

## The Development of Landing Rights in Malaysia

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### ABSTRACT

*Landing rights have been in the centre of negotiations of liberating the air transport services for decades. Within the recent years more and more states have become involved in bilateral or plurilateral agreements in the attempt to promote free air. With the advent of Open Skies a new frame for grant of landing rights is being employed. They facilitate grant of Landing Rights in many aspects. Amongst states welcoming the new trend of liberalization of air transport are the two neighboring states of Malaysia and Indonesia. They have adhered to promoting free air by getting involved in many bilateral and plurilateral agreements. Open skies will be reviewed in this article along with a background on the grant of landing rights prior to the current open skies model. Agreements that were means of exchanging landing rights between Malaysia and Indonesia will then be reported to figure how far they have gone in liberalizing landing rights. Finally, the two major Malaysian airlines (MAS and Air Asia) will be subjected to scrutiny to assess their performance in general before and after open skies entered the region.*

*Keywords: air transportation, open skies, landing rights, liberal, agreement.*

### ABSTRAK

*Hak-hak untuk mendarat (landing rights) telah menjadi topik utama dalam perundingan-perundingan untuk meliberalkan perkhidmatan udara semenjak beberapa dekad yang lalu. Kebelakangan ini, banyak negara terlibat dalam perjanjian di antara dua buah negara atau perjanjian yang melibatkan dengan banyak negara untuk menggalakkan laluan udara terbuka (open skies) secara percuma. Dengan munculnya konsep udara terbuka, satu rangka baru dalam membenarkan hak-hak untuk mendarat telah diterima pakai. Udara terbuka telah memberikan kemudahan hak-hak untuk mendarat dalam pelbagai aspek. Antara negara-negara yang menerima trend baru dalam meliberalkan pengangkutan udara adalah dua buah negara yang berjiran iaitu Malaysia dan Indonesia. Kedua buah negara ini telah menunjukkan kesungguhan dalam penglibatan laluan udara percuma dengan memasuki perjanjian di antara dua buah negara atau perjanjian dengan banyak negara. Artikel ini mengkaji konsep udara terbuka dan latar belakangnya dalam memberikan kebenaran Hak-hak untuk Mendarat. Perjanjian-perjanjian yang dimasuki antara Malaysia dan Indonesia dalam membenarkan hak-hak*

untuk mendarat akan diteliti untuk mengetahui sejauh manakah usaha-usaha mereka dalam meliberalkan hak-hak untuk Mendarat. Akhirnya, dua syarikat penerbangan udara utama Malaysia (MAS dan Air Asia) akan dikaji untuk menilai pencapaian mereka secara ringkas ketika sebelum dan selepas konsep udara terbuka memasuki rantau ini.

**Kata kunci:** pengangkutan udara, udara terbuka, hak-hak untuk mendarat, liberal, perjanjian.

## INTRODUCTION

Air transport industry and its role in the economy has been expanding and developing rapidly in recent decades. Such evolution requires more flexible approaches to be adapted that are capable of accommodating new aspects of the industry. Liberalization in the aviation sector is generally conceived to have positive impacts. More competition, wider range of services, greater efficiency, and lower fares are seemingly outcomes of a liberalized international air transport industry.<sup>1</sup> More liberalized air transport system promotes stronger travel and tourism industry by delivering affordable and convenient transportation.<sup>2</sup> With expanded travel and tourism comes more job opportunities and so another step towards economical advancement is taken.<sup>3</sup>

The bilateral system governing air relations prior to open skies are considered time consuming, over protective, and detrimental to the customers, airports, and cities. They have proven to be incomplete and inadequate in creating a global air transport network that is compatible with the needs of the passengers and the rapidly growing free trade movement. The solution would be a new multilateral regime that would relax the provisions for exchange of traffic rights. But, negotiating multilateral agreements that are inclusive of the requirements and conditions of an internationally liberalized air transport industry is a tiresome task. Considering oppositions and different attitudes of the states towards the subject, bilateral and plurilateral agreements seem to be the most practical approach.<sup>4</sup> This process is also referred to as phased

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<sup>1</sup> D. C. Hedlund, 'Toward Open Skies: Liberalizing Trade in International Airline Services' (Summer 1994) *Minnesota Journal of Global Trade* 259, p 6.

<sup>2</sup> C. Y. Gee, 'Aviation & Tourism: The Traveling Public' (1991) 1 (2) *Transport Law Journal*, p 3.

