Strategic Directions for ASEAN Airlines in a Globalizing World

Competition and Consumer Protection Policy

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The views expressed in this report are those of the authors, and not necessarily those of the ASEAN Secretariat and/or the Australian Government.
ABSTRACT

This study proposes a set of regional Codes of Conduct for the aviation industry that complements future liberalisation in this sector. These codes serve to ensure that when ASEAN airlines are able to operate freely across borders, consumers’ interests are properly protected and that liberalisation brings forth competition that is not only free, but also fair. The set of codes must be politically, legally and socially acceptable to all ASEAN states. They should not be prescriptive but should provide general principles or guidelines that can facilitate convergence of state or private self-regulatory rules in the longer run. In the paper, a stocktake is presented of existing rules, regulations and codes governing ASEAN airlines, airports and distribution systems at all levels—that is, multilateral, national, association and firm, so as to assess their scope of coverage and comprehensiveness. Recent consumer and competition issues in the aviation industry are discussed. State regulations or private codes that have been put in place in order to address these concerns are discussed. A set of regional aviation codes that may be compiled into the Template Regional Air Service Agreement is presented.
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A. INTRODUCTION

Business conduct in the aviation industry is governed by a complex web of voluntary codes of conduct and mandatory rules and regulation. Voluntary standards can be instituted either by the service provider itself, such as airlines’ code of conduct, by national self-regulating bodies, such as the Air Transport Association of the United States (ATA), or by multilateral associations like the International Air Transport Association (IATA). These codes of conduct are in keeping with the general principles outlined in various non-binding recommendations or guidelines established by the International Civil Aviation Organization (ICAO), a UN body. Mandatory rules and regulations are instituted by IATA’s binding resolutions, international conventions, such as the Chicago Convention 1944 and the Montreal Convention 1975, as well as national/regional competition or consumer protection authorities or sector-specific regulatory bodies. Appendix A provides a summary of voluntary commitments and regulatory measures applicable to major consumer issues.

For example, various codes of conduct and regulations can be found regarding a current competition and consumer concern, the Computer Reservation Systems (CRS). These include ICAO’s Code of Conduct for the Regulation and Operation of Computer Reservation Systems, the EU Code of Conduct on Computerized Reservation Systems and the Europe Civil Aviation Conference (ECAC) codes, as well as the Canadian and US codes.

Regarding consumer protection issues, market competition can often spur improvements in service quality. Competition does not, however, guarantee a fair or even minimum level of service quality, particularly when consumers lack the bargaining power needed to ensure minimal treatment and the information required to make informed choices. Cost pressures have occasionally led to adverse impacts on the interests of consumers, and infrastructure limitations and air space congestion have resulted in increased concerns about service quality. Together, these reasons have compelled some governments to intervene, but such interventions can impede the market.

For example, the imposition of a minimum service quality standard would tend to impose additional costs on service providers, which would likely lead to higher service prices and fewer service choices for consumers as (less expensive) lower quality service choices are withdrawn from the market. Also, regulations, once adopted, are difficult to withdraw, tending to be rigid and unadaptive to the changing market and economic environment. At worst, poor regulation may lead to distortions in other segments or elements of the market. Thus, self-regulation is generally preferred initially.

Voluntary commitments under a self-regulatory regime can be effective if properly monitored and if the threatened alternative of outside regulation is credible. Service providers also prefer to commit themselves to a set of ‘best practices’ as such in-house initiatives are more likely to be practical, and perhaps effective, than the regulatory alternative.

For example, in February 2002, European airlines developed the ‘Airlines Passenger Service Commitment’, following consultations with representatives of air travellers, European governments and the European Commission. The code covers 14 areas, including notification of flight delays, cancellations and diversions, baggage delivery, refund policy, check-in convenience, denied boarding, provision of information regarding operating carriers in case of code-sharing flights, and so forth. Similarly, European airports have developed an “Airport Voluntary Commitment on Air Passenger Service”. Issues covered include assistance to passengers in case of significant delays, provision of infrastructure for check-in, baggage and security and passenger information in legal rights. While these commitments are not legally binding, signatories strive to meet the quality standard set out.

Harmonized regional codes of conduct can be effective in protecting consumer’s interests than a patchwork of national codes or regulations. This is because airlines often operate a global network and hence are subject to a myriad of different sets of regulatory and contractual requirements, creating confusion for both the operators and customers alike. The
fragmented regime can also prove costly to comply for operators and confusing for passengers. Thus, a uniform code of conduct, if effective, can avoid excessive regulatory burden faced by carriers, benefiting the industry and consumers. It is therefore worthwhile to explore the possibility of having a regional Code of Conduct for the air transport sector, which includes air carriers, airports, CRS and distribution of air transport services.

With regard to competition, liberalization in air transport may be consistent with free, but not necessarily fair, competition. Many countries establish industry-specific competition rules on top of general competition rules stipulated by the national competition law. These include, for example, rules governing airport slot allocation, airlines’ code sharing and franchising, as well as the display of information regarding available flights/carriers on CRS screens.

As in the consumer protection case, airlines can be subject to different competition laws that entail different competition rules as they operate across borders. For example, South African airline decided to code-share a flight with Thai Airways on Bangkok–Johannesburg route instead of competing with each other. The particular route is therefore monopolized by the alliance between the two airlines, leaving consumers with little choice (unless they are willing to stop in Singapore and use Singapore Airlines instead). The South African Competition Tribunal is investigating the case, whereas the issue has not been brought to the attention of the inert Thai Trade Competition Office. What if the South African Competition Tribunal decided against the alliance? Will this prevent both Thai and South African consumers from benefiting from lower-cost joint operation? What if the alliance is allowed to proceed? Will the monopoly lead to higher prices? What if the South African and Thai competition authorities have different opinions on the matter? What if the other countries in the ASEAN region do not even have a competition law?

Due to the extraterritorial nature of unilateral enforcement of domestic competition rules, cross-border coordination and cooperation is required in order to avoid conflicts and to promote a more efficient transport industry. Given that only three ASEAN countries currently have a comprehensive competition law (Thailand, Singapore and Indonesia), a regional competition safeguard can go a long way in ensuring against unfair and restrictive trade practices that may inhibit development of the region’s aviation industry.

This study proposes a set of regional Codes of Conduct for the aviation industry that complements future liberalization in this sector. These codes serve to ensure that when ASEAN airlines are able to operate freely across borders, consumers’ interests are properly protected and that liberalization brings forth competition that is not only free, but also fair. Such a code would have to be politically, legally and socially acceptable to all ASEAN states. Presumably, it would not be prescriptive. Rather, it would provide general principles or guidelines that can facilitate convergence of state or private self-regulatory rules in the longer run.

The organization of this paper is as follows. Chapter 2 takes stock of existing rules, regulations and codes governing ASEAN airlines, airports, CRS and distribution at all levels—multilateral, national, association and firm—so as to assess their scope of coverage and comprehensiveness. Chapter 3 discusses recent consumers and competition issues in the aviation industries and examine state regulations or private codes that have been put in place on order to address these concerns. Chapter 4 discusses competition issues and associated state regulations and private codes. Chapter 5 summarizes the need for codes and proposes a regional aviation code that may be compiled into the Template Regional Air Service Agreement.

B. A SURVEY OF CONSUMER PROTECTION AND COMPETITION REGULATIONS/CODES IN ASEAN

The ASEAN aviation industry is governed by various binding rules and voluntary codes at both national and international levels. The major ones are described below.
1. International conventions and associations

The aviation industry is associated with two multilateral conventions:

- **The Convention on International Civil Aviation 1944**, known as the ‘Chicago Convention’. The Convention prescribes global rules of airspace, the bilateral air traffic agreement, airplane registration and safety, and details the rights of the signatories in relation to air travel that are applicable until now. Annex 9 to the Convention contains guidance materials pertaining specifically to the methods and procedures for carrying out clearance operations to facilitate clearance of aircraft and commercial traffic through the requirements of customs, immigration, public health and agriculture authorities. It thus specifies the minimum facilities to be provided by contracting states.

The Chicago Convention also established the International Civil Aviation (ICAO), a specialized agency of the United Nations charged with coordinating and regulating international air travel. ICAO serves as a global body to harmonize or facilitate convergence of regulations of air transport services. This is because the air transport business is global in nature. An airline takes off and lands in many countries. Thus, divergent national rules and regulations can be costly and confusing to both service providers and consumers. In order to promote convergence of national regulatory regimes, it has published a “Policy and Guidance Materials on the Economic Regulations of International Air Transport”. The document is a compendium of conclusions, decisions and guidance materials developed by ICAO for its contracting states concerning economic regulation of air transport. These include issues concerning consumer interests in areas such as conditions of carriage, fare guarantee, baggage, tariff disclosure, denied boarding, and a Code of Conduct for the Regulation and Operation of Computer Reservation System. With regard to competition issues, Appendix 2 of the particular document contains guidance on the avoidance or resolution of conflicts over the application of competition laws.

It is important to note that ICAO’s guidance materials, recommendations and codes are not legally binding on contracting states. They merely serve as a model rules for states, trade associations and carriers in designing their own codes, commitments or regulations according to their own needs and environment.

All ASEAN countries are signatories to the Convention. Hence, they are bound by the provisions stipulated in the Chicago Convention and are, subsequently, contracting states of the ICAO.


The Warsaw Convention and its subsequent amendments are the only major international conventions governing the air transport service. It sets out air carriers’ liability to passengers in case of accidents, loss of baggage and delays on international flights. All ASEAN countries, except Thailand, are bound by the provisions prescribed by the Warsaw Convention. Thailand does not have a specific law governing the liability of an air transport carrier. It applies the...

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1 Most states were bound by means of an extension by the occupying state at the time, i.e. the United Kingdom for Malaysia, Myanmar and Brunei, France for Cambodia and Lao PDR and the Netherlands for Indonesia.
liability and limitations of liability\(^2\) according to the Thai Civil and Commercial Code in case of damage or loss.

The Hague Protocol increased the liability limit of carriers, in particular in case of accidents. Only seven out of ten ASEAN states ratified the Protocol. The Montreal Convention further increased carriers' liability in case of deaths and personal injury resulting from accidents, by removing the liability limits with respect to accident victims in case the carrier cannot prove that it was not negligent, or that a third party was solely responsible for the damages. The liability for loss of baggage and delays were maintained as appeared in the Warsaw Convention, however.

Among ASEAN states, only Cambodia is signatory to the Montreal Convention. This may be the case because many states fear that the unlimited liability provision would impose excessive risks on their national carriers.

- **The International Air Transport Association (IATA).** IATA is a trade organization representing over 2,600 airlines operating scheduled passenger and/or cargo services. It was founded in 1945. The objective of the Association is to promote safe, regular and economical air transport, to provide means for collaboration among air transport service providers and to cooperate with the ICAO and other international organizations. The Association is also responsible for international tariff coordination and airport slot allocation that received immunity from anti-trust laws in most major countries.

IATA's Passenger Service Conference Resolution Manual contains the standard practices that have been universally agreed upon by airlines to process passengers and baggage in the international interline environment. It includes procedures for reservations, passenger and baggage check-in and ticket issuance, specifications for baggage tag and ticketing and various multilateral interline agreements and other passenger traffic-related regulations. IATA also has a set of Recommended Practices and Resolutions that relate to consumers' protection and competition issues.

It should be noted, however, as in the case of ICAO, IATA's resolutions and recommendations are not legally binding on member airlines. Airlines are not subject to sanctions for non-compliance. The documents simply provide a suggested framework that individual member airline may adapt to comply with their national regulatory rules and their own commercial practices. Each member airline is free to establish its own code of conduct vis-à-vis its customers. It should be noted that, for anti-trust reasons, the IATA must not be viewed as imposing commercial behaviour on member airlines.

National flag carriers of the original ASEAN 6 are members of the IATA (see Table 1). Those of new members are not. These are Vietnam Airlines, Lao Airlines, Royal Air Cambodge and Myanmar Airlines.

To sum up, the Chicago Convention 1944 is the only international convention that binds all ASEAN states (Table 1). Hence, the task of establishing a set of regional codes and rules governing consumer and competition issues in aviation can be challenging, albeit possible.

It is noteworthy that ASEAN has already taken steps towards harmonizing the liability regime for multimodal transportation of goods under the draft ASEAN Framework Agreement on Multimodal Transport. The agreement will make possible door-to-door transport.

