

[F.No. AERA/20011/AO-G/2010-11]

Airports Economic Regulatory Authority Of India

Order No.14/2010-11

**AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi -110 003**

**Date of Order: 28th February, 2011
Date of Issue: 28th February, 2011**

**In the matter of Regulatory Philosophy and Approach in Economic Regulation
of Airport Operators**

Pursuant to enactment of the "The Airports Economic Regulatory Authority of India Act, 2008" (hereinafter referred as the 'Act') and establishment of the Airports Economic Regulatory Authority (hereinafter referred as the 'Authority'), the Authority is to perform the following functions in respect of major airports:

- (a) to determine the tariff for the aeronautical services;
- (b) to determine the amount of the development fees in respect of major airports;
- (c) to determine the amount of the passengers service fee levied under rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934; and
- (d) to monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorised by it in this behalf.

2.1 As per Section 2 (a) of the Act, any service provided inter alia "for the landing, housing or parking of an aircraft or any other ground facility offered in connection with aircraft operations at an airport"; "for ground safety services at an airport"; "for ground handling services relating to aircraft, passengers and cargo at an airport"; "for the cargo facility at an airport"; and "for supplying fuel to the aircraft at an airport" are aeronautical services.

2.2 The Authority's mandate to determine the tariff for aeronautical services; to determine the rate of the Development Fee (DF) including User Development Fee (UDF); and to determine the amount of Passenger Service Fee (PSF), in respect of major airports, has been suitably incorporated in the Airports Authority of India Act, 1994, and the Aircraft Rules, 1937, as well.



2.3 To ensure transparency in the process leading up to the framing of appropriate procedures/systems for economic regulation, as required in terms of the Act, the Authority issued a White Paper on 'Regulatory Objectives and Philosophy in Economic Regulation of Airports and Air Navigation Services' ('White Paper') on 22nd December 2009, highlighting various issues relating to economic regulation of airports; air navigation services; and cargo, ground handling and fuel supply services. The White Paper provided stakeholders an opportunity to consider the issues highlighted therein and submit evidence-based feedback, comments and suggestions. The Authority received 28 submissions in response to the White Paper. The submissions were put up on the Authority's website for general information.

2.4 The Authority considered the views and opinions submitted in response to the White Paper and prepared a Consultation Paper listing out the major issues impacting formulation of its regulatory philosophy and approach and laying out its rationale for the positions/approach it was minded to take. The Consultation Paper (No. 3/2009-10) was issued on 26th February 2010 with the intention of providing a further opportunity to stakeholders to make relevant submissions to the Authority before the Regulatory Philosophy and Approach was finalized. On 16th March 2010 the Authority convened a consultation meeting with the stakeholders to elicit their views in person. The Authority received 21 written submissions containing suggestions and comments in respect to the Consultation Paper from stakeholders. These suggestions and comments together with the minutes of the meeting held on 16th March 2010 were uploaded on the Authority's website (<http://aera.gov.in>). The Authority also received two further submissions from APAO on the consultation protocol and the cost of equity.

3. After detailed consideration of the matter and stakeholder responses, the Authority had finalized its regulatory approach and general framework for determination of tariffs for determination of tariffs for the aeronautical services provided by the airport operators, vide the Order (No.13/2010-11) issued on 12.01.2011. The Order stated that the Authority proposes to operationalise the regulatory philosophy and approach through detailed guidelines, which shall be issued separately for stakeholder consultation before being finalised.

4. The Authority had, thereafter, issued the Draft of the "Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011" for stakeholder consultation vide Consultation Paper No. 13/2010-11 dated 02.02.2011. All stakeholders were requested to submit their written evidence based feedback/ comments and suggestions latest by 22.02.2011. A stakeholder consultation meeting was also held on 14.2.2011.

5.1 In response, submissions have been received from the following stakeholders :

- (i) Delhi International Airport Pvt. Ltd (DIAL)
- (ii) Federation of Indian Chambers of Commerce and Industry (FICCI)
- (iii) Federation of Indian Airlines (FIA)
- (iv) Express Industry Council of India (EICI)
- (v) International Air Transport Association (IATA)
- (vi) Airports Authority of India (AAI)



- (vii) Hyderabad International Airport Pvt. Ltd (HIAL)
- (viii) Bangalore International Airport Pvt. Ltd (BIAL)
- (ix) Cochin International Airport Pvt. Ltd (CIAL)
- (x) Association of Private Airport Operators (APAO)

5.2 The stakeholders at sl.no (ii) to (v) have submitted comments on the Draft Guidelines circulated vide the Consultation Paper No.13/2010-11. The DIAL [sl.(i)] has submitted that it has filed an appeal against the Order No. 13/2010-11 before the Hon'ble Tribunal. However, without prejudice to the same, they have made several submissions in respect of the Draft Guidelines.