<sup>3</sup> D. C. Hedlund, 'Toward Open Skies: Liberalizing Trade in International Airline Services' p 6.

<sup>4</sup> A plurilateral agreement is a compact between two or more nations which other nations are encouraged to endorse and become parties to.

multilateralism. This is very likely to occur in inter regional basis between like minded neighbors and trading partners.

Malaysia's policy to support tourism is to grant liberal traffic rights to other countries' carriers on a reciprocal base. Also the establishment of Kuala Lumpur International Airport has been in line with Malaysia's incentive to enhance competition and eventually becoming one of the main airport hubs in the region. Malaysia has effective open skies agreements with the United States of America, Taipei China, New Zealand, Australia, United Arab Emirates, Yemen, and the Scandinavian countries along with eighty six (86) Bilateral Air Service agreements (ASA). Indonesia also has partially open skies agreements with countries outside of the ASEAN region.<sup>5</sup> But what is the status of the two countries in opening their air to each other? In the following pages the history of air transport liberalization, the concept of landing rights, and the history of relation of the two countries will be reviewed.

## LANDING RIGHTS

Landing rights is the right granted by a state's regulatory authority to airline operators to land in that state's respective airports.<sup>6</sup> In other words, the governments allocate this market access right to designated carriers of other countries to operate on designated routes in its territory. In international parlance landing rights are also recognized as traffic rights and freedom of air rights in a broader concept compared to landing rights. There are nine (9) recognized traffic rights in international forum. These rights are as follows:<sup>7</sup>

- 1) freedom of the air: the right to fly over a country without landing.
- 2) freedom of air: the right to land in another country for non commercial purposes (e.g. refueling).
- 3) freedom of air: airlines are granted the right to maintain transportation services from their own states to another country.
- 4) freedom of air: the right to pick up passengers and cargo in a foreign country and transport them back to the airlines' own state.

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<sup>5</sup> Siew Yean Tham, ASEAN Open Skies and the Implications for Airport Development Strategy in Malaysia, *working paper 119-2008*, Asian Development Bank Institute (ADB), Kasumigaseki Building 8F, Tokyo: Japan, p 10.

<sup>6</sup> T. Keshvarani, Rationalization of Allocation of Landing Rights for Civil Aviation, Asian Development Bank Institute (ADB), Tokyo : Japan, p 4.

<sup>7</sup> J. Basedow, 'Synopsis on U.S-E.C. Legal Relations: Airline Deregulation in the European Community-its Background, its Flaws, its Consequences for E.C-U.S Relations' (1994) 13 (247) *Journal of Law and Commerce University of Pittsburgh*, p 2.

- 5) freedom of air: the right to operate between two countries outside an airline country of registry as long as the flight originates or terminates in its own country.
- 6) freedom of air: combination of third and fourth rights. In other words, the ability to fly from one territory to a gateway in the airline's own state and then fly to another destination in a third country.
- 7) freedom of air: the right to carry services between two countries other than the airline's home state. It is basically the fifth freedom rights in which the intermediary connection of the carrier's home land has been removed.
- 8) freedom of air: the right of a foreign owned airline to carry out services between two inland points (cabotage).
- 9) freedom of air: the right of transporting cabotage traffic of the granting State on a service performed entirely within the territory of the granting State.<sup>8</sup>

According to the Article 1 of the 1944 Chicago Convention, every state has sovereignty over the air space above its territory. Consequently, for developing international flights allocation of Landing Rights had to be discussed in the form of agreements.<sup>9</sup> Slots are considered to be valuable intangible assets because of their influence in facilitating air travel especially in high density airports. This value has created a conservative approach in treating slots. They are considered as the rights that should not be passed on easily and always should be granted while obtaining reciprocal benefits. There is no disagreement regarding the non commercial ones, namely first (freedom of the air: the right to fly over a country without landing) and second rights (freedom of air: the right to land in another country for non commercial purposes), they were discussed in multinational for as early as the 1944 Chicago convention and before the liberalization commenced. The rest of them (including beyond traffic rights) started to appear in bilateral and plurilateral agreements later, and they are still subject to contradictory conducts. Since the 1990's bilateral agreements have been broadly concluded or amended to pursue liberalization in the industry. According to International Civil Aviation Organisation (ICAO) between 1995 and 2001 over 600 bilateral agreements were concluded or amended, and about 70 percent of these agreements contained liberalized arrangements in some level.<sup>10</sup> Many of them include provisions covering third, fourth and sometimes

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<sup>8</sup> Manual on the Regulation of International Air Transport, part 4 (2004) Doc 9626, International Civil Aviation Organization (ICAO), (MRIAT).