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\(^2\) The Thai Civil and Commercial Code does not set a liability limit. The carrier is liable for the full amount of damage, loss, or delay suffered by the passenger or consignee if it cannot prove that it was a force majeur or that a third party was responsible for the damage or loss.
delivery of goods in member countries, using as many modes of transportation as required, under a single document. The draft Framework Agreement also incorporates the basis of liability in the UNCTAD/ICC Rules for Multimodal Transport and the UN Convention on Multimodal Transport 1980. In view of the initiation in transportation goods, it is possible to build a similar common regional liability regime by incorporating certain substantive provisions from international conventions into the regional framework agreement on air transport.
Table 1: ASEAN states’ signatories to international conventions and ASEAN airlines’ membership in the International Air Transport Association

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<tbody>
<tr>
<td>Brunei/Royal Brunei Airlines</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Cambodia/Royal Air Cambodge</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Indonesia/Garuda</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Laos PDR/Lao Airlines</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Malaysia/Malaysian Airlines</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Myanmar/Myanmar Airlines</td>
<td>X</td>
<td>X</td>
<td></td>
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<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Philippines/Philippine Airlines</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Singapore/Singapore Airlines</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Thailand/Thai Airways</td>
<td>X</td>
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<td></td>
<td></td>
<td>X</td>
<td>X</td>
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<tr>
<td>Vietnam/Vietnam Airlines</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

Note: X denotes signatory/membership
Source: Data collected by author
2. Domestic regulations

Most ASEAN airlines are under the regulatory supervision of a ministerial authority such as the Directorate of Air Transport in Indonesia, the Department of Air Transport in case of Thailand, the Civil Aviation Authority of Singapore, the Department of Civil Aviation in Cambodia, Myanmar and Brunei, the Ministry of Transport in case of Malaysia and the Civil Aviation Administration of Vietnam. The Philippines is the only country that has a full-fledged regulatory authority known as the Civil Aeronautics Board, which oversees economic regulation, including consumer and competition issues. Technical regulation is under the purview of the Air Transport Office, the Ministry of Transportation and Communications, however. It should be noted that regulatory authorities that are ministerial rather than independent bodies are responsible for both policy and regulatory functions (Table 2).

In general, the regulatory rules for consumer protection and competition in the aviation industry in ASEAN are not yet fully developed. Most existing regulations concern technical safety, licensing and tariffs issues. Competition issues are beginning to emerge as ASEAN countries began to liberalize their aviation markets since the early 1990s. Most aviation laws in the region do not address competition concerns since competition was not foreseen at the time of promulgation. Price regulation is usually the only tool that the state employs to prevent anti-competitive practices, in particular, predatory or monopoly pricing. Hence, for most member countries that do not yet have a competition law, rules governing fair competition are non-existent.

As for consumers issues, carriers' obligations with regards to, say, denied boarding compensation, flight delays and cancellation and protection of private information, etc., are not regulated. Carriers are allowed to establish their own "Condition of Carriage" subject only to the liability provisions as stipulated in the various Conventions to which the country is signatory. For airlines that are members of the IATA, the terms and conditions of carriage usually the IATA's guidelines. For those that are not members, the terms and conditions of carriage are uncertain.

The emergence of low-cost airlines in ASEAN has raised concerns as to whether certain basic issues regarding conditions of carriage should be legislated to protect consumers; in particular when domestic carriers are not members of the IATA. Certain ASEAN countries have taken steps to establish specific rules and regulations targeting at low-cost domestic carriers. For example, in December 2003, the Thai Ministry of Transport issued a Statement "On the Protection of Passengers of Thailand's Domestic Airlines", following its liberalisation of the domestic air transport in December 2001. The Statement covers issues concerning flight cancellation or combination and compensation in case of long delays or accidents. These passenger protection clauses are inserted in the air transport license issued by the Department of Air Transport, Ministry of Transport.3 It is imaginable that once low-cost airlines become prolific in the region, state authorities will move to establish rules and guidelines to protect basic consumers' rights in using air transport services.

Consumer issues that are not specific to the aviation industry, such as false or misleading advertisement, are normally handled by the consumer protection authority. For example, on 18 February, Thailand's Consumer Protection Board fined three low-cost carriers for misleading advertisements on their airfares. Thai Air Asia, Nok Air Co. Ltd and Orient Thai Airlines were each fined THB150,000. Consumers complained that the airlines used large fonts for the promotional prices, but gave details and additional conditions in very small, barely noticeable, text somewhere else in the advertisement. Unfortunately, not all ASEAN countries have a consumer protection law and authority. Lao PDR and Cambodia, for example, only have laws on product safety, price control and metrology.

3 The Statement can be viewed in English at http://www.aviation.go.th
Table 2: Regulation of the Air Transport Industry in ASEAN

<table>
<thead>
<tr>
<th>Country</th>
<th>Consumer Protection Law</th>
<th>Consumer Protection Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei</td>
<td>No consumer protection law.</td>
<td></td>
</tr>
<tr>
<td>Cambodia</td>
<td>No consumer protection law. Only Law on the Management of Quality and Safety of Products and Services</td>
<td></td>
</tr>
<tr>
<td>Indonesia</td>
<td>Consumer Protection Law 1999</td>
<td>National Consumer Dispute Settlement Board</td>
</tr>
<tr>
<td>Laos PDR</td>
<td>No consumer protection law.</td>
<td></td>
</tr>
<tr>
<td>Malaysia</td>
<td>Consumer Protection Act 1999</td>
<td>National Consumer Advisory Council, Tribunal for Consumer Claims</td>
</tr>
<tr>
<td>Myanmar</td>
<td>No consumer protection law.</td>
<td></td>
</tr>
<tr>
<td>Philippines</td>
<td>Consumer Act 1991</td>
<td>Department of Trade and Industry</td>
</tr>
<tr>
<td>Singapore</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thailand</td>
<td>Consumer Protection Act 1979</td>
<td>Consumer Protection Board, Office of the Prime Minister</td>
</tr>
<tr>
<td>Vietnam</td>
<td>Ordinance on Consumer Protection 1999</td>
<td>Directorate for Standardization Metrology and quality, Ministry of Science and Technology</td>
</tr>
</tbody>
</table>

Source: Data collected by author

Regulation of airports in ASEAN is much less developed than that of air transport. This is because there is hardly any private competition in the business. Since most airports are state-owned—except for the Philippines and Cambodia, state regulation remains *ad hoc.* Even in the case where the construction and operation of the airport is privatized such as in the Philippines, the Manila International Airport Authority (MIAA), which hands out airport concessions to the private sector, assumes the role of the regulator. Most ASEAN governments see very little rationale in developing economic regulatory rules for airports since the construction and operation of airports are often part of broader economic or industries policies such as the promotion of tourism.

With respect to competition rules, only four ASEAN countries have a full-fledged competition law that contains main substantive provisions regarding restrictive practices. These are Thailand, Indonesia, Singapore and Vietnam. Vietnam's law will become effective in July 2005. Thailand has the law only on paper, since main provisions regarding abuse of dominance and merger are not yet enforceable due to the absence of necessary implementing regulations. The Philippines relies on the penal and civil codes to deal with anti-competitive practices. Work is under way to draft a competition law with the assistance of the World Bank. Lao PDR has a Decree on Competition that came into effect on August 2004. While the Decree contains sections addressing issues of monopolies, collusive practices and mergers, the provisions are extremely brief, and it is unclear how the Decree will be implemented. The remaining ASEAN countries namely, Brunei, Cambodia, Malaysia and Myanmar do not yet have a competition law. Except for Cambodia, these countries have not yet taken any initiative in drafting such a law.

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4 The board of a state enterprise often consists of representatives from many different state departments that oversee different aspects of economic and social issues.
Table 2: Regulation of the Air Transport Industry in ASEAN (cont)

<table>
<thead>
<tr>
<th>Country</th>
<th>Regulatory body</th>
<th>Competition law and authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei</td>
<td>Department of Civil Aviation</td>
<td>No competition law</td>
</tr>
<tr>
<td>Cambodia</td>
<td>Department of Civil Aviation</td>
<td>No competition law</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Directorate of Air Transport Ministry of Transport (economic regulation)</td>
<td>Competition law available</td>
</tr>
<tr>
<td></td>
<td>rectorate of Aviation Safety (technical regulation)</td>
<td></td>
</tr>
<tr>
<td>Laos PDR</td>
<td>Lao Transport Authority</td>
<td>Decree on Competition (effective August 2004)</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Civil Aviation Department, Ministry of Transport</td>
<td>No competition law</td>
</tr>
<tr>
<td>Myanmar</td>
<td>Department of Civil Aviation</td>
<td>No competition law</td>
</tr>
<tr>
<td>Philippines</td>
<td>Civil Aeronautics Board (independent body responsible for economic regulation)</td>
<td>Article 186 of the Revised Penal Code, Civil Code RA 386, RA 186</td>
</tr>
<tr>
<td></td>
<td>Air Transport Office (Ministerial body responsible for technical regulation)</td>
<td>(Act to prohibit Monopolies and Combination in Restraint of Trade)</td>
</tr>
<tr>
<td>Singapore</td>
<td>Civil Aviation Authority of Singapore</td>
<td>Competition law available</td>
</tr>
<tr>
<td>Thailand</td>
<td>Department of Air Transport</td>
<td>Competition law available</td>
</tr>
<tr>
<td></td>
<td>(but certain key provisions are not yet enforceable)</td>
<td></td>
</tr>
<tr>
<td>Vietnam</td>
<td>Civil Aviation Administration</td>
<td>Competition law available</td>
</tr>
</tbody>
</table>

Source: Data collected by author.

To conclude, domestic regulations of the aviation industry—beyond safety and tariffs issues—is still relatively undeveloped in ASEAN. Hence, adoption of relatively basic rules as recommended by ICAO or IATA may imply a significant progress for some member countries.

3. Self regulation

Self-regulation may be organized at a global, regional, national or firm level. At the global level, Thai Airways and Singapore airlines belong to the largest air alliance, the Star Alliance. Other ASEAN airlines are not associated with a major alliance. Although these alliances do not establish their own codes or service standards, membership is conditional on the quality of its service. The Star alliance, for example, is seen as the alliance with high-quality services.
At the regional level, the Association of Asia-Pacific Airlines (AAPA) comprises 17 airlines, five of which are ASEAN national flag carriers. The Association's Secretariat is based in Kuala Lumpur, Malaysia. The AAPA's activities focus mainly on providing comments and response to state policies and regulations, rather than setting common service standards for member airlines.

At the national level, due to the limited number of operators in the market, carriers' associations are rare in ASEAN states, except for the Philippines and Indonesia—the archipelago states—that register a large number of carriers. The Indonesian National Air Carriers Association (INACA) approves airfare adjustments for member airlines within the ceiling regulated by the state authority.

At the firm level, only a few ASEAN airlines operating international flights show their 'general conditions of carriage' on their websites (Table 3). The contents cover basic issues regarding baggage rules and liability and denied boarding. For example, Garuda and Malaysian Airlines do not disclose denied boarding compensation on their websites. The websites merely inform passengers that a copy of the carrier's denied boarding compensation is available upon request. Philippines airlines, on the other hand, indicates in greater detail the specific procedures that will be taken in case of an overbooking of flights and the compensation to which persons who are denied boarding involuntarily are entitled to. Interestingly, Singapore Airlines and Thai Airways, the two largest carriers in the region, do not show their conditions of carriage on their websites.

This seems to suggest that the success of a carrier has little to do with its specific conditions of carriage; be it denied boarding or flight delay or cancellation policy. As long as the problems of overbooking, long delays and flight cancellation do not occur frequently, and the airline adheres to the basic treatment recommended by the IATA in case such events do happen, customers do not place importance on the 'extra mile' that the airline may take to guarantee greater protection. Other factors such as frequent flyer programs, the quality of in-flight services and facilities, leg room and food seem to matter more.

