

[F. No. AERA/20010/Civil Aviation Policy /2014-15/Vol-I]

Airports Economic Regulatory Authority of India

Order No. 14/2016-17

AERA Building,
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New Delhi - 110003

Date of Order: 12th January, 2017
Date of Issue: 23rd January, 2017

In the matter of aligning certain aspects of AERA's Regulatory Approach (Adoption of Regulatory Till) with the provisions of the National Civil Aviation Policy-2016 (NCAP-2016) approved by the Government of India.

1. Background

1.1 Government of India has announced the National Civil Aviation Policy-2016(NCAP) which, among other things, lays down that future tariff determination at all airports will be done on the basis of a 'Hybrid Till'. It says, "to ensure uniformity and level playing field across various operators, future tariff at all airports will be calculated on a 'hybrid till' basis unless otherwise specified for any project being bid out in future. 30% of the non-aeronautical revenue will be used to cross-subsidize aeronautical charges. In case the tariff in one particular year or contractual period turns out to be excessive, the airport operator and regulator will explore ways to keep the tariff reasonable, and spread the excess amount over the future."

1.2 The approach in the NCAP is different from the 'Single Till' mechanism adopted by the Authority. Under the 'Single Till' methodology the entire non-aeronautical revenues is used to subsidize the aeronautical charges. There is, therefore, a need to revisit the guidelines issued by the Authority. In order to do so, the Authority issued a consultation paper no. 01-2016-17 dated 05.10.2016 to solicit the views of the stakeholders on the need to align its guidelines on the Till mechanism in line with the New Civil Aviation Policy (NCAP). A meeting of the stakeholders was also held on 08.11.2016 to hear their views.

2 Ministry's Policy on Till

2.1 At the time when AERA took the decision to adopt the 'Single Till', the Ministry of Civil Aviation had not spelt out its policy regarding the Till mechanism to be followed for economic regulation of airports. In response to the White Paper prepared by the Authority on the approach to regulation of tariffs, the Ministry had given the following comments;

"Consumer's interest is of paramount importance and it should be kept in mind while deciding on the form of regulation".



Further on the Till mechanism, the Ministry had stated the following :-

“The adoption of a specific ‘till’ methodology should be airport specific, keeping in mind the contractual obligations (if any), socio-economic objectives of the Govt. as in the case of airports in the North Eastern states and in remote locations if covered under the ambit of AERA and other such conditions. The ultimate objective should be to reduce the burden on the end users (Passengers)”.

The adoption of a “Single Till’ by the Authority at that point of time could therefore be considered to be consistent with the objective of reducing the burden on the end users.

2.2. However, most of the decisions of the Ministry have indicated a preference for the hybrid till approach. In the case of Delhi and Mumbai, the Ministry had approved the Concession Agreements that prescribed a ‘Hybrid Till’ wherein 30% of the non-aero revenues are taken into account for fixing aeronautical charges. After the Authority adopted the ‘Single Till’ as the methodology for determination of airport charges, the Ministry suggested that only 40% of the non-aero revenues may be taken into consideration for fixing aeronautical charges at Bangalore airport during the first control period (2011-2016). The concessional agreements earlier approved for development of new airports at MOPA (Goa) and Navi Mumbai provide for determination of tariffs on the basis of the ‘Hybrid Till’. Recently in the case of Hyderabad, the Govt. directed the Authority under Section 42 of the AERA Act to take into account only 30% of the non-aero revenues for tariff fixation during the first control period. The Ministry has now come up with a clear cut policy to the effect that a ‘Hybrid Till’ of 30% shall be used for determination of tariffs at all airports.

3 Analysis of Stakeholders Comments.

The Authority has reviewed and analysed, in detail, the comments of the stakeholders keeping in mind the arguments that the Authority had used in favour of adopting the Single Till.

3.1 AERA Act mandates a Single Till.

One of the arguments used for adoption of ‘Single Till’ methodology is that the AERA Act mandates ‘Single Till’. Sec 13(a) of the Act lays down the factors that need to be considered while fixing the airport charges. One of them is the revenue received from services other than aeronautical services. The Authority had earlier interpreted this sub clause to mean that the adoption of a ‘Dual Till’ was ruled out but it had not examined the possibility of adopting a ‘Hybrid Till’. The Authority had opted for the ‘Single Till’ on the ground that the sub clause doesn’t specify that a part of the non-aero revenue could be taken into consideration for fixing aeronautical charges. The clause doesn’t specifically say that the entire revenue received from services other than aeronautical services should be taken into account while fixing Airport Charges. The Authority had not taken into account the proviso to the sub section which enables the Authority to fix different tariff structures for different airports having regard to all or any of the considerations specified in the sub clauses. A simple reading of the Section makes it clear that the Authority has the option to choose a ‘Hybrid Till’ and that it is not mandated to adopt the ‘Single Till’. Therefore the adoption of a ‘Hybrid Till’ is legally permissible.