5.3 Airport Authority of India, vide their letter dated AAI/CHQ/REV/AERA/APT/2010-11 dated 22.02.2011 have submitted that the comments of AAI have been forwarded to the Ministry of Civil Aviation for its perusal and the same will be submitted to the Authority immediately on its receipt from the Ministry.

5.4 The stakeholders at sl.no (vii) to (ix) have submitted that in view of the appeals filed by them before the Hon'ble Appellate Tribunal they are unable to offer any comments on the Consultation Paper at this stage. A request for deferring the consultation process has also been made on this ground. APAO has endorsed the stand so taken by the private airport operators.

6.1 MIAL vide letter No. MIAL/PR/253 dated 21.02.2011 and the Government of Andhra Pradesh vide their letter No 245/Airports/A1/2011 dated 21.02.2011 had requested for extension of time. The Authority is unable to accept the same for the following reasons:

- (i) MIAL had vide earlier letter dated 14.2.2011 stated that they have filed an appeal in the Hon'ble Tribunal against the Order No. 13/2010-11. Hence, "in deference to the judicial process of appeal at the Appellate Tribunal, it is abstaining from expressing any opinion on the Draft Guidelines at this stage but reserves its right to submit the same subsequently at a later stage." This letter, though, has been referred to in the caption of their letter dated 21.2.2011, it has not been qualified. In any case, it has been clearly stated in the clause 1.4 of the Draft Guidelines that they would be applicable to CSI airport in such form and manner as the Authority may by separate Order determine. Therefore, MIAL would get an opportunity to make their submissions at the time such Order is made.
- (ii) Government of Andhra Pradesh had been represented in the stakeholder consultation meeting held on 14.2.2011 wherein it was stated on behalf of the State Government "that the State Government would submit its written response by the due date." Now (virtually) on the last date a request for extension of 4 weeks has been made without disclosing any reason or justification for such request.
- (iii) Further, these requests have been received just when the Consultation Period decided by the Authority is coming to an end. If the Authority were to accept



these requests and extend the timelines, it would prejudice the stakeholders who have made their submissions in time.

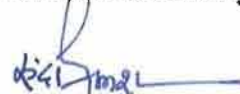
6.2 The Authority has noted the submission of the AAI that it has submitted its comments to the Ministry of Civil Aviation for its perusal before submitting the same to this Authority. However, the AAI have not requested for extension of the Consultation Period due to pendency of the matter with the Ministry. Furthermore, the submissions made by AAI during the stakeholder consultation meeting held on 14.2.2011 have been appropriately addressed by the Authority. The Authority noted that many other stakeholders have given their considered submissions.

6.3 As regards the request of the private airport operators and the APAO for deferral of the consultation process in view of the appeals filed in the Hon'ble Appellate Tribunal against the Order No. 13/2010-11 dated 12.1.2011, the Authority noted that it has not received any communication from the Hon'ble Tribunal, which would require this Authority to agree to this request. In fact, the Authority has also not received any notice from the Hon'ble Tribunal in the matter.

7. The Authority has carefully considered the submissions made by various stakeholders. A table indicating the stakeholders comments and responses of the Authority thereon is enclosed. The Draft Guidelines issued by the Authority for stakeholder consultations on 2.2.2011 have been modified to the extent indicated in the table enclosed. The Guidelines so amended are being issued separately.

8. The Authority is conscious of the fact that in terms of the Guidelines, the first Control Period would commence from 1.4.2011. In the nature of the timelines specified in the Guidelines, it would not be possible to determine the tariff in respect of any of the major airports before 1.4.2011. In this light, the Authority proposes to permit the concerned airport operators to continue charging the tariffs for aeronautical services provided by them, at the existing rates, in the interim period for which a suitable Consultation Paper is being issued separately.