5 AAPA membership consists of Air New Zealand, All Nippon Airways, Asiana Airlines, Cathay Pacific Airways, China Airlines, Dragonair, Eva Airways, Garuda Indonesia, Japan Airlines, Korean Air, Malaysia Airlines, Philippine Airlines, Qantas Airways, Royal Brunei Airlines, Singapore Airlines, Thai Airways International and Vietnam Airlines.
## Table 3: ASEAN Airlines Condition of Carriage as Appeared on Their Websites

<table>
<thead>
<tr>
<th>Airline</th>
<th>Condition of Carriage</th>
<th>Denied Boarding Policy</th>
<th>Code share</th>
<th>Flight delays, cancellation or re-routing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malaysian Airlines</td>
<td>Yes</td>
<td>Overbooking procedures not specified. Denied boarding compensation in accordance with carrier's policy. A copy of denied boarding compensation available upon request.</td>
<td>Carrier operating the aircraft's conditions of carriage applies Inform customer about carrier operating the aircraft before ticket is purchased.</td>
<td>For flight delays, cancellation or changes beyond carrier's control: Options: carry on another scheduled service re-route. If revised route fare is higher, passenger will not be charged; if lower, the difference will be refunded. Make a refund (a) if no portion of the Ticket has been used, an amount equal to the fare paid (b) if a portion of the Ticket has been used, the refund will be the higher of: - the one way fare from point of interruption to the destination or the stopover, adjusted by the same percentage discount, if any, as is reflected in the original fare purchased; or - the difference between the fare paid and the fare for the transportation used.</td>
</tr>
<tr>
<td>Airlines</td>
<td>Overbooking procedures not specified. Denied boarding compensation in accordance with applicable law and carrier's policy. A copy of denied boarding compensation available upon request.</td>
<td>Inform customer about carrier operating the aircraft at time of reservation.</td>
<td>Same with Malaysian Airline except for 3(b): if a portion of the Ticket has been used, not less than the difference between the fare paid and the applicable fare for travel between the points for which the Ticket has been used.</td>
<td></td>
</tr>
<tr>
<td>-------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Garuda</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Philippines Airlines</td>
<td>Carrier's personnel ask for volunteers willing to give up confirmed seats in exchange for reward. Passengers involuntarily denied boarding would be entitled to compensatory payment. Denied boarding compensation policy available as part of conditions of carriage.</td>
<td>Not available</td>
<td>Same with Malaysian Airline except for 3(b) if a portion of the Ticket has been used, the refund will be the difference between the fare paid and the applicable fare for the transportation used.</td>
<td></td>
</tr>
<tr>
<td>Singapore Airlines</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Royal Brunei Airlines</td>
<td>No</td>
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<td></td>
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<tr>
<td>Vietnam Airlines</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thai Airways</td>
<td>No</td>
<td></td>
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</table>

Source: Collected by author
C. CONSUMER PROTECTION ISSUES TO BE COVERED UNDER THE PROPOSED REGIONAL CODE.

With the continuing liberalization of air transport and the proliferation of various low cost airlines that compete fiercely for lower fares, consumer interests have received increasing attention in many countries, including ASEAN member states. The ICAO has developed guidance material on consumer interests in areas such as conditions of carriage, fare guarantee, baggage handling, tariff disclosure, denied boarding and a code of conduct for the regulation and operation of the computer reservation system (CRS). But certain states have decided to legislate certain aspects of the conditions of carriage in order to ensure passengers' rights.

The EU has taken unilateral action to regulate air transport and relate services in order to protect consumers' interests and to guarantee passengers' rights. It has issued a myriad of regulations concerning different aspects of consumer protection as will be examined in greater details in this section.

The US initial approach to regulation relied mainly on voluntary self-regulation by trade associations. In June 1999, the Air Transport Association (ATA), working with Congress and the Department of Transport (DoT), developed the ‘Airline Customer Service Commitment’ (see Appendix B). On 13 February 2001, the DOT Office of the Inspector General (IG) released a congressionally mandated report analyzing the progress made by the airlines under the voluntary ‘Customer Service Commitment’. The IG report concludes that, although progress has been made, there are still significant shortfalls, especially in provisions that trigger when there is a flight delay or cancellation. These provisions include keeping customers informed of delays and cancellations and also meeting customers' 'essential needs' during extended on-aircraft delays. Among the IG's recommendations is to make the Customer Service Commitment enforceable, either by requiring their inclusion in the airlines' contracts of carriage or by regulation.

The introduction of the Airline Customer Service Improvement Act coincided with the release of the IG's report. The Act requires that all ATA member airlines incorporate the Customer Service Commitment in their contracts of carriage. It also requires disclosure of the on-time performance and cancellation rate for chronically delayed or cancelled flights when a customer makes a reservation. As such, the customer can hold the carrier legally liable for breach of contract in case of non-compliance. The experience of the United States seem to indicate that a purely voluntary scheme has its limitations in the absence of an effective monitoring scheme and the force of law that stands behind it.

The following subsections address the main issues concerning consumers protection in aviation and examine the approach that each state has taken to deal with these issues, be they voluntary codes or legally binding regulatory rules.

1. Cancellation, delays and diversion

While the Warsaw Convention and its subsequent amendments provide for carriers' liability in case of flight delays or cancellation, there are also concerns about how passengers are to be informed about the delay or cancellation and how they should be treated while awaiting boarding of the aircraft. On these issues, the IATA provides for recommendations concerning delays and cancellation of flights in its *Recommended Practice 1724* (RP 1724) with regard to General Conditions of Carriage (Passengers and Baggage) as shown in Box 1 below. The recommendation stipulates that the airline will carry the passenger on the next available flight, re-route the passenger, or make a refund equivalent to the price of the ticket. It does not, however, specify how it would accommodate passengers in case of long delays. IATA's Resolution 735d on Involuntary Change of Carrier, Routing, Class or Type of Fare states that carriers should bear passengers' essential expenses (meals and accommodation) in case of involuntary change of aircraft, but silent on long delays.
Box 1
Recommended Practice Regards to Flight Delay, Cancellation or Diversion

9.1 SCHEDULES
We undertake to use our best efforts to carry you and your Baggage with reasonable dispatch and to adhere to published schedules in effect on the date of travel. However, to do so, we may need to use a substitute aircraft and/or the services of another carrier. We may also be obliged to change the time of flights, often for reasons beyond our control, and consequently, times shown in timetables cannot be guaranteed and thus form no part of your contract of carriage with us.

9.2 CANCELLATION AND RE-ROUTING
9.2.1 We reserve the right to substitute an alternative carrier and/or aircraft. If we cancel a flight, fail to operate a flight reasonably according to the schedule, fail to stop at your destination or Stopover, or cause you to miss a connecting flight on which you hold a confirmed reservation, you shall have the option, subject to our agreement, either:

9.2.1.1 to be carried on another of our scheduled services on which space is available without additional charge and, where necessary, extend the validity of your Ticket; or

9.2.1.2 to be re-routed to the Stopover or destination shown on your Ticket by our own services or those of another carrier. If the fare and charges for the revised routing are lower than what you have paid, we shall refund the difference;

9.2.1.3 if neither of the above alternatives is acceptable to you, we will make a refund in accordance with the provisions of 10.2 and we shall have no further liability to you.

9.3 If we are unable to provide previously confirmed space, we shall provide compensation pursuant to our denied boarding compensation policy. (Further information is available from us on request).

10.2 Involuntary Refunds

10.2.1. If we cancel a flight, fail to operate a flight reasonably according to schedule, fail to stop at your destination or Stopover, or cause you to miss a connecting flight which you hold a reservation, the amount of the refund shall be:

10.2.1.1. if no portion of the Ticket has been used, an amount equal to the fare paid

10.2.1.2. if a portion of the Ticket has been used, the refund will be not less than the difference between the fare paid and the applicable fare for travel between the points for which the Ticket has been used.
The European Union has recently taken steps to increase carriers' obligations in case of flight cancellation, delay or diversion. It recently passed a regulation on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights (Regulation (EC) No 261/2004) which came into effect on February 17, 2005. This regulation replaced Regulation (EC) No 898/2002 that incorporated provisions from the Montreal Convention into regional regulations. The new regulation increased the compensation that EU airlines would have to pay customers in case of denied boarding and stipulate treatment that a passenger is entitled to in case of flight cancellation, long delays, baggage damage, loss or delay and accidents. Passengers may also claim damages from tour operators if it fails to provide services that he or she has booked within the EU.

As for the United States, the Airline Customer Service Improvement Act does not prescribe the minimum level of standard of treatment of passengers in case of flight delay or cancellations beyond the financial compensation required by the Warsaw Convention. The Act simply requires that 'large air carriers' provide best information to customers regarding delay, cancellation or diversion, and establish a plan with respect to how passengers who must remain overnight during a trip due to flight delays, cancellations or diversions are to be assisted. Unlike the EU’s Passenger Rights, it does not prescribe meals or accommodations for long-delays. That is, the US places greater importance on ensuring the availability of relevant information to customers, rather than prescribing the minimum level of treatment of passengers that all carriers must comply. Airlines are free to establish their own policies with regard to assistance as long as the information is made available to passengers so that they can make informed choices in selecting the airlines they will travel with.

2. Consumers Aspects of Code sharing (ICAO's recommendation of code sharing, EU Code, ECAC code)

The proliferation of codesharing agreements between airlines has raised many concerns among consumers. The major concerns are carrier's liability in a joint service arrangement and passengers' awareness about the details of the arrangement. With regard to liability, the Montreal Convention stipulates that the passenger can take action against the carrier, which performed the carriage during which an accident or a delay occurred, unless there is a specific agreement such that the first carrier assumes the liability. This has been incorporated into Article 15 on Liability of Carriers in IATA's Recommended Practice 1724 with regard to General Conditions of Carriage. It should be noted, however, that only 52 states are signatories to the particular convention, among which only 1 (Cambodia) is an ASEAN member. Hence, the liability regime of ASEAN carriers' under a codesharing arrangement will be subject to the domestic law of the particular country.

On the issue of consumers' awareness, there are concerns that consumers may not be made aware of the details concerning codeshared flights at every stage in the passenger's journey, in particular flight operators, intermediate stops and changes of aircraft, airlines and airports. On this issue, the ICAO has established the Recommendation on Consumer Aspect of Codesharing, which calls for states to ensure that consumers are fully informed about codeshared flights (Box 2). The Recommendation does not prescribe the details of the information that should be made available to the passenger, however. IATA's recommendations spell out that airlines will advise the passenger of the carrier operating the aircraft at the time that a reservation is made. EU regulations concerning codesharing is embedded in its Code of Conduct on Computer Reservation System, which will be discussed in greater details later on. The provision, which calls for passenger to be informed about the identity of the operating carrier is similar to those found in both the IATA and the ECAC's (European Civil Aviation
Box 2

ICAO’s Recommendation on Consumer Aspects of Codesharing

RECOMMENDATION ATRP/9-6

THE PANEL RECOMMENDS that States take the necessary action to ensure that consumers are fully informed and protected with respect to codeshared flights operating to or from their territory and that, as a minimum, passengers be provided with the necessary information in the following ways:

a) orally and, if possible, in writing at the time of booking

b) in written form, on the ticket itself and/or (if not possible), on the itinerary document accompanying the ticket, or on any other document replacing the ticket, such as a written confirmation, including information on whom to contact in case of a problem and a clear indication of which airline is responsible in case of damage or accident, and

c) orally again, by the airline's ground staff at all stages of the journey.

In ASEAN, a codesharing provision appears only in the general conditions of carriage of only two carriers, Malaysian Airlines and Garuda (Table 3). Malaysian Airlines informs passengers that the conditions of carriage of the carrier operating the flight applies under a code-share arrangement and that the carrier commits to informing passengers about the carrier operating the aircraft before the ticket is purchased. Garuda is silent on the liability regime, but commits to informing passengers about the carrier operating the flight when reservation is made. Other ASEAN carriers' policies with regard to code-sharing arrangements are not available.

3. Overbooking/denied boarding

The practice of overbooking in airlines is universally accepted for efficiency reasons. Since not all passengers who confirm a seat on a flight will show up, it is general practice for an airline to overbook the number of passenger in order to ensure that its aircraft are filled to capacity. How a carrier decides which passenger should be ‘bumped’ and how the involuntarily ‘bumped’ are to be compensated are major concerns. There is no international treaty addressing this issue as the Warsaw Convention contains no provision on denied boarding compensation.

Article 9.3 of the IATA’s RP 1724 allows member airlines to establish their own denied boarding compensation scheme (see Article 9.3 in Appendix D). However, the IATA’s Passenger Services Conference Resolutions Manual contains provisions with regard to the notification of overbooking of flights and denied boarding compensation (Appendix D). The recommended practice stipulates that a passenger that is denied boarding should be entitled to compensation in addition to a full refund of the unused portion of the ticket. Before denying boarding to any passenger, the airline may call for volunteers not to board such flights. Any passenger who accepts the denied boarding compensation does so as full settlement of any and all claims against the airline.

