ASEAN

The ASEAN Single Aviation Market (ASAM) policy will supersede existing unilateral, bilateral and multilateral air services agreements among member states which are inconsistent with its provisions.

**ASEAN Multilateral Agreement on Air Services Manila, 20 May 2009**

<http://www.asean.org/communities/asean-economic-community/item/asean-multilateral-agreement-on-air-services-manila-20-may-2009-2>

**ARTICLE 12 - FAIR COMPETITION**

 Each Contracting Party agrees:

1. that each designated airline shall have a fair and equal opportunity to compete in providing the international air services governed by this Agreement; and
2. to take action to eliminate all forms of discrimination and/or anti-competitive practices by that Contracting Party and/or its designated airline(s) that it deems to adversely affect the competitive position of a designated airline of any other Contracting Party.

 **ARTICLE 13 - SAFEGUARDS**

 1.The Contracting Parties agree that the following airline practices may be regarded as possible anti-competitive practices that may merit closer examination:

 a. charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the air services to which they relate;

 b. the addition of excessive capacity or frequency of air services;

 c. the practices in question are sustained rather than temporary;

 d. the practices in question have a serious negative economic effect on, or cause significant damage to another airline;

 e. the practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another airline from the market; and

 f. behaviour indicating an abuse of dominant position on the route.

2.The grant of state aid and/or subsidy shall be transparent among the Contracting Parties, and shall not distort competition among the designated airlines of the Contracting Parties. The Contracting Parties concerned shall furnish other interested Contracting Parties, upon their requests, with complete information on such grant and any revision to or extension of such grant. Such information shall be treated with the utmost sensitivity and confidentiality.

 3. If the aeronautical authorities of one Contracting Party consider that an operation or operations intended or conducted by the designated airline of another Contracting Party may constitute unfair competitive behaviour in accordance with the indicators listed in paragraph 1, or any discrimination by means of undue state aid and/or subsidy by that other Contracting Party, they may request consultations in accordance with Article 16 (Consultations and Amendment) with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request, and the consultations shall begin within fifteen (15) days of the receipt of such request.

 4.If the Contracting Parties fail to reach a resolution of the problem through consultations, any Contracting Party may invoke the dispute resolution mechanism under Article 17 (Settlement of Disputes) to resolve the dispute.

 5.Each Contracting Party shall have the right to withhold, revoke, suspend, impose conditions on or limit the operating authorisations with respect to an airline designated by another Contracting Party temporarily, should there be reasonable ground to believe that unfair or anti-competitive practices related to paragraphs 1 and 2 of this Article committed by a Contracting Party or its designated airline seriously affect the operation of its designated airline.

**See: Point IV./ COVERAGE 7/A.(f)**

 *(f) competition law and policy/state aid;*

Table :

* Subject : Competition Law
* Measures: To be governed by ASEAN all-sector approach
* Timeline : by 2015.

See ASAM Implementation framework – pdf.

COMPETITION POLICY:

<http://www.asean.org/communities/asean-economic-community/category/competition-policy>

Agreements on Transportation and Communication : <http://www.asean.org/communities/asean-economic-community/category/agreements-on-transportation-and-communication>

See Legal and Institutional Framework – Handbook, p. 7

One Competition authority in charge of competition law enforcement

**Common Anticompetitive practices:**

* **Anticompetitive agreements (including associations and concerted practices)**
* Prohibition of Anti-competitive Agreements (horizontal and vertical agreements between undertakings that prevent, distort or restrict competition in the AMSs’ territory, unless otherwise exempted.
* AMSs should evaluate the agreement by reference to its object and/or its effects where possible and then may decide that it infringes the law only if it has as its object or effect the appreciable prevention, distortion or restriction of competition. AMSs may consider identifying specific “hardcore restrictions” = having an appreciable adverse effect on competition (e.g., price fixing, bid-rigging, market sharing, limiting or controlling production or investment).
* **Abuse of dominant position / Monopoly / other unilateral measures**
* Prohibition of abuse of dominant position

Illustrative list of such conduct:

* Exploitative behavior towards consumers, customers and/or competitors (e.g., excessive or unfair purchase or sales prices or other unfair trading conditions, tying);
* Exclusionary behavior toward competitors (e.g., predatory pricing by an undertaking which deliberately incurs losses in the short run by setting prices so low that it forces one or more undertakings out of the market, so as to be able to charge higher prices in the longer run margin squeeze).
* Discriminatory behavior (e.g., applying dissimilar pricing or conditions to equivalent transactions and vice-versa).
* Limiting production, markets or technical development to the prejudice of consumers (e.g., restricting output or illegitimate refusal to supply, restricting access to/use of/ development of a new technology).
* **Merger control and acquisitions**
* Prohibition of Anti-competitive Mergers
* **Exemptions or exclusions from Application of Competition Law**

Key rationale for granting exemptions or exclusions from competition law provisions to specific industries or activities includes strategic and national interest, security, public, economic and/or social considerations.