By the Order of and in the
Name of the Authority



(Sandeep Prakash)
Secretary

1. **Airports Authority of India,**
Rajiv Gandhi Bhawan,
New Delhi – 110003.
(Through : Shri V.P. Agrawal, Chairman)
2. **Cochin International Airport Pvt. Ltd,**
Nedumbassery,
Cochin, Kerala.
(Through: Dr. Krishnadas Nair, Managing Director)



3. **Delhi International Airport Pvt. Ltd,
Uran Bhawan, IGI Airport,
New Delhi – 110 037.
(Through: Shri Kiran Kumar Grandhi, Managing Director)**
4. **Hyderabad International Airport Pvt. Ltd,
Hyderabad.
(Through: Shri Kiran Kumar Grandhi, Managing Director)**
5. **Mumbai International Airport Pvt Ltd,
CSI Airport,
Mumbai.
(Through: Shri G.V. Sanjay Reddy, Managing Director)**
6. **Bangalore International Airport Pvt Ltd,
118, Gayathri Lakefront, outer Ring Road,
Hebbal, Near Flyover,
Bangalore.
(Through: Shri G.V. Sanjay Reddy, Managing Director)**

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Responses of the Authority to stakeholder comments and observations on Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011 (the Guidelines)

Broad Area	S. No.	Comments given by Stakeholders	Authority Response
Procedure	1.	<p>The Tariff Proposal should be duly served upon the stakeholders and should be posted on the website of the Authority. While submitting the Tariff Proposals to the Authority, the Service Provider shall indicate whether copy of the complete Tariff Proposal has been served on each of the beneficiaries and whether the application has been posted on its own website.</p> <p>The Authority should then invite comments and suggestions from the Stakeholders on the aforesaid Tariff Proposal. The accounts related statements submitted with the Tariff Proposal should be duly audited and certified.</p> <p>AERA should consult with users for the Multi-Year Tariff Proposal and the Annual Tariff Proposal before it issues the respective orders.</p>	<p>The Authority has detailed the procedure for submission and review of Tariff Proposals in Chapter 1 of the Guidelines.</p> <p>The Authority has further considered submissions in this regard and Clauses 3.2 and 3.5 of the Guidelines have been revised to clarify that the Authority shall, upon due consideration of the submitted Multi Year Tariff Proposal and additional documents, obtained from the Airport Operator if required by the Authority, place the Multi Year Tariff Proposal and its draft views on the said Proposal in public domain for stakeholder consultation.</p>
	2.	<p>Adequate time be provided for airport-user consultations to take place before the airport's submission of the Multi-Year Tariff Proposal and the Annual Tariff Proposal to AERA.</p> <p>The timeframes specified in Doc 9082/8 (ICAO's Policies on Charges for Airports and Air Navigation Services) Paragraph 25 on Consultation Process be adopted.</p> <p>Sixty days period for Multi Year Tariff Proposal is an onerous target and should be suitable addressed.</p> <p>Submission of tariff proposals from various airports should be staggered and sufficient time provided to users to give inputs in order to alleviate the strain on user resources needed to evaluate the proposals.</p>	<p>The Authority has accepted this submission and timeframe for submission of the Multi Year Tariff Proposal has been increased from two (2) months to four (4) months from the date of issue of the Guidelines to provide more time for due stakeholder consultations (Clause 3.1).</p> <p>Likewise, time for submission of the Annual Tariff Proposal for the first Tariff Year of the first Control Period has been increased from 45 days to 60 days from the date of issue of the Multi Year Tariff Order. Appropriate amendments have accordingly been made to Clauses 3.1 and 3.4 of the Guidelines.</p> <p>While the Authority has revised timeframes for submission of Multi Year and Annual Tariff Proposals, it is open to considering any reasonable requests for extension of time for submission of such proposals by any Airport Operator.</p>