Although the recommended practice indicate that airlines should call for volunteers and that passengers denied boarding, voluntarily or involuntarily, should be
compensated, it is non-binding. Hence, carriers are able to establish their own overbooking and denied boarding procedures and compensation rules, unless these are regulated by the national regulatory authority. As seen in Table 3, only Philippine Airlines employs the volunteer scheme as recommended by the IATA. It is also the only airline that discloses the exact amount of involuntary compensation in case of denied boarding as required by the Civil Aviation Board. Other ASEAN airlines do not disclose how passengers are ‘bumped’ or the level of compensation to which they are entitled. This may be the case because of the absence of a sector-specific regulatory oversight as discussed earlier.

The development of a denied boarding scheme

The rationale for regulating denied boarding procedures and compensation is based on ‘asymmetric information’. Since the possibility of a passenger with a confirmed ticket being denied boarding is relatively remote,\(^6\) most passengers are ignorant of the trade off between the price of the ticket and the chance of being bumped off the flight. Even in the case where disclosure about the overbooking is legislated as in the case of the United States, passengers are informed about overbooking only after the ticket is purchased since overbooking often results from last-minute bookings.

Although a passenger unhappy with the compensation for the breach of contract by the carrier may pursue damages in court, they rarely litigate due to the transaction costs involved and the potential court award is unlikely to be able to offset those costs. Given the information asymmetry, airlines would tend to abuse the overbooking policy if there is no penalty for doing so. This would also discourage airlines from adopting policies that would help avoid overbooking, such as the issuance of non-refundable tickets (no-shows are rare when tickets cannot be refunded).\(^7\) Thus, given incomplete information, certain states stepped in to determine the level of compensation that carriers are required to pay passengers that are bumped off their flight. For example, the federal government of the United States set the level of damages for passengers denied boarding at a maximum of US$400 applicable to all commercial flights in the United States. This rate has been in place since 1978.

The prevailing industry practice with regard to denied boarding as a result of overbooking is that whoever arrives at the gate first would get to travel. This is seen as inefficient as passengers who are less concerned about arriving at the destination later than expected may not be bumped off the flight, while those that need to connect with another flight may be denied boarding. As a result, in 1978 the United States pioneered a volunteer auction scheme whereby carriers are mandated to carry out an auction plan to reduce the number of involuntary bumpings. The airlines saved a large sum of money since many passengers were willing to accept sums that were lower than the statutory ceiling of US$400 in case of involuntary denied boarding as determined by the Civil Aviation Board. The rate of involuntary bumping also decreased from 6.4 per 100,000 passengers in 1978 to 1.1 per 100,000 passengers in 1991 in spite of an increase in the revenue share from overbooked passengers from 6.4 per cent to 15.1 per cent of sales during the same period.\(^8\) From 2000 to 2002, 2.9 million passengers were denied boarding; 2.76 million accept the compensation offered by the airlines. This seems to indicate that the set maximum level of

\(^6\) According to the Air Travel Consumer Report 2000 published by the US Department of Transport, the average number of passengers that were involuntary denied boarding was 1.04 per 10,000, with the minimum number at 0.34 and maximum at 2.36.

\(^7\) For example, JetBlue does not overbook flights at all as all tickets are non-refundable.

\(^8\) Simon (1992)
compensation of US$400 is too low, since 5 per cent of passengers that were denied boarding were not satisfied with the compensation they received from the carrier.

There has been suggestion that the maximum compensation should be eliminated in order to avoid any involuntary bumping. There are concerns that passengers may have the incentive to overstate their damage and hold out for inflated compensation. But the fear of collusive practices among passengers has proved to be unfounded thus far. The number of passengers involved in any volunteer passenger auction may mitigate such concerns.

Existing regulations concerning denied boarding

As mentioned earlier, the US federal government imposes a mandatory auction system for volunteers to give up seats on an overbooked flight and set a US$400 maximum for denied boarding compensation for flights within the United States. It also has strict rules that require air carriers to display ‘Notice: Overbooking of flight’ at each check-in airport counter as well as on the ticket, ticket jacket, or a separate piece of paper accompanying the passenger’s ticket.

The EU's new Passengers Rights became effective in February 2005 in order to establish common rules on compensation and assistance in case of denied boarding and cancellation of flights for member countries. The new rule requires calls for volunteers and increases the sum of payment that a non-volunteer is entitled to, according to the distance of the trip and the length of the delay. In addition, it also prescribes in detail the assistance that carriers would have to provide to the affected passengers.

Another new clause that was introduced in the new EU's regulation requires the carrier to offer choice of compensation options, including a return flight to the original point of departure. IATA strongly opposes the EU's new denied boarding regulation, in particular the prescribed financial compensation that the Association views as arbitrary as it is not linked to the price of the ticket. Also, the mandatory option of a return flight to the point of origin would hold carriers experiencing delays liable to other portions of a trip in which it is not involved in case the passenger holds a multiple-coupon ticket. This can prove costly and may prompt airlines to stop interlining. Travellers will then face repeated check-in and baggage claim procedures at each stop and higher fares. As the regulation only became effective on 15 February 2005, it is too early to assess the impact of this groundbreaking regulation to protect consumers.

4. Air transport service distribution and computer reservation system (CRS)

The term distribution refers to the sale and marketing of air transport services. Until recently, CRS has been the vital part of the distribution as it provides travel agents with flight schedules, fares, seat availability, seat reservations and ticket issuance. Consumers' concerns regarding CRS arise from the fact that each of the systems in use to date were once owned and controlled by several airlines. This has led to anti-competitive practices in that each CRS tends to favour its own 'parent carrier', meaning any carrier that directly or indirectly, alone or jointly with others, owns or effectively controls the particular CRS. It does so by setting the order of display of available flights to a city-pair. That is, information on flights operated by 'parent carrier(s)' is made to appear first on the screen.

Discriminatory presentation of information is not only unfair to competitors, but also to consumers. As a result, regulations have been put in place to ensure that customers receive unbiased information regarding their travel options from travel agents using a CRS ICAO's Code of Conduct for the Regulation and Operation of the CRS prescribes the obligations of both the system vendors (means an entity that operates or markets a CRS) and subscribers (meaning an entity such as a travel agent that uses
CRS under contract with a system vendor for the sale of transport services to the general public) with regard to display of information on the CRS and the supply of information to consumers as shown in Box 3.

Another consumer concern regarding the use of CRS is the handling of passengers’ private information. On this issue, the ICAO’S Code of Conduct for the Regulation and Operation of CRS requires contracting states to take appropriate measures to ensure that all parties involved in the CRS operating system safeguard the privacy of passenger data, and that these parties are held responsible for data protection (see Article 11 in Box 3). The EU’s regulation ensures compliance to this provision by requiring the system vendors to, at a minimum, employ software that supports the protection of private data by screening access.

In recent years, airlines’ dependence on the CRS has gradually diminished against the rising prominence of the internet. Consumers are now able to make their own itinerary, ticket reservation and payment on-line, which is less costly. They can do so through a third-party i.e. on-line travel agents that may or may not have conventional retail outlets, airlines’ own websites, or a group of airlines’ website (such as Orbitz in North America, Opodo in Europe and Zuji in Asia-Pacific). There are thus questions regarding whether the existing ICAO Code of Conduct that was designed for the traditional marketing channel is applicable to internet-based distributors.

Consumers concerns with regard to internet marketing are wide-ranging. Consumers are generally less protected when they buy services on-line than when they buy from traditional outlets. Most countries have regulations governing e-commerce that can be protect consumers against marketing fraud. However, in practice, there is little that a state can do to regulate these internet-based air transport service distributors, whose domicile lies outside the national jurisdiction. The exception would be large industrial countries, such as the US and the EU, where many of these internet distributors are registered.

In order to ensure that the requirements of the provision of neutral and accurate information imposed on the traditional carriers also apply to internet-based distributors (who are also subscribers to the CRS), several states have addressed the issue under the umbrella of airline passenger rights, while others apply general consumer protection law to the internet transactions. The EU has revised its Code of Conduct for CRS in 1999 in order to ensure that the scope of the definition of ‘CRS subscribers’ in the regulation covers modern distribution channels as well.

Turning to ASEAN, the use of the internet remains limited as the majority of the population still does not have access to a computer or are not sufficiently computer literate to make own arrangements on the web. The traditional travel agency remains the major distribution channel. Fierce competition in the market has kept these businesses extremely lean. Concerns about misleading or inaccurate presentation of display may be present in countries where the national flag carrier holds an equity stake in a particular CRS. Five ASEAN airlines—Singapore Airlines, Malaysian Airlines, Royal Brunei Airlines, Silk Air and Garuda—hold an equity stake in Abacus, one of the three major CRSs used in this region. In 2003, the Indonesian competition authority found that Garuda had breached the national competition law by requiring travel agents to use only Abacus reservation to reserve its tickets. To ensure that distribution of the CRS in ASEAN is fair and efficient, member countries should consider adopting the ICAO’s code concerning CRS distribution to ensure that consumers are provided with impartial information about their travel options.

9 These are Amadeus, Abacus and Galileo.
Box 3

ICAO’S Code of Conduct for the Regulation and Operation of CRS

Article 7 — Obligations of System Vendors Regarding Displays

A system vendor shall:

a) make available a principal display or displays of schedules, space availability and tariffs of air carriers which are fair, non-discriminatory, comprehensive, and neutral in terms of:

i) not being influenced, directly or indirectly, either by the identity of participating carriers or by airport identity; and

ii) the information being ordered in a manner which is consistently applied to all participating carriers and to all city-pair markets;

b) ensure that any principal display made available is as fully functional and at least as easy to use as any other display it offers;

c) always provide a principal display except where there is a specific request from an air transport user which requires the use of another display;

d) base the ordering of services in a principal display and the selection and construction of connecting services on objective criteria (such as departure/arrival times, total elapsed time between initial flight departure at origin and final flight arrival at destination, routing, number of stops, number of connections and fares);

e) provide to subscribers:

i) a principal display of flight options ranked in the order of all non-stop flights by departure time, other direct flights not involving a change of aircraft and all connecting flights by elapsed journey time; or

ii) a principal display of flight options ranked in any other order based on objective criteria; or

iii) principal displays based on i) and ii)

f) in the ordering of services in a principal display, take care that no carrier obtains an unfair advantage;

g) in any principal display of schedule information:

i) clearly identify non-scheduled flights, scheduled en-route changes of equipment, use of the designator code of one air carrier by another air carrier, the name of the operator of each flight, the number of scheduled en-route stops, and any surface sectors or changes of airport required; and

ii) clearly indicate that the information displayed regarding direct services is not comprehensive if information on participating carriers’ direct services is incomplete for technical reasons or if any direct services operated by non-participating carriers are known to exist and are omitted;
Box 3 (cont.)

h) in the selection and construction of connecting services in a principal display, select as many alternative (single or multiple) connecting points on a non-discriminatory basis as is necessary to ensure a wide range of options;

i) not intentionally or negligently display inaccurate or misleading information;

j) in cases where States do not find it practicable to ensure that subscribers comply with Article 10, include appropriate provisions regarding compliance in its contract with each subscriber; and

k) where participating carriers have joint venture or other contractual arrangements requiring two or more of them to assume separate responsibility for the offer and sale of air transport products on a flight or combination of flights, permit each carrier concerned—up to a maximum of three—to have a separate display using its individual designator code.

Article 10 — Obligations of Subscribers

A subscriber shall:

a) use or provide a principal display meeting the requirements of Article 7 for each transaction, except where a preference indicated by an air transport user requires the use of another display;

b) not manipulate information supplied by a CRS in a manner that would result in inaccurate or misleading information being given to an air transport user;

c) be responsible for the accuracy of any information it enters into a CRS;

d) where non-scheduled flights are included in a CRS, inform an air transport user if a flight is non-scheduled and of any special requirements

Article 11 — Safeguarding the Privacy of Personal Data

a) States shall take appropriate measures to ensure that all parties involved in CRS operations safeguard the privacy of personal data.

b) Air carriers, system vendors, subscribers and other parties involved in air transportation are responsible for safeguarding the privacy of personal data included in CRSs to which they have access and may not release such data without the consent of the passenger.
D. COMPETITION ISSUES IN AVIATION

Liberalization of the airline industry implies that state regulation may be replaced with market forces. While a less regulated environment can be a boon to the industry, there are also risks that market liberalization may bring forth competition problems, especially when the market is dominated by a few major carriers. It is therefore, necessary to have effective competition safeguards in a liberalized regional aviation market.