3.2 Adoption of 'Single Till' is in public interest since it minimizes airport charges for the users.

The adoption of a 'Single Till' normally results in low airport charges. But that only takes care of the interests of the users in the short term. The airlines and cargo operators would like to expand their business and modernize their operations in the long run. The passengers also expect modern facilities at the airport. This would mean that the Airport Operator should also invest adequate funds for capacity expansion and modernization. Normally an investor in any airport would like the business to generate funds for future asset additions and for modernization. If the airport operator doesn't invest further in expansion or modernization in a timely manner, it will be the users who will be affected by way of congestion and poor service levels. One of the factors to be considered for tariff determination under Sec 13 (a) is capital expenditure incurred and the timely investment in improvement of airport facilities. While fixing the charges for Bangalore airport, the Authority in effect accepted the fact that adoption of 'Single Till' doesn't provide the airport operator with adequate funds for capital expansion. Ideally, the Till mechanism should therefore be designed to balance the interests of the users and the airport operators. Besides, there are other methods to keep the costs in check. The airports should keep the capital costs low and operate their facilities more efficiently. The new civil aviation policy of the Ministry also recognizes this fact as it states that the Ministry will coordinate with AERA, AAI, airlines, airport operators and other stakeholders to identify ways to bring down airport charges. The Authority has already fixed certain norms for capital costs that can be incurred by the airport operator in order to keep these costs reasonable. Similarly the Authority would endeavor to keep costs on operation and maintenance of the airports at a reasonable level. This should safeguard the interests of the airport users and keep the airport charges affordable.

3.3 ICAO and the Planning Commission favour the 'Single Till' approach

ICAO guidelines states that "reaching a common understanding on the contribution of non-aeronautical revenues to defray the cost base for charges is an acknowledgement of the partnership between airports and users". This clearly means that the non-aero revenues in the airport should be shared between the airport operator and the users. The airport operator and the airlines should come to an understanding on who gets how much of the surplus generated from non-aero revenues. The intention here seems to be that the airport operators who collect these revenues should share a portion of it with the airlines and other users and not retain the entire surplus. The ICAO guidelines therefore indicate a preference for a 'Hybrid Till' rather than a 'Single Till' / 'Dual Till'.

In fact much of the argument which the Authority had adduced in favor of 'Single Till' was based on the disadvantages of a 'Dual Till' rather than the demerits of the 'Hybrid Till'. The Planning Commission seems to have endorsed the views of ICAO and it hasn't conducted any independent study on the subject.

3.4 AERA as an independent authority should follow its own guidelines.

AERA is independent in its functioning in the sense that it is neutral and objective in its approach to tariff determination. However it is the prerogative of the Government



to lay down the policy on economic regulation. The AERA Act makes it clear that the Government may issue policy directions to the Authority. As explained in the new policy, there is a need to adopt a uniform Till methodology so as to remove any regulatory uncertainty and to provide a level playing field. The Policy has also been formulated after exhaustive consultations with the stakeholders and taking into consideration the ground realities and the need for greater investments in the sector. Besides, so far as the Authority is concerned, adopting a regulatory stance that is in conflict with the stated policy of the Government is unwarranted unless there are compelling reasons to do so especially in view of the legal provisions in this regard.

3.5 Government's policy applies only to PPP airports and state government airports. Doesn't provide a level playing field.

This conclusion has been arrived at by some of the stakeholders since the policy on Till has been brought under the section relating to PPPs and state government sponsored airports. In our view this is not the correct interpretation of the Policy. It is clear that the Policy applies to tariff determination in all airports.

4. Conclusion

4.1 The Authority's decision to use the 'Single Till' approach to fix the tariff for airports at a time when most of the new airports are being developed on 'Hybrid Till' basis has only resulted in differential treatment with one set of airports under the 'Single Till' and the other group under the 'Hybrid Till'. It is difficult to justify the basis for such differential treatment and it has also caused some regulatory uncertainty which is not warranted at a time when greater emphasis is being placed on private investments for airport development.

