. To begin with, all fifth freedom routes, as illustrated above, must be permitted without restriction and regardless of their route “shape”. In time, pure “seventh freedom” routes should also be allowed – this would allow the Thai carrier to station planes in Jakarta to operate stand-alone flights between Jakarta and Manila. Just as in the E.U. common market, it is essential for a single aviation market project like ASAM to include the “seventh freedom” (though for now, domestic “cabotage” flights for foreign airlines remain controversial in ASEAN and should best be left for future discussion). In other words, the ASAM cannot stop at third, fourth and fifth freedom rights only. If it does, the ASAM will remain restricted and “single” in name only.

### **Ownership and Control**

22. There are still significant barriers to ownership and control of airlines in ASEAN. Typically, all ASEAN carriers must be “substantially owned and effectively controlled” by their own nationals. This means that stakes owned by foreigners must remain in the minority (i.e. less than 50%). To address this, the ASEAN agreements have introduced the concept of the “community carrier”, which allows any member state to designate an airline as long as it is substantially owned and effectively controlled in one or more ASEAN member state. This means, for instance, that Cambodia can designate an airline that is 40% owned by Thai interests, 40% by Vietnamese interests and only 20% by Cambodian interests. As long as substantial ownership and effective control lie within the family of ASEAN interests, it would not matter that there is minority (or even zero) Cambodian interests. Of course, Cambodia, as the designating state, will still have to exercise effective *regulatory* control over that airline.
23. The above community carrier concept currently exists only on paper. New joint venture airlines like Thai Lion Air, Thai VietJet Air, Malindo and NokScoot have all employed the traditional 51:49 ownership rule, joining the more established AirAsia and Jetstar joint ventures. This is because the ASEAN agreements provide that the community carrier, once designated, *must still obtain the consent* of each member state to which it wishes to operate. In the post-2015 period, this barrier must be removed so that community carriers can be freely established to exercise all rights available to them.
24. One way to lift this barrier is for member states to retain the traditional “substantial ownership and effective control” rule for their own carriers only, if they so wish. For carriers from fellow ASEAN member states, the community model should be fully allowed and welcomed. This will reassure airline investors of the community carrier’s long-term sustainability. Eventually, all restrictions on ownership and control by ASEAN nationals, even for member states’ own airlines, should be phased out. This is only logical for a true “single” aviation market to emerge. Community carriers must enjoy the confidence that they can freely exercise the relevant third, fourth and fifth freedom rights within ASEAN. At the same time, the member states must ensure that their domestic laws are aligned so as to allow the establishment and designation of community carriers in which ASEAN nationals hold a majority share.
25. Even if this is resolved, an ASEAN community carrier will only be able to fly within ASEAN. The moment it wishes to fly to another country outside ASEAN, e.g. Australia, India and Japan, it would have to satisfy the ownership and control requirements contained in its designating state’s bilateral air services agreements with these countries. As such, another post-2015 priority is to get ASEAN member states to come together and adopt new air services agreements with third countries that recognise the designation of ASEAN community carriers. The ASEAN-China agreement already does this, and further expected agreements with other countries should contain the same feature.
26. It also bears re-stating that in ASEAN’s negotiations with third countries, a limited third, fourth and fifth freedom exchange will have long-term disadvantages for ASEAN carriers. As shown by the ASEAN-China agreement, Chinese carriers can operate from any point in China (it being one market) to any point in ASEAN. In contrast, ASEAN carriers can only operate from their own national home points (and not the whole of ASEAN) to any point in China. This is simply because ASEAN is not a true single market yet, and ASEAN member states do not allow each other’s carriers seventh freedom rights to China (e.g. a Thai carrier flying between Singapore and Beijing). This is another item to be tackled post-2015 in tandem with intra-ASEAN seventh freedom.

## 5. CONCLUSION

27. The post-2015 ASAM agenda must pursue the following items to ensure the creation of a truly single aviation market:

### **On infrastructure and human capacity:**

- Facilitating cost reduction and efficiencies for all airline operations, FSC and LCC;
- Committing to overcome infrastructural (airport terminal, runway and slots) constraints as well as the shortage in skilled human capacity.

### **On technical integration:**

- Establishing a Joint Aviation Authorities (JAA)-type body to drive the adoption of “base” standards against which national standards can be compared for equivalence;
- Adopting a formal legal agreement on Mutual Recognition for certifications, licenses, permits, approvals and other forms of documentations that are aligned with the relevant “base” standards. The specific categories of regulation will include crew/personnel licensing and training organisations, safety and maintenance programmes, flight operations and air traffic management;
- Establishing procedures to ensure consistent implementation, monitoring of such implementation and the taking of corrective measures in the event of non-compliance;

### **On economic integration:**

- Pursuing market access liberalisation beyond third, fourth and fifth freedom operations to include seventh freedom rights that take in both: (i) “V”-shaped fifth freedom operations; and (ii) stand-alone or pure seventh freedom operations;
- Lifting restrictions on “community carriers” so that these can operate unimpeded without having to secure the consent of each destination state; at the same time, the member states must align their domestic laws to allow the establishment and designation of such airlines in which ASEAN nationals hold a majority share;
- ASEAN member states to negotiate with third countries as a unified bloc and to ensure that ASEAN community carriers are recognised for operations to those countries;
- ASEAN member states to begin recognising seventh freedom rights for fellow member states’ carriers to operate externally (i.e. extra-ASEAN) to third countries such as China, Japan, Korea and Australia.



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