<sup>9</sup> T. Keshvarani, Rationalization of Allocation of Landing Rights for Civil Aviation, p 4.

<sup>10</sup> T. Keshvarani, of Landing Rights for Civil Aviation p 6.

limited fifth freedom rights<sup>11</sup>.

The most common framework for bilateral agreements is taken from Bermuda 1 signed between the United States and the UK in 1946.<sup>12</sup> Based on reciprocity principals, bilateral agreements are designed with the purpose of regulating carriers and route designations, capacity, frequency, pricing, and in general all commercial aviation activities.<sup>13</sup> Although Bermuda 1 was a fairly liberal agreement, it could not be used as an international liberalization instrument. Such bilateralism can restrict access to gateways and other operating rights.<sup>14</sup> The importance of international carriers, particularly to national states and carriers has led to various treatments based on the country or region that the airport is located. However, the importance of landing rights requires a non-discriminatory method for allocation of slots. Allocation techniques that are not neutral would lead into an uneven distribution of benefits and discourage carriers that are willing to enter the competitive market.<sup>15</sup> Such approaches would distort competition and basic goals behind liberalization would be disregarded. Although so far attempts to achieve a global multilateral agreement for exchange of traffic rights have been fruitless, Alternative methods have been employed to facilitate the process, with the most famous one "open skies".

### OPEN SKIES AGREEMENTS

The notion of open skies started the aviation industry in the 1944 Chicago Convention for the first time by the strongest aviation power at that time, the United States of America.<sup>16</sup> The idea of a multilateral agreement that would

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<sup>11</sup> Third freedom of air; airlines are granted the right to maintain transportation services from their own states to another country, forth freedom of air: the right to pick up passengers and cargo in a foreign country and transport them back to the airlines' own state, fifth freedom of air: the right to operate between two countries outside an airline country of registry as long as the flight originates or terminates in its own country.

<sup>12</sup> Tae Hoon Oum, 'Overview of Regulatory Changes in International Air Transport and Asian Strategies towards the US Open Skies Initiatives' (1998) 4 (127-134) *Journal of Air Transport Management* p 1.

<sup>13</sup> Tae Hoon Oum, 'Overview of Regulatory Changes in International Air Transport and Asian Strategies towards the US Open Skies Initiatives', p 1.

<sup>14</sup> G. M. Alves Pinto, 'Competition and Predation in the airline industry' (Winter 2009) 74 (3), *Journal of Air Law and Commerce*, p 3.

<sup>15</sup> D. Mafoo, 'Slot Trading in the Reform of the Council Regulation (EEC) No 95/93: A Comparative Analysis with the United States' (Fall 2001) 66, *Journal of Air Law and Commerce*, p 13.

<sup>16</sup> D. C. Hedlund, 'Toward Open Skies: Liberalizing Trade in International Airline Services', p 3.

shift the decision-making authority about frequencies<sup>17</sup>, capacities<sup>18</sup>, and fares from national regulatory agencies to the market power didn't seem as appealing to many of other present states as it did to the United States. Few of the states (Netherlands and the Scandinavian countries in particular) backed the United States, while others with the United Kingdom in the lead, rejected the proposal of a free trade environment out of fear of industrial domination by the powerful American industry.<sup>19</sup>

Attempts continued and a variety of bilateral agreements were adopted to achieve a liberalized market. Eventually, the most liberalized Open Skies Agreement was concluded between the United States and Netherlands in 1992. Unrestricted capacity, frequency on all routes, open entry into each other's markets, and freedom in setting fares to the highest possible degree were amongst the specifications of the agreement that made it worthy of the name "the one and only true Open Skies".<sup>20</sup>

Open Skies Agreements include some principals for liberalization of air transport. Open access to market in participating states and removal of all restrictions on capacity, frequency, and traffic rights are the most fundamental principals.<sup>21</sup> Air fare and rates are to be determined by market forces, and price controlling by states is not admissible.<sup>22</sup> The only exceptions are the measures taken to prohibit anti competitive and predatory behaviors to dominate the market. In this case the necessity of avoiding an oligopoly situation requires interference from governments.<sup>23</sup> Non-discriminatory rules should be applied while treating other matters such as fair commercial opportunities, setting up sales and distribution offices, ground handling, and other airport facilities.<sup>24</sup>

Accession clauses in the Open Skies Agreements indicate the willingness of the participants to welcome other states to join the agreement. Hence, the range of countries abiding by the terms expands.<sup>25</sup> The intention to eventually achieve a phased multilateralization can be perceived of this clause. The United States started its negotiations to pursue an Open Skies policy in Asian countries in 1996. Singapore was the first country in the region to accept the

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<sup>17</sup> Frequency is the number of flights over a particular route usually measured on a per week basis.