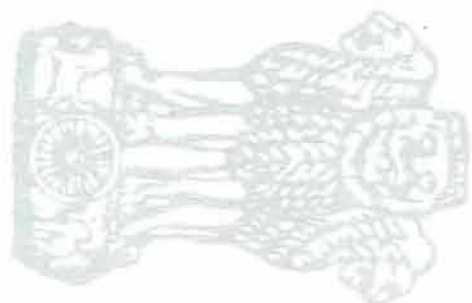


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	3.	At least one month should be provided between the issue of the Annual Tariff Order and the effective date of the new tariffs.	The Authority has accepted the submission. Clause 3.6 has been revised accordingly.
	4.	The Authority may also provide time lines it would take to approve tariff proposals.	The Authority is seized of the importance of review and approval of tariffs in a time bound manner. However, the timeframe required for the same would depend significantly on the nature and quality of submissions received from the Airport Operators, completeness of data / information provided in the submissions, nature and substance of concerns raised by stakeholders, etc. These factors may especially be relevant for the first Control Period where the Authority, Airport Operators as well as all stakeholders will be participating in such an exercise for the first time.
	5.	In case of annual compliance, an extension for annual review should be allowed if the annual account finalization has been extended by Registrar of Companies.	It is felt that provisions of Clause 3.8 of the Guidelines take care of such contingencies adequately.
Passenger Service Fee	6.	Authority should consider the appropriateness of the levels of fees being charged and recovered at each of the major airport.	As per the Order No. 13/2010-11 of the Authority, the PSF shall cover only the expenses pertaining to mandated security expenditure. While the Authority will separately issue guidelines for determination of Passenger Service Fee (PSF), the determination of PSF will also have reference to relevant orders issued by Ministry of Civil Aviation, Government of India.



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UDF and Separation between Passenger and Airline Charges	7.	<p>Distribution of UDF to domestic and international passengers has to have a transparent, consistent and rational basis.</p> <p>a. The suggestion in ICAO's Doc 9562 Airports Economic Manual to use terminal space usage as the basis for allocating cost between domestic and international passengers should be pursued.</p> <p>b. According to ICAO guidelines, allocation of UDF charges on domestic and international passengers has to be based strictly on cost incurred per passenger. The Airport Operator will therefore need to identify the cost per passenger (domestic, transfer, international) on which the level of UDF should be based.</p> <p>Proportion of costs allocable to various categories of users should be determined on equitable basis, so that users are not burdened with costs not properly allocable to them.</p> <p>IATA has proposed a revamp of airport charges to ensure that existing gaps in charge levels and practice between international and domestic flights/airlines that contravene ICAO policies of cost-based charging and non-discrimination are closed and that the rates are largely expressed on a per passenger basis.</p>	<p>The Authority notes this suggestion. In view of the fact that airports in the country have different contexts (for instance include integrated terminals as well as separate terminals for domestic and international passengers), it would not be possible at this stage to provide for uniform guidelines for the assessment of UDF separately for domestic and international passengers. Such determination would need to be undertaken for each Airport on a case to case basis when such suggestions can be more appropriately considered.</p> 



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	8.	<p>Current measures inefficient from a tax pass through perspective.</p> <ol style="list-style-type: none"> Airport Operators charge a service tax on the UDF collected Airlines do not get benefit of input tax credit which UDF being a pass through Therefore, a need to evaluate the benefits of implementing the same by increasing UDF charges or by increasing LPH charges <p>IATA endorses an increasing re-balancing of airport charges towards direct passenger charges to better reflect the 'user pays' principle in particular since the bulk of the new costs to be recovered by the airport has to do with building, operating and maintaining the passenger terminal building used by passengers. IATA has provided certain other reasons in favour of direct passenger charges. IATA believes that charging users directly will be more transparent and efficient. (Australia example that direct passenger charges make up 90% of the total airport charges)</p> <p>Authority has given the preference for airline charge. However, it should be left to the respective airport operator to devise an efficient pricing structure which is non -discriminatory.</p>	<p>The Authority has noted the difference in submissions by the two airline representative bodies.</p> <p>The Authority had detailed its considerations and decision on the issue of principles for determination of tariffs and PSF, UDF, etc. in its Order No. 13/2010-11 dated 12th January 2011. As explained therein, the UDF is to be treated as a revenue enhancing measure in line with the judgment of Hon'ble High Court of Kerala in its judgment in the case of Commissioner of Central Excise Vs. Cochin International Airport Limited [2009 (16) S.T.R. 401 (Ker.)]. Therefore UDF has to be determined after taking into account the revenue proposed to be received from other tariff heads.</p> <p>The Guidelines provide for the Airport Operator to submit Annual Tariff Proposals covering various charges. This gives adequate flexibility to the Airport Operator in this behalf.</p>
	9.	<p>The distribution between airlines charges and UDF charges should be in following proportion</p> <ol style="list-style-type: none"> Capital investment made for the facilities required for the airlines to operate from an airport should be recovered by airline charges. Capital investment made for facilities directly used by the passengers should be recovered by UDF collection. To give a boost to domestic traffic in the region, it is suggested that the UDF collected from domestic passengers should be subsidized by international passenger UDF collection 	<p>The Authority had detailed its considerations and decision on the issue of principles for determination of tariffs and PSF, UDF, etc. in its Order No. 13/2010-11 dated 12th January 2011. The response above may also be referred.</p>