According to the discussion during the Fifth Air Transport Conference in November 2002 organized by the ICAO,10 States are faced with two issues in considering how to ensure fair competition in international air transport

- to determine what constitutes fair or unfair competition that would trigger necessary regulatory action, and
- to design an effective the enforcement mechanism.

Concerning the first question, most general competition laws contain comprehensive provisions that can deal with all types of restrictive practices, be they abuse of dominance (dumping of air fares or increase in capacity), collusive practices (air alliances/code sharing), or mergers and acquisitions. In the absence of a national competition law, the sector-specific regulatory body usually assumes the competition oversight.11 The mandate to oversee competition problems of a particular regulatory body may be legislated in some cases, and non-existent in other cases.

In the event that competition rules do not exist, the competent regulatory authority may incorporate the ICAO’s Model Clause for Competition Safeguard in Air Service Agreements into its regulatory guidelines. The particular model clause spells out the specific restrictive practices in its model competition safeguard clause that can be inserted into air service agreements as can be seen in Box 4.

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10 The conference is held once every 5 years.

11 In some cases, competition oversight may rest with the sector-specific regulatory body, or shared between the sector regulator and the competition authority. For example, in the United States, the Department of Transport issues ‘Domestic Competition Guidelines’ to protect new entrants in the air transport markets and approves airline alliances. The Department of Justice (Anti-trust division), on the other hand, has authority under the Clayton Act to institute judicial proceedings against a merger that would likely create a monopoly or lessen competition in the market.
Box 4

ICAO’s Model Clause for Competition Safeguard in Air Service Agreements

The Conference agreed that States should give consideration to the following model clause as an option for use at their discretion in air service agreements.

“Safeguards against anti-competitive practices

The Parties agree that the following airline practices may be regarded as possible unfair competitive practices which may merit closer examination:

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

The addition of excessive capacity or frequency of service;

The practices in question are sustained rather than temporary;

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

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

Behavior indicating an abuse of dominant position on the route.

If the aeronautical authorities of one Party consider that an operation or operations intended or conducted by the designated airline of the other Party may constitute unfair competitive behavior in accordance with the indicators listed in paragraph 1, they may request consultation in accordance with Article [on Consultation] with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request, and the consultation shall begin within 15 days of the request.

If the Parties fail to reach a resolution of the problem through consultations, either Party may invoke the dispute resolution mechanism under Article [_] to resolve the dispute.”
It should be noted, however, that the ICAO code appears to be pre-occupied narrowly with predatory behaviour, i.e. sales of ticket below cost or excessive capacity expansion. It does not cover agreements—such as airline’s codesharing schemes and alliances—or airline mergers that may lead to market concentration and limited competition. Conventional competition safeguards include three types of practices that may lead to restriction of competition in a market. These are (a) abuse of dominance (b) anti-competitive agreements and (c) mergers. The ICAO code covers only the first type. Hence, the scope of the ICAO’s competition safeguard is not sufficiently comprehensive to replace a competition law.

Concerning the second question, an effective enforcement mechanism in regulating cross-border air transport services would depend on the regulatory environment of countries involved as follows.

- If all member countries have a national competition law, then what needs to be agreed upon is a mechanism that can facilitate coordination and cooperation among competition authorities to ensure consistency in law enforcement and to avoid conflicts that may arise from ‘extra-territorial’ law enforcement. The United States and the EU has the most advanced cooperative framework in dealing with cross-border competition cases. This option is not relevant to ASEAN as only three member countries have a competition law.

- If only some member countries have a competition law, those that do not have such a law would have to identify the local competent authority that will be responsible for competition oversight. These designated authorities would have to import major substantive provisions found in a competition law into their regulatory rules.

- If no member countries have a competition law, then the process towards building a sector-specific regulatory body may be the designated authority to oversee competition issues. Second, a mutually agreed set of descriptions of what constitute anti-competitive practices should be established in the regional air service agreement, such as the ICAO’s model clause mentioned earlier. A number of regional air transport liberalization arrangements have made use of the model clause such as the Arab Civil Aviation Commission. It is also interesting to note that the Common Market of Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC) have developed a comprehensive set of competition rules specifically for the air transport sector. Such rules form part of the region’s economic integration.

Given the diversity of the competition regime in ASEAN member states, option (b) or (c) are relevant. ICAO’s Model Clause may be adopted. However, additional clauses on collusive practices, i.e. code-sharing and alliance arrangements, should be incorporated into the code. The same goes for cross-border mergers. Although mergers among ASEAN airlines are unforeseeable at this point in time (most national flag carriers are state-owned) this situation may change with privatization.

Private practices are not the only source of competition concerns. State policy, namely subsidy policy, can also give rise to unfair competition between carriers. The following sub-sections will deal with major competition concerns that are specific to the aviation industry.

1. State subsidy

In the WTO, trade in goods has protection against subsidies in the GATT, but trade in services does not enjoy the same protection under GATS, unless the service concerned is linked to an exported good. However, work is currently underway to collect information on types of service subsidies implemented in member countries so as to be able to categorize subsidies into those that are prohibited, not prohibited but subject to retaliation, or allowed; similar to the agreement on countervailing duties in the GATT.
In the absence of a multilateral discipline on service subsidies, most regional and bilateral trade agreements, too, do not include subsidies in the cross-border services chapter, be they NAFTA or US free trade agreements (FTAs) with Singapore and Chile signed in 2003. This implies that foreign versus domestic, or state versus private, service providers in the same market may not be competing on a level playing field where state subsidy is present.

ASEAN countries have had their share of state subsidies in the aviation industry. Philippines Airlines (PAL), Indonesia’s Garuda and Malaysian Airlines (MAS) all have received large bailouts from the state in the past. In 1998, the Indonesian government provided the national airline with a US$ 100 million loan guarantee and extended US$400 million worth of equity loans. In 2002, the government wiped out most of MAS’ US$2.4 billion debt after an unsuccessful privatization that led to renationalization of the national flag carrier. While the Philippines government had provided the privately owned national flag carrier with a range of subsidies including guarantees of all loans, debt write-offs, exclusive use of government owned and controlled airports, non-payment of take off and landing fees, and tax exemptions on all inputs and other operating expenses.

Indeed, airlines on the brink of bankruptcy worldwide also receive support from the state, including those in the United States and the EU. But where there is free competition across borders, the issue becomes more sensitive as subsidies can put a national flag carrier ahead of that of the other state. Hence, rules are required to ensure that state aid does not lead to distortions in competition. For example, the European Commission (EC) adopted a common guideline on state aid in the aviation sector. Aid for restructuring is allowed, but not for operations. It recommended that the aid should be

- a one-off measure
- linked to a restructuring plan, to be assessed and monitored by independent professionals appointed by the Commission
- should not be used to buy new capacities
- and that the state needs to
- refrain from interfering in commercial decision making by the airline
- ensure that the interests of other carriers are adversely affected.

Aldaba (2005) found that in the case of the Philippines, the dispensed state aid did not comply with the EC guideline. Specifically, the debt write-off was undertaken in the absence of any conditionality with regard to firm restructuring such as capacity reduction, or future debt redemption. As a result, management was able to expend the cash at its own discretion. Moreover, the exclusive use of the new airport and the reduction in take off and landing fee are clearly discriminatory and constitute a continual operational subsidy rather than a one-time restructuring subsidy. Many other transport services provided by state enterprises in ASEAN are also subject to state aid, in particular rail and public mass transportation.

To briefly conclude, in the absence of rules and guidelines governing state subsidies, ASEAN countries are likely to encounter competition problems in the liberalization of its air transport industry, where state aid proliferates as each member country competes to promote own national flag carrier’s interests. Hence, a regional agreement to open up the transport industry will need to be complement by preparatory work on laying rules and regulations governing state aid. Perhaps, coordination and cooperation in containing the size or scope of competing subsidies catered to these services to prop national providers ahead of others can better serve to save member states' money and ultimately, benefit their economies as a whole.
2. Airline: Code sharing/alliance:

Codesharing, which is a particular form of alliance, allows airlines to (a) share capacity costs and circumvent foreign investment restrictions; (b) have access to airport facilities accessible by partner airline; (c) exploit the advantages of the availability of travel agents and corporate sales associated with their incumbency (Warren, Tamms, and Findlay 1999). Hence, codesharing may promote greater competition and efficiency in air transport. But an alliance may go well beyond just codesharing. An agreement may cover route and schedule coordination, integrated marketing, advertising and distribution networks, co-ordinated pricing, or even revenue sharing, than can be viewed as collusive practices.

Currently, the issue of alliance is handled by the general competition authority. In most developed countries, airlines have to request for a permission to form an alliance from the Office of Fair Trade. The decision whether to permit the alliance will depend on the conditions of the agreement as well as the potential impact on the relevant markets. Hence, air alliances are dealt on a case-by-case basis.

For example, the Department of Transport (DoT) would not approve a new alliance that would result in a highly concentrated market or excessive market domination, unless the concerned airline is willing to surrender gates, facilities and other airport access to smaller carriers. The alliance between American Airlines and British Airways was approved on the condition that American Airlines gave up 250 weekly slots – out of which 180 were at Heathrow Airport. Other alliances were also considered on the basis of their impact on dominance and market competition.

Cross-border alliances that involve two airlines from two different countries may face problems if there is no co-ordination between competition authorities on both sides. For example, the liberalization of the air transport industry in Europe has resulted in a series of transatlantic airlines alliances between American and European Airlines such as those between British Airways and American Airlines, Lufthansa/SAS and United Airlines, Swissair/Sabena/Austrian and Delta, KLM and Northwest. The approach taken by the EC and the US is different. The EC examines each case separately. If an agreement is likely to generate only short-term benefits for consumers, but forecloses the market in the longer run leading to fare increases, it will not be approved. The US, on the other hand, grants anti-trust immunity to international alliances if there is an ‘open-sky’ agreement between the US and the particular foreign country. For example, in January 1993, the Department of Transport (DoT) granted anti-trust immunity to the Northwest/KLM alliance in conjunction with the US-Netherlands open-sky accord. In April 1995, the DoT issued an ‘International Aviation Policy Statement’ that encourages open skies agreement in view of growing airline alliances. This view is not shared by the EC, which sees open skies policy, an agreement between two states, and competition rules governing individual airline’s practices as two separate issues.

Competition concerns with regard to air alliance is real for many ASEAN countries where the number of flights on a particular route is very limited. As can be seen in table 4, there are many country-pairs with no flight in operation, except for Thailand, Malaysia and Singapore. The number of weekly flights to and from Laos, Cambodia, Myanmar, Brunei on many country-pairs are also very limited, indicating that there are probably only one or two carriers operating on the particular route.

The second competition concern about code-shared flight is their display on computer screen. The display of a code-shared flight more than three times is considered an undesirable practice known as ‘screen padding’. Multiple listing of the same flight create both consumers and competition concerns. Multiple entries imply that other travel option are pushed down to succeeding screens, requiring additional time and effort on the
part of the subscriber or air transport user to view all the travel options for a particular city-pair. Thus, code of conduct/regulation aims at limiting the number of times the same code-shared flight may be displayed.

However, one must take into consideration that in the case where a few airlines participate in a codesharing arrangement, restricting the number of listing of the particular codeshared flight may imply that a carrier participating in a codesharing arrangement may not have its service displayed on the CRS screen under its own designator code. Article 7k: Obligations of System Vendors Regarding Display of the ICAO’s Code of Conduct for the Regulation of Operation of Computer Reservation System stipulates that a codeshared flight can gave at maximum three entries. The EU/ECAC Codes of Conduct regarding CRS limit the number of listing of a codeshared flight to two since most codesharing involve only two carriers.
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Source: Leinbach (2004)
3. Airport slot allocation

Air transport liberalization and the emergence of low cost airlines have made air travel much more affordable. As a result, the demand for air transport has surged, placing severe capacity constraints on airports globally. While global slot allocation has traditionally been administered by airports themselves, certain governments, in particular, the EU, have begun to intervene to ensure fair, equitable and efficient allocation of slot, in particular for new airlines.