<sup>18</sup> Capacity is the number of available commercial seats on a particular aircraft multiplied by the frequency of flights on a particular route.

<sup>19</sup> D. C. Hedlund, 1994 p 3.

<sup>20</sup> D. C. Hedlund, 1994 p 5.

<sup>21</sup> D. C. Hedlund, 1994 p 12.

<sup>22</sup> D. C. Hedlund, 1994 p 12.

<sup>23</sup> D. C. Hedlund, 1994 p 12.

<sup>24</sup> D. C. Hedlund, 1994 p 13.

<sup>25</sup> D. C. Hedlund, 1994 p 12.

terms of the new agreement in April 1997.<sup>26</sup> Since the first agreement Open Skies have turned into widely accepted agreements in the Pacific. The Open Skies Agreements signed between the United States and Asian countries grant the parties the right to fly from one point in their land to any point in the other country's land. Restrictions on capacity and frequency are eliminated and unlimited beyond traffic rights (fifth freedom rights) are granted. Some of these have even gone further and have included seventh freedom rights in their provisions. In the following sections, bilateral and multilateral agreements that govern the exchange of Landing Rights between the two countries of Malaysia and Indonesia will be briefly reviewed.

#### BILATERAL AGREEMENTS SIGNED BETWEEN MALAYSIA AND INDONESIA

The first bilateral agreement signed between Malaysia and Indonesia was the 1968 Air Service Agreement (ASA). It was signed on 6 May 1968 and like other ASAs covered some of the landing rights, but was merely convenient enough to form scheduled restricted services between the countries. On 26 August 1999, the two countries significantly increased their bilateral cooperation.<sup>27</sup> As for future cooperation, there are already arrangements set for opening new routes and Landing Rights for Malaysian airlines. In a meeting between the Malaysian delegation led by Prime Minister Datuk Seri Najib Razak and the Indonesian delegation led by President Susilo Bambang Yudhoyono on 23 April 2009, it was decided to explore new aspects of bilateral cooperation in improving open skies by grant of landing rights to Malaysian Airlines.<sup>28</sup>

#### MULTILATERAL AGREEMENTS WITH MALAYSIA AND INDONESIA AS PARTIES

Malaysia ratified the 1944 Chicago Convention on 7 April 1958. Indonesia ratified the 1944 Chicago Convention on 27 April 1950. The General Agreement on Trade in Services (GATS) is another multilateral agreement that both

<sup>26</sup> Tae Hoon Oum, 'Overview of Regulatory Changes in International Air Transport and Asian Strategies towards the US Open Skies Initiatives', p 4.

<sup>27</sup> I. Thomas, *Understanding the Market*, Centre for Asia Pacific Aviation, Sydney, NSW, 2000, p 5.

<sup>28</sup> Mohd Nasir Yusoff, 'Exploring New Air Routes To Strengthen Indonesia-Malaysia Ties', *Bernama*, 24 April 2009, p 1, <http://www.bernama.com/bernama/v5/newsgeneral.php?id=406402> (25 November 2009).

Malaysia and Indonesia have signed. The GATS annex on air transport is quite inadequate compared to other agreements in allocation of Landing Rights and liberalizing trade in aviation, consequent to obstacles of reaching to a global unified multilateralism.

### OPEN SKIES IN ASEAN

Having one of the fastest growing travel and tourist industries in the world, air transport liberalization holds substantial benefits for the ASEAN region. Despite the wide differences among the Pacific countries—particularly ASEAN members in terms of Gross Domestic Product (GDP) capita, size, aviation policies, and strength of the industry, these countries have demonstrated a strong will to lead their aviation industries towards liberalization.<sup>29</sup> The progress achieved since the first movements in the 1990's.