**See p.19/20 – ASEAN Handbook – Role and Responsibilities of Competition Regulatory Body/Institutional Structure/Sector Regulators**

* **Balancing approach with national sectorial regulation**

**4.4.4 The AMSs may also establish a regular inter-agency forum or a platform with the relevant stakeholders to enable the competition regulatory body and sector specific regulators to work together to help reduce the incidence of conflict between regulators as well as the costs of “forum shopping” by regulated parties. AMSs may also wish to consult and enter into arrangements with relevant stakeholders so as to engage them.**

**4.4.5 The inter-agency forum or platform can also serve to:**

**4.4.5.1 Ensure that best practices and expertise are shared between the competition regulatory body and the sector-specific regulators.**

**4.4.5.2 Create a programme of work to coordinate all concurrent functions of the competition regulatory body and sector-specific regulators with a view to ensuring that the application of all of these functions is consistent and reflects best practice (e.g., allocating responsibility for dealing with particular complaints).**

**4.4.5.3 Determine whether specific inquiries would be best conducted by a**

**joint team in relevant cases.**

**See also “Commitments’’ p. 27**

**COOPERATION – PRACTICES**

* **See p. 42 : *Chapter 10: International Cooperation / Common Competition Related Provisions in Free Trade Agreements***

**•Air Transport Agreement between ASEAN and China, Bandar Seri Begawan, 12 November 2010**

**ART 11 – FAIR COMPETITION**

<http://www.asean.org/communities/asean-economic-community/category/agreements-on-transportation-and-communication>

**ASEAN Members States:**

* BRUNEI DARUSSALAM: no competition law
* CAMBODIA: no competition law
* INDONESIA: Law No 5 of 1999 concerning the prohibition of monopolistic practices and unfair business competition (the “Law”), together with the elucidation on the Law, the Decree of the President of the Republic of Indonesia No. 75 of 1999 on the Komisi Pengawas Persaingan Usaha of KPPU (the Decree), 4 procedural regulations and several guidelines, available on the KPPU website at : <http://eng.kppu.go.id>

KPPU: state-independent jurisdiction + applies competition law in all sectors

* LAO: Decree 15/PMO (4/2/2004) on Trade Competition but not implemented
* MALAYSIA: Competition Act 2010 (enter into force in 2012) accompanied by the Competition Commission Act 2010

Established the Competition Commission

Comprehensive set of competition rules

* MYANMAR: no comprehensive competition law
* THE PHILIPPINES: sectorial approach to competition policy and law enforcement with over 30 competition laws, industry-specific and consumer welfare laws addressing competition related-practices

Executive order No. 45, series of 2011 designating the DOJ as the Competition Authority

Regarding aviation: Civil Aeronautics Act - Civil Aeronautics Board (CAB)

* SINGAPORE: Competition Act (Chapter 50B) and other competition related act + 13 Guidelines

Competition Commission of Singapore (CCS) – independent statutory board under the Minister of Trade and Industry (MTI)

Available at the Competition Commission of Singapore (CCS) website: [www.ccs.gov.sg](http://www.ccs.gov.sg) under « Legislation »

Aviation sector has its specific regulatory authority: Civil Aviation Authority of Singapore ([www.caas.gov.sg](http://www.caas.gov.sg) ) : regulation of airport services under the Civil Aviation Authority of Singapore Act 2009 (Act No. 17 of 2009) and Airport Competition Code.

* THAILAND: The Trade Competition Act B.E. 2542 (1999)

Enforcement authority : the Trade Competition Commission (TCC)

TCC responsible for the enforcement of competition law in all sectors, including aviation.

* VIETNAM: The competition Law No. 27/2004/QH11 + 6 implementing Guidelines

2 authorities: the Vietnam Competition Authority (VCA) and the Vietnam Competition Council (VCC)

Vietnam Competition Authority website: [www.vca.gov.vn](http://www.vca.gov.vn) under “Legal resources”

Aviation as a specific regulatory authority: in the civil aviation sector, the Civil Aviation Administration of Vietnam (Ministry of Transport)

See Article “Aviation Policy in Indonesia and Its Relation to ASEAN Single Aviation Market” (Proceedings of the Eastern Asia Society for Transportation Studies, Vol.9, 2013): <http://easts.info/on-line/proceedings/vol9/PDF/P422.pdf> at p.7

Air transport liberalization plan in ASEAN has been discussed as early as 1995 during the fifth summit of ASEAN Leaders in Bangkok (Forsyth et al., 2006). ASEAN Single Aviation Market (ASAM) is one of the agendas in the proposed establishment of an ASEAN Economic Community (AEC), which is also targeted to be in place by 2015. AEC envisages four characteristics: (a) a single market and production base, (b) a highly competitive economic region, (c) a region of equitable economic development, and (d) a region fully integrated into the global economy. Air transport sector and ASAM falls under the first and second characteristics (see Figure 3). Air transport is one of the service sectors that member states agree to liberalize, and also one of the designated 12 priority sectors for economic integration within ASEAN. Moreover, under infrastructure development agenda, implementation of ASAM is emphasized.