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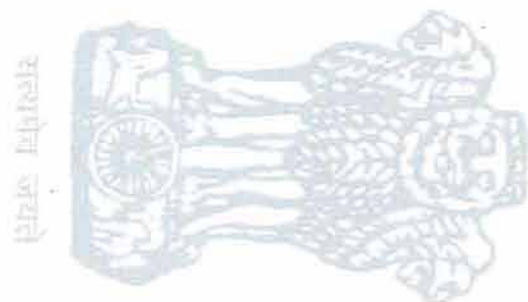
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Audit of Airport Accounts	10.	The Accounts of the Airport must be audited separately under Section 209 (1) d of the Companies Act 1956, which is more often referred to as Cost Audit and this process must be formalized with Scope outlined by the regulator	The Authority believes that regulatory review may not need to have reference to Section 209 (1) d of the Companies Act 1956.
Land	11.	The Authority should ensure that the valuation of land is undertaken by a valuer of repute, taking into consideration the market realities and also the end use concessions / restrictions given to the Airport operators for development of Real estate.	Authority proposes to determine value of land in accordance with land valuation principles as may be applicable.
	12.	DIAL has expressed concern on the manner in which the Authority would treat the non-Airport assets including the surplus land to be used to develop an aerotropolis. According to them, the provisions of the order on the Ring fencing principles in its current form was not deliberated in the consultation process nor was any feedback from the stakeholders solicited. It has thus come as a surprise that a serious issue of this magnitude was introduced without prior consultation.	<p>The Authority had highlighted in its Consultation Paper No. 3/2009-10 dated 26th February, 2010 (Para 4.16) that it may need to consider the issue of financial ring-fencing arrangements in respect of assets outside the scope of the RAB.</p> <p>After the stakeholder consultation, the Authority has addressed this issue in its Order No. 13/2010-11 dated 12th January 2011.</p> <p>In any case, as highlighted in the aforesaid Order itself, the position in respect of airports at Delhi and Mumbai will be separately addressed by the Authority after due consideration of relevant covenants of the SSA entered into by the Central Government.</p>



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Regulatory Asset Base	13.	Any exclusion from the Regulatory Asset Base must be properly documented and operating expenditure arising out of such investments must not be included in the "Operating Costs of the Airports" from a tariff determination perspective.	This submission has already been addressed by the Authority in Clause 5.2.1(g) of the Guidelines.

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	14.	<p>The Authority has not considered any scenario wherein any new capital investment is mandated to be undertaken within the control period by the Central or State Government or Competent Authority. Despite the facts such investment were not envisaged at the time of Multi Year Tariff Proposal, the same should be considered on actual basis and appropriate correction to RAB and yield should be corrected.</p>	<p>The Authority has considered this submission and believes that the most significant capital investment that could be mandated to be undertaken within any Control Period by the Government or any other Competent Authority could pertain to security related assets. The Authority has also noted that the Ministry of Civil Aviation has clarified that security related capital expenditure for any greenfield or brownfield airport project shall be included in the project cost and would not be reimbursed through the PSF. Keeping in view that such projects are planned sufficiently in advance, the Authority believes that most of the capital expenditure would be anticipated before the commencement of the relevant Control Period and would accordingly be reflected in the RAB. Any unanticipated expenditure, which is not likely to be significant in the view of the Authority, would also be adjusted at the commencement of the subsequent Control Period by way of Roll Forward RAB in terms of Clause 5.2.6 of the Guidelines. Further, as indicated in Clause 6.21.2 (b) (i) of the Guidelines, the Authority shall also provide correction for any difference between realized return on RAB adjusted at the end of the Control Period for actual capital expenditure as reviewed by the Authority.</p> <p>Therefore, the Authority believes that there would not be any material implication on the Airport Operator of the scenario highlighted in the submission.</p> <p>In any case, the Authority is of the opinion that RAB adjustment within any Control Period would not normally be advisable to lend predictability to the tariff profiles for all stakeholders and avoid a full reconsideration of tariffs at the end of each year.</p>