The member countries agreed on adoption of an open skies policy and establishing a unified aviation market by 2015. The purpose behind a unified aviation is to grant the designated airlines of the member countries the right to operate unrestricted flights, of course capacity deregulation and price controls are also included in the plan.<sup>30</sup> The process of implementing open skies in the region is negotiation based. The first initiatives towards openness commenced with the 1995 Agenda for Economic Integration that included development of open skies.<sup>31</sup> Subsequently, integrated implementation program for the ASEAN Plan of Action in Transport and Communications in 1997 set the establishment of a competitive air service program among its goals. However, the ASEAN Memorandum of Understanding (MOU) on Air Freight Services in 2002 is the agreement that is considered to be the first practical step of the region towards open skies.<sup>32</sup> Third and fourth freedom rights were included in this Agreement. Regarding the landing rights (traffic rights), in freight services, unrestricted third, fourth, and fifth rights with no limitation on capacity, frequency, and air craft type was set as the goal to achieve by 2008 (by 2015 all members will be included). While for scheduled passenger services, the granting of rights was designed in three time tables, by 2008 third, fourth, and fifth rights were

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<sup>29</sup> P. Forsyth, J. King, C. L. Rodolfo, 'Open Skies in ASEAN' (2006) 12 (143-152) *Journal of Air Transport Management*, p 1.

<sup>30</sup> Siew Yean Tham, ASEAN Open Skies and the Implications for Airport Development Strategy in Malaysia, working paper 119-2008, Asian Development Bank Institute (ADB), Japan, p 7.

<sup>31</sup> P. Forsyth, J. King, C. L. Rodolfo, 'Open Skies in ASEAN', p 2.

<sup>32</sup> Siew Yean Tham, ASEAN Open Skies and the Implications for Airport Development Strategy in Malaysia, p 8.



granted in capital cities and for designated airlines<sup>33</sup>. One step further, is grant of the three mentioned freedom rights in all international airports for designated airlines by 2010, and finally by 2015 all ASEAN members are to ratify these agreements and open their international airports to other members' airline.<sup>34</sup>

In 2004 a three staged timetable was suggested for ASEAN to pursue gradual move to open skies.<sup>35</sup> Phase 1 (2005-2007): double disapproval of fares; double designation, unlimited 3rd and 4th freedom, capacity; a move to substantial ASEAN ownership of a country's airline permitted; access to secondary gateways. Phase 2 (2008-2010): no fare controls; multiple designation; access to secondary gateways; open passenger charters. Phase 3 (2010-2012): principal place of business ownership test; unrestricted 5th freedom for ASEAN carriers within ASEAN.<sup>36</sup>

#### THE BRUNEI DARUSSALAM-INDONESIA-MALAYSIA-PHILIPPINES EAST ASEAN GROWTH AREA (BIMP-EAGA)

Brunei Darussalam, Indonesia, Malaysia and the Philippines BIMP-EAGA Agreement is a sub regional triangle formed by the member countries to accelerate regional growth in consistency with the global trend towards free trade.<sup>37</sup> In the field of air transport, Landing Rights have been granted to the designated air carriers of the four members in 1995.<sup>38</sup> There are also limited Open Skies Agreements ratified within BIMP-EAGA by 2004.<sup>39</sup> The agreement is the Memorandum of Understanding on Expansion of Air Linkage, first signed on 21 February 1995 MOU was signed on 12 January 2007.

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<sup>33</sup> Third freedom of air: airlines are granted the right to maintain transportation services from their own states to another country; forth freedom of air: the right to pick up passengers and cargo in a foreign country and transport them back to the airlines' own state and fifth freedom of air: the right to operate between two countries outside an airline country of registry as long as the flight originates or terminates in its own country.

<sup>34</sup> Siew Yean Tham, 2008, Table 2, p 9.

<sup>35</sup> P. Forsyth, J. King, C. L. Rodolfo, p 6.

<sup>36</sup> P. Forsyth, J. King, C. L. Rodolfo, p 7.

<sup>37</sup> P. Forsyth, J. King, C. L. Rodolfo, p 2.

<sup>38</sup> P. Forsyth, J. King, C. L. Rodolfo, p 4.

<sup>39</sup> Siew Yean Tham, p 10.