The process of slot allocation started in the early 1960s when airlines, on a voluntary basis, agreed to respect specific take-off and landing times at an airport as allocated by a ‘slot coordinator’. Over time the process spread to a growing number of airports and agreed guidelines were adopted, again voluntarily, by airlines attending the bi-annual IATA Scheduling Conferences. The IATA Scheduling Conferences have become the focal point of slot allocation for some 215 coordinated airports worldwide. Similarly, conference participation has grown to more than 200 airlines (scheduled and charter, IATA and non-IATA) and 50 Slot Coordinators. The IATA's Scheduling Procedures Guidelines are regularly reviewed and updated by all participants in the Scheduling Conferences. It should be noted that the Conference receives anti-trust immunity from competition laws of major industrial countries. The exemptions for IATA's tariff coordination and slot allocation in the EU are due to expire in June 2005, in which case a renewal will be assessed.

The EU was the first and remains the only state that intervenes in the slot allocation procedure of international flights operations. This is because many of the airports in member countries have been facing severe congestion problems, in particular Heathrow Airport. Regulators believed that the existing allocation scheme does not promote efficient use of airport capacity.

What bothered the state regulator was that the IATA's scheduling procedures contain 'grandfather rights' and a ban on slot trading. The first refers to rights of existing carriers to retain the secured slots regardless of whether these slots are being used. The second implies that unused slots of a carrier cannot be sold to another carrier that is in need of slots. The EU identified these two elements as the major shortcoming of the current system as it provides no incentives for carriers to use the capacity efficiently. Together, the grandfather clause and the ban on trade foreclose competition from newcomers that are not able to secure slots while existing carriers 'hog' them. The EU introduced the 'use or lose it' slot allocation mechanism in 2004 (Reg 793/2004), meaning that airlines' unused slots at all EU airports would be recalled and reallocated. The US uses the same scheme, but only for domestic flights. Unlike the EU, the US has not intervened in the international scheduling arranged by the IATA.

The EU continues to seek further amendments to the current slot allocation system. It is considering a rule that would (i) confiscate a certain percentage of the ‘grandfather slots’, or slots that airlines hold in perpetuity (there is a discussion of a figure of about 3 per cent) and (ii) introduce a market mechanism in slot allocation, i.e., auctioning of slots. These proposed rules received strong criticism from trade associations that believe that airport congestion problems arise for lack of capacity expansion rather than inefficient slot allocation. They also believe that the ‘grandfather’ scheme is essential for the sustainability and predictability of airline operations as airlines that operate globally need to secure long term availability of slots in different airports. Most importantly, it was noted that slot allocation is not a European issue as they have global implications. The EU's rule will have a knock-on effect on other airports globally and will undoubtedly, provoke retaliations. Hence, rules need to be globally compatible.

The new EU regulation has solicited heavy criticism from seven international trade associations, including the IATA, ERA as well as the AAPA (Association of Asia Pacific Airlines). The unilateral action to regulate EU slot allocation was seen as inconsistent with
the recommendation of the fifth Worldwide Air Transport Conference (ATConf/5) that any slot allocation system should be

- fair, non-discriminatory and transparent
- globally compatible
- aimed at maximizing effective use of airport capacity
- simple, practicable and economically sustainable

Looking at the situation in ASEAN, congestion problems are unlikely to arise in the near future given the constant expansion in airport capacities in Singapore, Malaysia and Thailand. Hence, it would be best that ASEAN leaves the slot allocation system under the current regime organized by the IATA Scheduling Conference given that, to date, there is no evidence that the alternative scheme introduced by the EU can solve congestion problem at airports, or promote greater competition among airlines.

4. Predatory pricing

The emergence of low cost airlines has placed tremendous competitive pressures on incumbent carriers. New entrants are able to prosper from high load factor and lower operating cost generated from the use of secondary airports, lean operation and elimination of ‘frills’ such as frequent flier programs, passenger lounges, better schedules and in-flight services. Undoubtedly, incumbent carriers move to respond to these head-on competitive challenges by cutting own fares to match those of new entrants.

While price competition will no doubt benefit consumers, ‘price predation’—the setting of prices below cost in order to pressure competitors to exit the market—may imply lower consumer welfare in the future. This is because, once new entrants exit the market, the incumbent may reinstate higher fares. New entrants, especially smaller ones with limited financial backing, are vulnerable to predation by large incumbent carriers that are flushed with cash from monopoly days. Predatory pricing is considered illegal in all competition laws. The greatest challenge is that the state authority must be able to distinguish between price cuts that represent legitimate competition and those that are unlawful predation.

There have been several price predation cases in the aviation industry in North America and Europe, where markets have been liberalized and competition regimes are well developed. In 1999, the Department of Justice filed a civil antitrust action against American Airlines, claiming that it engaged in predatory tactics. In July 2003, US Court of Appeals upheld a summary judgment in favour of the airline on the basis that the government failed to establish that the carrier ‘priced below an appropriate measure of cost’. In Australia, an allegation of predatory pricing by Qantas Airways against budget carrier Virgin Blue Airlines was also discontinued in the basis that securing a court decision on this matter would be extremely difficult, lengthy and expensive. The German competition authority, the Bundeskartellamt, however, succeeded in issuing a pricing injunction against Lufthansa that was alleged of pursuing predatory pricing against Germania, a low cost operator.

How does a competition authority analyze a predatory pricing case in aviation? The US Supreme Court employs a two-part test for predatory pricing. The first part is that it must be proven that the alleged predatory price is below short run marginal cost. This is because ‘rational’ firms do not price below such cost because they could reduce their

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losses by nor providing the service altogether. The second part is to prove that the price cut will effectively force competitors to leave the market and that the alleged violator will be able to ‘recoup’ the losses incurred from its predatory strategy. In practice, however, it is relatively difficult to prove both parts. For example, should cost be measured seat-by-seat, flight-by-flight, or route-by-route? The cost of filling an empty seat on a given flight is almost zero, but the cost of operating a marginal flight can be much higher as it includes the cost of leasing the particular aircraft. But what if the whole operation consisting of several flights a day on a particular city-pair is still profitable, although the particular flight generates a loss? Would this be considered predatory? What if the airline redeploys the aircraft from another route? What will be the cost?

According to the DoJ, the most meritorious claim of possible predation involves not only price cuts, but also significant capacity expansion by incumbents. This is because an incumbent's entry into a route not served prior to competition emerging has little justification. If the particular route was not profitable before new entries, why would it be afterwards? On the other hand, expansion of capacity on an existing route may be rational if lower prices increase demand.

To conclude, in order to deal with the very complex issue of price predation, ASEAN states need to have a well-developed competition regime and a competent competition authority. In the absence of such a regime and authority, regional liberalization in aviation may be hampered by restrictive practices by incumbent national carriers. Worse, if the state claims that a pricing strategy is predatory when it is not, can do much harm to the budding price competition in the market.

5. Service distribution: CRS and internet distribution

As mentioned earlier, competition concerns concerning CRS arise because of certain airlines' ownership stakes in the computer reservation system. Vertically integrated ownership spawns competition problems. When a carrier owns a distribution system of its own service as well as other airlines' services, it would no doubt tend to exploit its control of the system in order to discriminate against its competitors. Anti-competitive practices in CRS include

- exclusive dealing: prohibiting airlines that subscribe to a particular CRS from using other CRS
- refusal to deal: a major airline refusing to become a member of a CRS in which it does not hold an equity share and thus undermines the particular CRS' ability to provide consumers with information its services
- discriminatory listing of available itineraries: flights operated by parent carriers are made to appear first on the list of possible itineraries on a specific route.

Many ASEAN airlines are parent carriers of the Abacus system, whose proliferation is limited in the Asia Pacific region. Ownership in Abacus includes Singapore Airlines, Philippine Airlines, Malaysian Airlines, Royal Brunei Airlines, SilkAir and Garuda. In 2003, the KPPU—the competition authority in Indonesia—found Garuda, the national airline, in breach of the national competition law by requiring travel agents to use only Abacus reservation system to reserve its tickets. The authority ordered Garuda to terminate its exclusive agreement with Abacus and to withdraw the mandatory requirement for travel agents to use Abacus to reserve its tickets.14

The ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems established in 1996 is often used a reference framework for the

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regulation of CRS in contracting states. The Code defines the obligations of the four concerned parties, namely, the states (governments), system vendors, air carriers and subscribers (travel agents).

- **States** shall ensure that all players associated with the air service distribution within its jurisdiction follows the ICAO Code.

- **Airlines** holding a dominant position in a certain market shall not (a) refuse participation in a particular CRS; (b) require subscribers to use a particular CRS; (c) refuse to provide information regarding tariff and flight schedule to CRS that is used by subscribers in the carrier's state of domicile.

- **CRS vendors** must (a) permit participation of any carrier that is willing to pay the requisite fee and accept the system vendors standard condition; (b) treat all carriers equally in terms of the condition of participation, presentation of information submitted by carriers and access to information available from the CRS.

- **Subscribers** (travel agencies and web-based ticket reservation service providers) shall provide a principle display15 (a prescribed order of displaying available flights on the computer screen) (b) not manipulate the data submitted by carriers in a manner that would result in misleading and inaccurate information to consumers; (c) not make fictitious reservation through the CRS.16

States that choose to follow the Code are not precluded from expanding the scope of CRS regulation beyond the provisions of the Code, provided that such expansion is not inconsistent with the Code and its purpose. The EU, Canada and the United States, for example, have developed a more detailed and comprehensive regulation of CRS operation.

The problems associated with anti-competitive practices may subside as airlines release control of CRSs. For example, in December 2004, Air France relinquished all equity stakes in Amadeus (France). Currently, there are four major global CRS vendors: Amadeus, Galileo, Sabre and Worldspan. Galileo became a subsidiary of Cendant, a provider of travel and real estate services. Amadeus is still controlled by European Airlines (Lufthansa 18.28 per cent, Air France 23.36 per cent and Iberia 18.28 per cent), but the public now holds over 40 per cent of the equity stake. Worldspan was owned entirely by three US airlines (Delta 40 per cent, Northwest 24 per cent, American Airlines 26 per cent), but was sold to an entity set up jointly by the Citigroup Venture Capital and Teachers Merchant Bank in mid 2003. There are ongoing discussions as to whether the European airlines should relinquish their equity stakes in exchange for a deregulation of the GDS industry so as to allow it to compete effectively with on-line distributors that are not subject to strict rules regarding neutral information display and prescribed order of displaying flights.

Competition concerns about the growing prominence of internet-based distribution of air transport are receiving increasing attention, however. While the use of internet provides greater opportunities for competition in the marketplace, resulting in rapid growth of new products and services, there are concerns about websites that are jointly owned by competing airlines such as Orbitz and Opodo—as mentioned earlier—because the latter can possibly use these websites to tacitly fix prices on certain routes where competition is limited.

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15 'principal display' means a comprehensive neutral display of data concerning services between city pairs, within a specified time period, containing *inter alia* all direct flights by participating carriers.

16 Fictitious reservation may be used, for example, to identify the capacity utilization of a competing carrier.
Given that most ASEAN members still do not have a competition law, it is suggested that member countries adopt the ICAO's Code of Conduct for the Regulation and Operation of Computer Reservation Systems 1996 to ensure fair competition in the airline distribution system. Although the scope of regulation of an internet-based service provider is practically very limited since service providers offering air transport distribution services may reside anywhere in the world, the Code would nevertheless help prevent the traditional anti-competitive practices associated with CRS as well as with web-based tour operators residing within the jurisdiction of member countries.

E. RECOMMENDED ASEAN CODES

There are three major issues that need to be addressed in designing regional aviation codes of conduct. The first concerns the substances of the codes. Which consumer protection and competition issues need to be codified, and which should be left to airlines' own policy or consumers' own preference with regard to price and service quality trade-off? Second, what will be the modality of the regional agreement on aviation codes? Should the codes be binding, subject to a regional dispute settlement mechanism, or should it be voluntary, subject to periodical reviews to create peer pressures. Finally, which institutions or organizations—at both national and regional level—should be responsible in implementing and monitoring compliance to the codes?

1. Substance of the codes

The substance of the recommended ASEAN codes will draw heavily on existing codes and regulations that are already available in international forum. As the air transport industry is global in nature, any regional codes would have to be consistent with those already established at the multilateral forum. To be specific, ASEAN's aviation codes should be based on recommendations, resolutions and guidelines established by the ICAO and the IATA. Such codes would not be overly prescriptive, as these guidelines and recommendations are specifically tailored to provide flexibility for the individual states to fill in own details for implementation. Hence, one may avoid the risk of overregulation that could strangle the fragile competition in the market. On the other hand, these recommendations and guidelines offer basic consumer protection and fair competition rules that have been accepted by both member governments and private operators in the market.17 Table 5 summarizes the recommended competition and consumer protection codes to be adopted by ASEAN states.