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	15.	<p>It may be difficult to accurately project future capex value due to variations in cost/ time. A time variation due to reasons beyond the airport operator's control should be suitably adjusted in error correction mechanism. Similarly reasonable cost variations should be suitably adjusted to the RAB value in annual compliance.</p> <p>If due to sudden variation in traffic, there may be a need to expedite the planned capital expenditure in earlier year. In such case Authority needs to consider the same in the annual review.</p>	<p>As discussed in the above response, the Authority has already taken into account the point highlighted in the submission, in specifying principles for computation of roll forward RAB and potential adjustment to tariffs for the subsequent Control Period. Also, as stated above, the Authority is of the opinion that RAB adjustment within any Control Period would not normally be advisable.</p>
	16.	<p>Profits on disposal should be shared between the airport and the passenger equally to incentivise the operator for a better upkeep of disposable assets.</p>	<p>The Authority is of the view that since assets at the airport would be created for the benefit of the users, and funded through tariffs charged to the users, any profits/losses from asset disposals should accrue to the users. Further, the Authority believes that the Airport Operators would appreciate that in lieu of tariffs that users would pay, they would be entitled to expect proper upkeep of assets by the Airport Operators and an appropriate management focus and actions in this regard.</p>
	17.	<p>Efficiency for Existing Assets (Already capitalized): It is presumed that the efficiency of assets already capitalized in the books of accounts will not be questioned and the proviso related to efficient procurement of assets exceeding 5% of assets will not be applicable to historical assets.</p>	<p>In terms of Section 13 (1) (a), the Authority while determining the tariffs for aeronautical services is inter alia required to take into consideration "(i) the capital expenditure incurred and timely investment in improvement of airport facilities". The Authority would review the expenditure incurred accordingly. Further, the Authority has noted that in the specific case of this respondent (DIAL), Government of India, while approving levy of a Development Fee, had stipulated the requirement of an audit by an independent auditor under the auspices of this Authority and the same had been accepted by the respondent.</p>



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Cost Allocation	18.	To avoid undue disruption to users, increase in charges should be introduced on a gradual basis; however, it is recommended that in certain circumstances a departure from this approach may be necessary.	The Authority has already taken into account the point highlighted in the submission in specifying its approach towards determination of yield per passenger for the first Tariff Year and X factor (Clause 6.5 of the Guidelines).
	Error Correction Term	19.	Flexibility in implementation of charge increases arising from an under-recovery of the Actual Maximum Allowed Yield per passenger should be exercised when there is an industry downturn.
20.		<p>If the operator is not able to recover the aeronautical or UDF charges (as per AERA approved tariff) from the airport users for any reason, then AERA should allow the recovery in the subsequent years.</p> <p>If during any tariff year within the quinquennia the airport operator has not been able to charge or recover the mandated yield rate he should have the liberty to recover the shortfall in any further year within the quinquennia.</p>	The Authority has specified the treatment for any adjustments to tariffs that may be required for any under-recovery in Clauses 6.20.2 and 6.20.5 of the Guidelines.
21.		In order to leverage an efficient financing capital structure, airport operators generally favour availing foreign currency loans to part fund their project investment. In such cases, at the time of reporting i.e. at the end of the financial period, the current carrying value of such loans is duly adjusted for forex fluctuation and the reported value at the time of submitting the Multi Year Tariff Proposal would be different due to underlying movement in the foreign currency rate. Therefore, the Authority should at the time of annual compliance, true up for the variation in loan fluctuation.	The Authority is of the opinion that sourcing of funds is to be considered a business decision and hence risks associated with the same would need to be borne by the Airport Operator. Accordingly, the Authority is not persuaded to agree to the suggestion of a true up of any fluctuation in forex loans within the Control Period.



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	22.	<p>The following cost should be considered by Authority for effecting error correction;</p> <ol style="list-style-type: none"> Foreign Exchange Fluctuation Bad Debts Force Majeure conditions New Capex/Opex mandated by the Central/State Government or Competent Authority. Change in the Interest rate of debt from the forecasted rates. Variation in Discount 	<p>The Authority has already considered and responded to some of the points above. With respect to the remaining points, it is noting its responses as under:</p> <ol style="list-style-type: none"> Foreign Exchange Fluctuation – Reponse provided above Bad Debts – The Authority believes that bad debts in case of Airport Operators would pertain to inefficiencies in collection/ follow-up for payments from institutional users like Airlines unlike structural problem in collecting payments from retail users (post facto for supply / provision of services) as may be the case in certain other infrastructure sectors. Accordingly, the Authority is not persuaded to accept the submission in this regard. Force Majeure conditions – The Authority shall have reference to its mandate under the Act while considering any specific requests under such a scenario. New Capex/Opex mandated by the Central/State Government or Competent Authority – The Authority has already provided its response above with respect to consideration of capital expenditure that may be mandated by the Government or any other Competent Authority within the Control Period. Further, Clauses 6.16 and 6.17 of the Guidelines already elaborate the provisions with respect to annual adjustments to tariffs that may be required for any changes in Statutory and Other Mandated operating costs. Change in the Interest rate of debt from the forecasted rates – The Authority’s view on this issue is linked and identical to its view on the issue of fluctuation in forex loans noted above. Variation in Discount – The Authority had considered this aspect and has specified that it will not consider any discounts or adjustments made in invoices to / payments by end users against approved tariffs (Clauses 6.10.2 (b) and 6.20.4 of the Guidelines).