## INDONESIA-MALAYSIA-THAILAND GROWTH TRIANGLE (IMT-GT)

Another sub regional arrangement that aims at improving regional growth is Indonesia, Malaysia and Thailand Growth Triangle (IMT-GT). This agreement includes provisions to permit airline cooperation in secondary and tertiary points (limited landing rights) among member countries. The relative agreement is the Memorandum of Understanding on Expansion of Air Linkage, with the last amendment on 11 August 2006. However it is not considered to be very successful in implementing freedom rights between Indonesia, Malaysia and Thailand.<sup>40</sup>

## MALAYSIAN AIRLINES BEFORE AND AFTER THE OPEN SKIES

The two major Malaysian airlines had gone through significant alterations since liberalization entered the region. How did they adapt themselves to the new Open Skies policy? Both Malaysian Airline System Berhad (MAS) and Air Asia Berhad (AIR ASIA) had gone through significant changes since the beginning of the millennium, including the ASEAN open skies policy.

Given the lack of data, a systematic and empirical evaluation on the gains of liberalization is difficult.<sup>41</sup> However, the evidence gathered through years of liberalized methods practiced indicates to significant gains. Generally speaking, the main beneficiaries of liberalization are consumers and passengers, they benefit from low fares and better services.<sup>42</sup> The airline industry is likely to lose in the short run, due to elimination of governments' aids, improved competition, and mostly entrance of new carries-mostly low cost carriers. But in the long run with development of tourism industry and cost adjustment, the airlines that have survived the immediate post liberalization obstacles are likely to turn profitable and strong in the competitive environment.

Studies on open skies in the region has generally indicated to a more competitive and expansive regulatory environment.<sup>43</sup> Open skies has also enhanced the harmonization amongst the players for future regional air travel. The removal of trade barriers and more importantly, changing the protective policy towards national carriers has resulted in increased number of deals being

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<sup>40</sup> P. Forsyth, J. King, C. L. Rodolfo, p 7.

<sup>41</sup> P. Forsyth, J. King, C. L. Rodolfo, p 5.

<sup>42</sup> P. Forsyth, J. King, C. L. Rodolfo, p 5.

<sup>43</sup> Dato' Seri Bashir Ahmad, 'ASEAN Air Community; Malaysia Airports Holding Berhad' (2009) *Airports 2009*, p 2.

signed and development opportunities for the region.<sup>44</sup> The open skies have enabled regional carriers to make as many flights between the regions capital cities as possible.

## MAS

As Malaysia's leading air carrier, MAS performance and progress holds significant importance for the nation. Following years of profitability, MAS was the first government entity that went through privatization in 1994.<sup>45</sup> Although the privatization was not a fruitful process for MAS, it continued to be one of the regions leading carriers. The airline suffered losses following the years of privatization, with the highest amount of RM836 million in 2001/2002. However it started to recover in 2002/2003, and achieved its profit in 2004.<sup>46</sup>

After the open skies initiation in ASEAN, MAS suffered some loss on domestic routes. Of 118 domestic routes, only four proved to be profitable as in 2005.<sup>47</sup> It faced competition against the main no frill budget airline (Air Asia). Reduced subsidies affected the airline following the open skies policy. However, MAS survived the ups and downs of the new circumstances of the industry. It managed to achieve its highest profit in 60 years in 2007, RM851 million.<sup>48</sup> MAS currently serves 101 international destinations.<sup>49</sup> Liberalization of the air transport industry in the pacific region required airlines to adapt themselves to market driven business environment. That's why MAS realized the need to introduce new methods and policies to attract more customers in order to preserve its situation in the region. Launching value fares and all inclusive low fares, online booking facilities were among the methods that helped MAS remain resilient despite the sudden increase in fuel price in 2007 and 2008.

MAS has diversified in to related industries and sectors, including aircraft ground handling, aircraft leasing, aviation engineering, air catering, and tour operator operations. It has over 20 subsidiaries, with 13 fully owned by Malaysia Airlines. Some of these subsidiaries are as follows, Syarikat Pengangkutan Senai Sdn Bhd; Pengangkutan Kargo Udara MAS Sdn Bhd; Abacus Distribution

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<sup>44</sup> Dato' Seri Bashir Ahmad, 'ASEAN Air Community; Malaysia Airports Holding Berhad' p 3.

<sup>45</sup> Khairiah Salwa Mokhtar. *Privatizing Malaysia Airlines: A Policy Transfer*, Penerbit Universiti Kebangsaan Malaysia, Bangi, Malaysia, 2008, p 159.

<sup>46</sup> Malaysian Airline System Berhad Annual Report 2004, 10601-W, p 8.