4.2 The earliest intervention by the Govt. on the issue of Till relates to Bangalore airport where the Govt. had suggested that the Authority adopt a 40% hybrid till. The Authority agreed to this view partially and used the suggested till subject to the condition that the true up shall be done on a 'Single Till' basis. The reasoning given for adopting 'Hybrid Till' in this case was that adequate funds need to be provided to the airport operator for taking up capital expansion projects. The intention of the Authority was that this arrangement was a one time exception and that later period tariff determination will be done on 'Single Till' basis. A major portion of the capital addition at Bangalore was scheduled for the next control period and it is not clear as to how the true up could be done on 'Single Till' basis when the intention of the Authority for using the 'Hybrid Till' was to provide funds for capital expansion. The 'Single Till' mechanism is not suitable in providing adequate funds to the airport operators for taking up various expansion and modernization programs in the airport. 'Hybrid Till' is more suitable to fund capital additions. One of the major functions of the Authority is to ensure that the airport operator has adequate funds to make capital additions at the appropriate time. 'Single Till' mechanism cannot provide adequate funds to the airport operators in a timely manner and it cannot be adopted uniformly at all times and in all airports.

4.3 Indian civil aviation has been witnessing passenger growth rates of more than 20% over the last two years. The regional connectivity scheme proposed in the new civil aviation policy could only add to this growth rate. Many metro airports in the country are already witnessing congestion. Greater and timely investments are important for development of the sector. A study by the Center for Asia Pacific Aviation (CAPA) estimates that even at more modest growth rates, the investment required in Indian airports will be of the order of \$40 billion during the next decade.



A major portion of this investment will have to come from private investors as is evident from the fact that all the new airports at the major cities in India are being developed on PPP basis. An analysis of the worldwide trends shows that wherever Governments adopt the PPP model for development of airports, they opt for a 'Dual Till' or a 'Hybrid Till'. This seems to be necessary to attract investments into airports and generate resources for the governments. In such a scenario, adoption of the 'Single Till' as a regulatory mechanism in the concession agreements for future airports is quite unlikely with State governments and the Ministry of Civil Aviation indicating a clear preference for the 'Hybrid Till'.

4.4 The 'Single Till' is not mandated by law and it is legally permissible to adopt a 'Hybrid Till'. The 'Single Till' approach does not recognize the contribution of the airport operator in generating non-aeronautical revenues and it doesn't seem to generate adequate resources for the airport operator to make timely investments to expand terminal capacity and to modernize the facilities. It may be noted that the 'Hybrid Till' is also widely prevalent in the aviation sector all over the world. One could perhaps argue over the sharing pattern laid down in the civil aviation policy of the Government. However these are matters which could be thought of for the future.

4.5 Having regard to these factors, the Authority is of the view that 'Single Till' may not be appropriate at this juncture when there is high growth and capacity expansion is the need of the hour. The Authority's methodology for tariff determination should be consistent with the Governments policy unless there are compelling reasons for the Authority to take a different view. The guidelines laid down by the Authority in its order no. 13/2010-11 dated 12.01.2011 on the Till mechanism may therefore be amended to align it with the policy of the Government. The Authority will continue to pursue cost control measures at major airports in order to safeguard the interests of the users of the airport.

ORDER :

The Authority, in exercise of powers conferred by Section 13(1)(a) of the Airports Economic Regulatory Authority of India Act, 2008 and after careful consideration of the comments of the stakeholders on the subject issue, decides and orders that :

- (i) The Authority will in future determine the tariffs of major airports under "Hybrid Till" wherein 30% of non-aeronautical revenues will be used to cross-subsidize aeronautical charges. Accordingly, to that extent the airport operator guidelines of the Authority shall be amended. The provisions of the Guidelines issued by the Authority, other than regulatory till, shall remain the same.
- (ii) In case of Delhi and Mumbai airports, tariff will continue to be determined as per the SSA entered into between Government of India and the respective airport operators at Delhi and Mumbai.



**By the Order of and in the
Name of the Authority**

Puja Jindal
**(Puja Jindal)
Secretary**

To

All Airport Operators at Major Airports (As per list attached).

Copy to:-

1. Secretary, Ministry of Civil Aviation, Rajiv Gandhi Bhawan, New Delhi – 110003



सत्यमेव जयते

भा.वि.आ.वि.प्रा.
AERA



LIST OF AIRPORT OPERATORS AT MAJOR AIRPORTS

1. **Dr. Guru Prasad Mahopatra,**
IAS,
Chairman,
Airports Authority of India,
Rajiv Gandhi Bhawan,
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2. **Shri V.J. Kurian, IAS,**
Managing Director,
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Ndedumbassery, Kochi Airport P.O.,
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3. **Shri Srinivas Bommidala,**
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Delhi International Airport Pvt. Ltd,
Uran Bhawan, IGI Airport,
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4. **Shri S.G.K Kishore,**
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5. **Shri Sanjiv Bhargava,**
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6. **Shri G.V. Sanjay Reddy,**
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7. **Shri Jai Bhagwan Saini**
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