The issue of carriers' liability lies at the heart of consumer protection issues in air transportation. A global convergence of the liability regime will lessen uncertainties and confusion to both operators and consumers alike. Given that seven ASEAN members are already signatories to the Hague Protocol's Amendment to the Warsaw Convention, a regional liability regime based the Protocol can be established easily. If all ASEAN members were able to subscribe to the liability regime provided under the Convention, ASEAN carriers' liability in case of damage, accidents and flight cancellation, delays and diversions would converge.

The Montreal Convention increased the carriers' liability and eliminated the liability limit in case of deaths and bodily injury resulting from accidents. The liability regime established by the Convention may be inconsistent with many member countries' laws that impose a statutory limit to a carrier's liability in case of deaths or accidents. But in some countries such as Thailand, liability in air transport is subject to the civil code, which

17 ICAO's recommendations, resolutions and guidelines are formed according to the findings from the Worldwide Air Transport Conferences that are attended by over 30 international organizations and delegations from 188 contracting states, which include representatives of the government, academia and the industry. IATA's recommendations, on the other hand, are endorsed by over 265 airlines operating approximately 94 percent of all international scheduled air traffic.
does not place a liability limit in any case. ASEAN countries may discuss whether it is in their interests to increase carrier's liability according to the Montreal Convention.

More importantly, the Convention lays out clear rules governing each carrier's liability in case of a joint operation or code sharing. It is in the interest of ASEAN countries to incorporate these rules into the regional code so that the liability regime of ASEAN carriers that operate under a code sharing scheme will become clear and consistent with global practice. It is therefore recommended that the regional aviation codes prescribe the liability regime in case of joint operation or code sharing.

Concerning cancellation, delay and diversion of flights, the IATA's Recommended Practices and Resolutions can help provide a framework for drafting a regional code. The IATA's Recommended Practice with regard to flight cancellation and delay offers various options to passengers, be it being carried on another scheduled flight, re-routed or refund. The refund policy is also prescribed. Most airlines already incorporate the IATA's recommended practice into their general conditions of carriage. So, too, should ASEAN airlines. It should be noted, however, that in the case of flight delays, the recommendation leaves open the definition of when a carrier 'fails to operate a flight reasonably according to schedule', leaving the interpretation subject to the carrier's discretion. It is therefore, recommended that a specific timeframe (i.e. the number of hours of delay) be determined so that consumers know when they are entitled to alternative travel arrangements, such as re-routing, or refund from the carrier.

With regard to denied boarding, the IATA's recommended practice merely states that in case a carrier is unable to provide previously confirmed space, it shall provide compensation pursuant to its denied boarding policy. The problem is that denied boarding compensation policy of most ASEAN airlines are not accessible to consumers as discussed earlier. On this note, at the minimum, the Code should require all ASEAN carriers to make available their denied boarding policy (perhaps on-line accessibility should be mandated). If the airline's own denied boarding compensation is not satisfactory, i.e. if the percentage of passengers being involuntarily 'bumped' off flights do not fall, then the Code may be later on revised to prescribe a statutory compensation level that a carrier must offer a passenger as in the Philippines, the US and the EU.

It should be noted, however, that the initial size of statutory compensation should not be too high such that the carrier's ability to manage load capacity will be seriously constrained. To be able to determine the optimal compensation, the size of the compensation and the number of passengers subject to involuntary denied boarding should be closely monitored as the case in the United States described before.

Concerning calls for volunteers, past experience indicates that it is in the airline's own interest to minimize involuntary denied boarding by auctioning compensation. Hence, the code need not make calls for volunteers mandatory. The more important factor is that the size of compensation in case of involuntary denied boarding must be sufficiently large to provide proper incentives for the carrier to call for volunteers to minimize costs.

With regard to the air service distribution, the ICAO's Code of Conduct on the CRS is relatively comprehensive. It covers both competition and consumer issues associated with air service distribution system. The ICAO also published 'Notes on the Application of the Code' that will help contracting states in the process of adopting and implementing the Code. The adoption of the ICAO's code will ensure that travel options presented to consumers are accurate, fair and efficient.

Concerning the Consumer Aspect of Codesharing, the ASEAN Code may incorporate both the IATA's and the ICAO's Recommendations on Consumer Aspect of Codesharing. The first requires that carriers inform passengers of the carrier operating at the time reservation is made, while the latter requires that the carrier clearly indicates which airline is responsible in case of damage or accident at the time of booking. Most
airlines already comply with these recommendations. Hence, incorporating these benchmark practices into the regional code and making it available to passengers should not impose any additional cost.

With regard to competition issues such as airline alliances and predatory pricing, and since most ASEAN states do not yet have a comprehensive competition law, it will be necessary to adopt a specific competition safeguard for the aviation industry as proposed by the ICAO. The ICAO’s model clause on competition safeguard covers only anti-competitive practices relating to dumping of air transport services, however. It is therefore recommended that ASEAN amend the model clause to include, at the minimum, provision on agreements that shall include airline codesharing arrangements and alliances, as well as other forms of cooperation that may restrict competition in the market.

On the issue of airport slot allocation, it is recommended that the status quo allocation regime organized by the IATA’s Scheduling Conference be maintained, unless there is evidence of monopolization at ASEAN airports by certain dominant carriers.

Finally, the regional codes should contain provisions that will ensure that state aid does not lead to distortions in competition. Like the EU, ASEAN may adopt a similar guideline on state aid in the aviation sector that allows one-time aid for corporate restructuring for airlines facing bankruptcy, but not for operation.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Recommended Mandatory Codes</th>
<th>Commitment of ASEAN States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumer protection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carriers Liability in case of accident and flight delays and cancellation</td>
<td>The Warsaw Convention and the Hague Protocol</td>
<td>Binding commitment to become signatory to the convention and the protocol.</td>
</tr>
<tr>
<td>Cancellation, delay and diversion of flights</td>
<td>IATA’s Recommended Practice Regards to flight delay, cancellation or diversion IATA’s Resolution 735d recommends that airlines cover essential expenses (meals and accommodation) in case of involuntary change of aircraft, but not delay.</td>
<td>Binding commitment to ensure that the content of the recommended practice and resolution established by the IATA are incorporated into carriers’ general conditions of carriage.</td>
</tr>
<tr>
<td>Denied Boarding</td>
<td>IATA’s Recommended Practice - Denied Boarding Compensation (PSC(13)1799)</td>
<td>Binding Commitment to ensure that carriers’ establish and disclose denied boarding procedures and compensation in their general conditions of carriage</td>
</tr>
<tr>
<td>Consumer Aspect of Codesharing</td>
<td>ICAO and IATA Recommendation on Consumer Aspect of Codesharing (information provision to passengers) Montreal Convention (liability of carriers in joint operations)</td>
<td>Binding commitment to ensure that the content of the recommended practice and resolution are incorporated into carriers' general conditions of carriage. Binding commitment to liability regime in case of codesharing as prescribed in the Montreal Convention</td>
</tr>
</tbody>
</table>
| Competition | ICAO's Code of Conduct for the Regulation and Operation of CRS | Binding commitment to incorporate the Code of Conduct into domestic regulations.  
*Note: ASEAN states may want to amend this code to ensure applicability to internet distribution system along the lines of the EU's regulation.* |
| General competition safeguard | ICAO's Model Clause for Competition Safeguard in Air Service Agreement (for member states that do not yet have a general competition law only) | Binding commitment to implement the competition rules  
*Note: ASEAN States may want to insert provisions concerning inter-airlines agreements (including codesharing) and mergers and acquisitions.* |
| Airline Alliances | ICAO's CRS Code (concerning screen padding) |  |
| Airport Slot Allocation | - | The status quo slot allocation organized by the IATA is preferred unless there is indication of monopolization of airport slots in ASEAN airports. |
| CRS and internet distribution system (competition concern) | ICAO's CRS Code | Binding commitment to incorporate the Code of Conduct into domestic regulations |
| State subsidy | EC's subsidy guideline for aviation industry | Binding commitment to comply with the regional code on state subsidy. |

2. The modality of the agreement with regard to regional aviation codes

The ASEAN aviation codes can be binding, subject to peer pressure or voluntary. Binding code means that a violation of the code will be subject to the dispute settlement mechanism set out in the regional air transport service agreement. An alternative would be to have compliance subject to peer pressure. This would require an annual review of each member state's and carriers' compliance to the set regional aviation codes. The review should be published and made available to all member countries. This process can prove costly and time-consuming, however. A purely voluntary code is also an option, but is unlikely to produce any tangible results in the absence of a threat of statutory
regulation (stick) or suitable incentives (carrot) and an effective compliance-monitoring scheme.

For a regional code to be meaningful, it would need to be binding. However, binding commitments need not be as binding as it sounds. While states will be bound to take actions or measures according to the prescribed codes, the content of which may be broad, leaving much room for each member state to design its own rules or measures according to own domestic policy or legal and institutional environment. It is also possible to have a mix of a prescriptive and a general code, depending on the particular consumer or competition issue.

The mandatory and prescriptive codes would presumably cover competition and consumer aspects that are of vital importance to guarantee basic passengers rights and to ensure fair competition in the market. Less prescriptive ones are preferred for issues of less importance. For example, carriers' liability regime may be subject to a harmonized rule, while compensation for denied boarding may be left to the individual member state's policy. Some may prefer strong state regulation; others may be content to self-regulate. The author would recommend the following compliance mechanism for various consumer and competition issues concerned (see Table 5 for a list of binding commitments).

- Compliance to a harmonized liability regime (in case of accidents, flight delay, cancellation or delays for both passenger and baggage) is mandatory on all member states. This may be arranged either by having all ASEAN members become signatories to the relevant international convention or protocol, or to reproduce the liability provisions from the specific convention or protocol into the Regional Air Services Agreement.

- Compliance to relevant ICAO's Codes and Recommendations are mandatory for ASEAN carriers/states since these codes and recommendations have been endorsed by contracting states, which include all ASEAN countries.

- Likewise, compliance to IATA's resolutions and recommendations should also be mandatory for all ASEAN national airlines since these resolutions and recommendations have been affirmed by all member carriers, including seven ASEAN carriers.

It should be noted, however, that regional agreements only bind states and not private operators. Hence, the agreement would need to spell out the state's obligations to pass regulation that will ensure carriers' compliance. For example, member states may be bound to pass regulations that require carriers to incorporate the relevant codes, recommendations or resolutions into their conditions of carriage that are promptly disclosed and made easily accessible to the public.

For certain aspects of consumer and competition issues that are not yet addressed or prescribed by the ICAO or the IATA, it is recommended that the first step is to give self-regulation a chance. These include issues such as passenger assistance in case of flight delays, cancellation or re-routing and denied boarding procedures and compensation. ASEAN states may commit to monitoring self-regulatory initiatives of the carriers in order to assess whether consumers are promptly and adequately protected under such a regime, and whether a replacement by statutory regulatory rules will be necessary. At this point in time, the simple requirement that all ASEAN airlines disclose their conditions of carriage that contain all key aspects of consumer protection concerns on their websites is itself already a great leap in promoting better consumer protection in aviation in the region.

In the longer run, the region may explore the possibility and the potential benefits of harmonizing these aspects of conditions of carriage for regional carriers.
3. Institutional Arrangements

The ASEAN Aviation Code may be incorporated into a regional air service agreement. It may therefore, rely on the dispute settlement mechanism available under the particular agreement.

Once ASEAN states ratified the agreement, they are obligated to amend laws and regulatory rules that will ensure compliance. Each member country must designate the competent authorities responsible for the prompt implementation of the codes, be they the sector-specific regulatory body, the relevant department in the Ministry, the competition authority or the consumer protection body.

On issues that are subject to voluntary self-regulation, ASEAN Sub-Committee on Civil Aviation and Related Services (ASCCARS)\(^{18}\) may undertake a project to monitor airlines’ policies with regard to denied boarding, delay and cancellations or handling of private information. Once airlines are required to disclose their general conditions of carriage, it would be possible to track changes in consumer policies of carriers in the region.