<sup>47</sup> Malaysian Airline System Berhad Annual Report 2005, 10601-W, p 9.

<sup>48</sup> Malaysian Airlines System Berhad Annual Report 2008, 10601-W, p 9.

<sup>49</sup> ICAO Assembly Working Paper, A36-WP/163-12/09/07, p 2.

Systems (Malaysia) Sdn Bhd; MAS Hotels and Boutiques Sdn Bhd; Airfoil Services Sdn Bhd; Aircraft Engine Repair and Overhaul (Malaysia) Sdn Bhd; Aerokleen Services Sdn Bhd; MAS Academy Sdn Bhd; MAS Catering Sdn Bhd; MAS Engineering Services Sdn Bhd; MAS Golden Boutiques Sdn Bhd; MAS Golden Holidays Sdn Bhd; MAS Wings of Gold Sdn Bhd; MAS Properties Sdn Bhd; MASKARGO Sdn Bhd.<sup>50</sup> Although MAS is still in fierce competition with its main low cost carrier rival and other national carriers in the region, transformation in policies and introducing new measures for customer satisfaction has enabled MAS to remain active and profitable.

### AIR ASIA

Low cost carriers are born out of the liberalization process. Their global effects on the industry and improving competition are undeniably among the most practical outcomes of liberalization. Air Asia had a strong restart in 2001 after being purchased by an investment group. Under the new leadership of its current Chief Executive Officer (CEO), Datuk Tony Fernandes, the airline started to make profit right after its transition to new methods employed and low fared offered to customers. Air Asia carried 611,000 passengers in its first full fiscal year. Within three years it was carrying nearly three million people a year.

As of 2008, Air Asia had over 110 routes in across 13 countries.<sup>51</sup> Since 2004 and the initiation of open skies, with the establishment of low cost carrier terminal (LCCT) in Kuala Lumpur International Airport, Air Asia had turned into the largest low cost carrier of Asia Pacific.<sup>52</sup> Two principal subsidiaries of Air Asia, Thai Air Asia and Indonesia Air Asia were relatively established in 2003 and 2004.<sup>53</sup> Increased number of aircrafts, and passengers, widened operation area, and possessing the low cost carrier hub in the region, all indicates to Air Asia's adaptation to the open skies. open skies in the region has supported the idea behind the award winning low cost carrier, and taking that into its advantage, Air Asia has turned into one of the best examples of successful products of liberalized aviation industry.

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<sup>50</sup> Malaysian Airlines System Berhad Annual Report 2008, 10601-W, p 18-34-76.

<sup>51</sup> Air Asia Annual Report, 16<sup>th</sup> Annual General Meeting, AirAsia Academy Sepang, Selangor, 2008, p 4.

<sup>52</sup> ICAO Assembly Working Paper, A36-WP/163-12/09/07, p 2.

<sup>53</sup> Air Asia Annual Report, 13<sup>th</sup> Annual General Meeting, Air Asia Academy, Sepang, Selangor, 2005, p 5.

## CONCLUSION

Grant of landing rights has been subject of international negotiations for decades. So far attempts to achieve a multilateral framework that includes traffic rights and beyond traffic rights have been fruitless. That is the premier reason for forming bilateral and plurilateral agreements that facilitate exchange of traffic rights for countries and include accession clauses for willing states to join. The most applicable format of these bilaterals are the open skies introduced by the United States in the 1990s. Ever since the first Open Skies Agreement was signed between the United States and Netherland, Many other countries embraced the new liberalization policy and engaged in forming open skies with other states. ASEAN countries were no exception; they started liberalizing their air transport in the 1990s. They set their goal to achieve a unified market by 2015 by adopting a regional open skies policy and the first ASEAN Memorandum of Understanding (MOU) on Air Freight Services in 2002.

Malaysia and Indonesia, being members of the ASEAN, complied with the new intended policy of the region. They also engaged in other bilateral and plurilateral agreements to promote a more liberalized aviation relation. The two neighboring nations paved the path for more cooperation and more landing rights for each others air carriers recently. They both have offered much and are likely to gain much from their openness, as the experience of the two major air carriers of Malaysia has shown in recent years. More passengers, more profit, and overall enhanced performance come with competition and competition is a direct outcome of relaxed traffic rights and less governmental intervention. With the attitude of the pacific nations, especially Malaysia and Indonesia, the future of air transport and consequently any industry influenced by it seems bright and productive.

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