It is also important to start building a regional database for consumer issues in aviation. ASEAN states should submit statistics on the number of delays, cancellations or re-routing of carriers, as well as the number of passengers denied boarding—both voluntarily and involuntarily—as a result of airline's overbooking policy. ASEAN carriers would be obligated to submit the information to the domestic regulatory authority. National regulatory body should also be required to conduct random survey on airlines' compliance to their established conditions of carriage. With such data, passengers can make better-informed choices when choosing airlines with which they would travel. ASEAN states may agree to produce an annual report on consumer complaints on cross-border air transport, similar to ‘Airline Complaints in Ireland 2003–2004’, a report produced by the European Consumer Center in Dublin.\(^{19}\)

Should statistics reveal that self-regulation does not work in better protecting consumers, the immediate alternative would be co-regulation, whereby the trade association proposes industry rules, and the state implements them. This softer approach can help avoid imposition of impractical or distortionary rules that would not serve the purpose. Only when co-regulation fails, should state regulatory measures be considered. The consumer database will assist policymakers in assessing the relative effectiveness and adequacy of a self-regulatory regime.

On this note, ASCCARS shall continue to work closely with carriers and their regional associations, as well as the ICAO. In fact, both the ICAO and the ASEAN Airlines Meeting (AAM) already attend ASEAN Senior Transport Officials Meeting (STOM) Working Group on Air Transportation meetings as observers on a regular basis. Future work may require greater involvement of the private sector, in particular when regulatory measures become more complex in a liberalized aviation market. It should be noted that, according to ASEAN Transport Agenda Action Plan 2005–2010, the policy directions for intensified cooperation in the ASEAN transport sector include promotion of greater involvement of the ASEAN Airlines Meeting (AAM) by way of joint consultation, identification, formulation and implementation of ASEAN transport programs and activities.

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18 The Sub-committee is established by the Committee on Transport and Communications (COTAC)

F. BIBLIOGRAPHY


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IATA Recommended Practice 1724 General Conditions of Carriage.


## APPENDIX A

### SUMMARY OF VOLUNTARY COMMITMENTS AND REGULATORY MEASURES

<table>
<thead>
<tr>
<th>Item</th>
<th>Voluntary Commitments by airlines</th>
<th>Legislation/Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offer the lowest fare available</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Inform possible availability of lower fares at website</td>
<td>Yes*2</td>
<td>-</td>
</tr>
<tr>
<td>Honour the agreed fare after payment</td>
<td>Yes*2</td>
<td>-</td>
</tr>
<tr>
<td>Allow reservations to be held or cancelled</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Provide prompt ticket refunds</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Waive ticket restrictions (non-refundable, sequential use of flight coupons)</td>
<td>Yes*2</td>
<td>-</td>
</tr>
<tr>
<td>Ensure fair advertisement</td>
<td>Yes*3</td>
<td>Yes</td>
</tr>
<tr>
<td>Advise passengers regarding an airline’s commercial and operational conditions</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Ensure good customer service from code-share partners</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Take measures to expedite check-in</td>
<td>-</td>
<td>Yes</td>
</tr>
<tr>
<td>Provide notification of delays, cancellations and diversions</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Assist in case of delay including long on-aircraft delays</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Handle passengers denied boarding with fairness and consistency</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Compensate for flight cancellation</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Deliver baggage on time</td>
<td>Yes*6</td>
<td>Yes</td>
</tr>
<tr>
<td>Support an increase in baggage liability limit</td>
<td>Yes</td>
<td>-</td>
</tr>
<tr>
<td>Respond to customer complaints</td>
<td>Yes*1</td>
<td>Yes</td>
</tr>
<tr>
<td>Submit data for regular complaints</td>
<td>Yes</td>
<td>Yes*10</td>
</tr>
<tr>
<td>Properly accommodate the disabled and special-needs passengers (i.e. people with reduced mobility)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Notes: *1 : Global Customer Service Framework only; *2 : RP 1724 only; *3 : Disclosure of change of gauge service (14 CFR 258); Disclosure of cancellation policy (contracts of carriage as required by (14 CFR 254); *4 : Code-share Safety Program Guidelines; *5 : In the process of reviewing the current airline oversales rules; *6 : Repecs Project 04/008: Final Report (Revised)
DOT increased the domestic baggage liability limit from $1,250 to $2,500 effective January 2000 (14 CFR 254); *7: DOT reports flight delays, mishandled baggage, oversales and consumer complaints. DOT proposed also to collect disability-related complaints from carriers; *8: CRS code of conduct (EC Regulation 2299/89 as amended by 3089/93 and 323/99) contains related provisions; *9: CRS code of conduct (ditto) contains related provisions; ECAC Recommendation on Consumer Information Protection Needs (1996); *10: The Commission proposed to amend the current EC Regulation 295/91 to reinforce protection against denied boarding and to cover cancellation and long delay; *11: In the process of amending EC Regulation 2027/97 to include a provision on liability for baggage; *12: In the process of legislation; *13: The ECAC Policy Statement in the Field of Civil Aviation Facilitation, section 5; *14: Warsaw Convention as amended at the Hague 1955 and by Protocol No.4 of Montreal 1975; *15: Montreal Additional Protocol No.2 1975; Montreal Additional Protocol No.1 1975; Warsaw Convention as amended at the Hague 1955 and by Protocol No.4 of Montreal 1975
APPENDIX B: ATA AIRLINE CUSTOMER SERVICE COMMITMENT

ATA's AIRLINE CUSTOMER SERVICE COMMITMENT

The member carriers of the Air Transport Association (ATA) are committed to providing the best level of service to our customers. In recent months, there has been an increasing recognition of the need to improve airline passenger service. As a result, the ATA carriers, working with Members of Congress, have developed an Airline Customer Service Commitment, and each carrier will develop its individual Customer Service Plan to demonstrate our ongoing dedication to improving air travel.

The ATA carriers hereby commit to:

- **Offer the lowest fare available** Each airline will offer the lowest fare available for which the customer is eligible on the airline's telephone reservation system for the date, flight and class of service requested.

- **Notify customers of known delays, cancellations and diversions** Each airline will notify customers at the airport and on board an affected aircraft, in a timely manner, of the best available information regarding known delays, cancellations and diversions. In addition, each airline will establish and implement policies for accommodating passengers delayed overnight. A clear and concise statement of airlines' policies in these respects will also be made available to customers.

- **On-time baggage delivery** Each airline will make every reasonable effort to return checked bags within 24 hours and will attempt to contact any customer whose unclaimed, checked luggage contains a name and address or telephone number.

- **Support an increase in the baggage liability limit** The airlines will petition the Department of Transportation within 30 days to consider an increase in the current baggage liability limit. [Since 1984, DOT rules provide baggage liability of $1250.]

- **Allow reservations to be held or canceled** Each airline will allow the customer either to hold a telephone reservation without payment for 24 hours or (at the election of the carrier) to cancel a reservation without penalty for up to 24 hours, in order to give customers an opportunity to check for lower fares through other distribution systems, such as travel agents or the Internet.

- **Provide prompt ticket refunds** Each airline will issue refunds for eligible tickets within 7 days for credit card purchases and 20 days for cash purchases.

- **Properly accommodate disabled and special needs passengers** Each airline will disclose its policies and procedures for handling special needs passengers, such as unaccompanied minors, and for accommodating the disabled in an appropriate manner.

- **Meet customers' essential needs during long on-aircraft delays** The airlines will make every reasonable effort to provide food, water, restroom facilities and access to medical treatment for passengers aboard an aircraft that is on the ground for an extended period of time without access to the terminal, as consistent with passenger and employee safety and security concerns. Each carrier will prepare contingency plans to address such circumstances and will work with other carriers and the airport to share facilities and make gates available in an emergency.
ATA's AIRLINE CUSTOMER SERVICE COMMITMENT (cont.)

- **Handle "bumped" passengers with fairness and consistency** Each airline will disclose to a passenger, upon request, whether the flight on which the passenger is ticketed is overbooked, if, within the usual and ordinary scope of such employee's work, the information is available to the airline employee to whom the request is directed. Each airline will also establish and disclose to the customer policies and procedures, including any applicable requirements (such as check-in deadlines), for managing the inability to board all passengers with confirmed reservations.

- **Disclose travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration** Each airline will disclose to the customer:
  
  (i) any change of aircraft on a single flight with the same flight number;

  (ii) cancellation policies involving failures to use each flight segment coupon;

  (iii) rules, restrictions and an annual report on frequent flyer program redemptions; and

  (iv) upon request, information regarding aircraft configuration, including seat size and pitch

- **Ensure good customer service from code-share partners** Each airline will ensure that domestic code-share partners make a commitment to provide comparable consumer plans and policies.

- **Be more responsive to customer complaints**

  Each airline will assign a Customer Service Representative responsible for handling passenger complaints and ensuring that all written complaints are responded to within 60 days.

  Each airline will develop and implement a Customer Service Plan for meeting its obligations under the Airline Customer Service Commitment. Customer Service Plans will be completed and published within 90 days and will be fully implemented within 6 months.

  Airline implementation will include training for airline reservation, customer service and sales personnel to enhance awareness of the responsibilities involved in implementation of the Customer Service Commitment and Plans.

  The Airlines will publish and make available their Customer Service Plans:
APPENDIX C: IATA’S RECOMMENDATION ON DENIED BOARDING

IATA’s Passenger Services Conference Resolutions Manual

Resolution 724A – Passenger Tickets Notice of Overbooking of Flights (Except USA/US Territories) (PSC(20)724a)

Notwithstanding Resolution 724, Members shall provide notice to the passenger relating to reservation status, only on its own services, stemming from any practice of over-booking.

1) The following notice shall be included on or with the Passenger Ticket and Baggage Check in a minimum of six point size; the following notice does not apply to tickets sold in the United States for transportation originating in the United States.

DENIED BOARDING BY OVERBOOKING

In those countries where Denied Boarding Compensation regulations are in force, carriers operate compensation plans for passengers with confirmed reservations who are denied boarding because of non-availability of seats caused by over-booking. Details of these plans are available at the airlines’ offices.

2) The notice shall be included on or with all tickets irrespective of whether they are issued by Agents or Members.

3) In addition the following paragraphs may be included on or with the Passenger Ticket and Baggage Check. In order to minimize the effect of “no shows” and to permit seats to be used by passengers who otherwise would not be able to travel on a chosen flight, carriers may overbook flights. Whilst carriers make every effort to provide seats for which confirmed reservations exist, seat availability is not absolutely guaranteed.

4) A Member or individual BSP may use a notice of its own wording provided it contains the substance of the language in the notice in Paragraph 1.

Recommended Practice – Denied Boarding Compensation (PSC(13)1799)

RECOMMENDED that, when introducing a Denied Boarding Compensation scheme, Members use the following rules.

Except this would not be applicable from countries where a denied boarding compensation scheme is already in effect.

1) Passengers who are denied boarding on a scheduled flight are entitled to compensation. In order to qualify, such passengers must be in possession of a valid ticket with a confirmed reservation for the particular flight shown on that ticket. They must also have presented themselves for check-in within the stipulated time limits and be in possession of the necessary travel documents, according to the General Conditions of Carriage.

2) The rules which are followed for boarding in the event that all passengers booked cannot be accommodated on a flight, will give first priority to handicapped passengers and unaccompanied children.
IATA Recommended Practice – Denied Boarding Compensation (cont)

4) Passengers who are denied boarding, voluntarily or otherwise, shall have the choice of:
   4.1 full refund of the cost of the unused portion of the ticket;
   4.2 re-routing to the final destination of the ticket presented at check-in by the first available flight(s) or at a later date at the passenger’s convenience.

5) Additionally, upon being denied boarding, each passenger is entitled to receive the following compensation:
   
   | Amount (to be established by the Flight Distance Delay Time Members concerned) |
   |-----------------------------|-----------------------------|
   | Up to 3,500 km Up to 2 hours |
   | Up to 3,500 km More than 2 hours |
   | More than 3,500 Up to 4 hours |
   | More than 3,500 More than 4 hours |

   Note: Where the one way fare for the sector(s) concerned in the appropriate class of service is less than the DBC amount, the one way fare will be paid.

6) The compensation shall be paid in cash or, if acceptable to the passenger, in travel vouchers. If the passenger’s class of service is downgraded, then he/she shall be entitled to reimbursement of the difference in price.

7) Any passenger denied boarding will be offered, in addition to the compensation payment, the following:
   7.1 a telephone call and a telex or fax message to the destination point;
   7.2 meals, refreshment and hotel accommodation as appropriate while waiting for alternative transportation arrangements.

8) Full details of the denied boarding rules applied by each airline are available for inspection at airline offices.