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	23.	<p>As proposed if only partial recovery is allowed for forecast error, the operator will be in great loss and will not be able to provide required services to airlines and passengers. It is clearly stated that over-recovery will be clawed back, but under-recovery adjustment is based on various factors which may be unfair towards the airport operator. In subsequent years, the airport operator may try to under estimate volumes, to get higher yield per passenger, which may unnecessarily result in increased aeronautical charges or UDF. The error correction mechanism should suitably address any variance in ATM traffic mix since the airport operator has no control over the same.</p>	<p>The Authority does not agree with the submission that the Airport Operator has no control on traffic. Internationally, airport operators have taken initiatives to develop respective airports as nodes or have invited airlines to develop their bases at the airport. Authority has noted that DIAL has taken initiatives to develop traffic at its airport by inviting Air India to develop its base at Indira Gandhi International Airport at Delhi. Further, there are provisions of bilateral agreements and advanced filing of airline schedules, which limit the uncertainty in traffic and ATM mix to a large extent. Therefore, the Authority reiterates it's earlier considered position, reflected in relevant provisions of the Guidelines, in this regard.</p> <p>The Authority assumes that the Airport Operators would file their traffic forecasts with responsibility and would not try to either underestimate or overestimate the same. At any rate, the Authority would review such forecasts, and put them for stakeholder consultation which would substantially mitigate the possibility of gaming.</p> <p>It is also highlighted that the Authority proposes to allow the Airport Operator to retain any over-recovery on account of variation in Volume (of traffic) within the specified band and a suitable amendment to this effect has been made to Clause 6.20.4 of the Guidelines by way of a proviso.</p>
	24.	<p>In respect to the traffic estimate submitted by the operator, the Authority may accept or approve a different traffic forecast. If the actual traffic falls short of such stretched traffic estimate, the airport operator need not be called for to make up the loss in the traffic.</p>	<p>The Authority is of the opinion that this submission is based on assumptions and presumptions. The Authority cannot accept the interpretation that its review would imply "stretching" of the forecast.</p> <p>The Authority's review of the Airport Operator's submissions would take into account relevant factors including inputs and responses from stakeholders as stated above.</p>



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	25.	The under-recovery or over-recovery of the charges in year 't' should be adjusted in year 't+2' based on actual capital expenditure, traffic, operating expenditure, depreciation, tax and non-aeronautical revenues in year 't'.	The Authority had considered various aspects and submissions and has enunciated the principles of error correction within the Control Period in Clause 6.20 of the Guidelines. The Authority is of the opinion that suggested adjustments would be inconsistent with an incentive based tariff regime that the Authority has specified.
	26.	The under-recovery due to factors beyond the control of airport operator should be compensated within Multi Year Tariff Proposal period.	The treatment for any adjustments to tariffs within the Control Period, that may be required for any under-recovery have been specified in Clauses 6.20.2 and 6.20.5 of the Guidelines and between Control Periods have been specified in Clause 6.21.2.
Proposed Inclusions	27.	FIA has proposed certain inserts on miscellaneous provisions under the following heads: a. Issue of Orders and Practice Directions b. Powers to remove difficulties c. Power of Relaxation d. Interpretation e. Saving of Inherent Powers of the Authority f. Power to Amend	The Authority has considered the proposed inserts and believes that appropriate provisions are either already covered in the Guidelines (Clause 2.29 on Interpretation) or are not required to be provided in the Guidelines (do not need reiteration) in view of the mandate of the Authority under provisions of the Act.
Depreciation	28.	Respondents have suggested that the Authority position of considering only 90% of the asset value for computing depreciation is in contradiction with the Companies Act, 1956. Respondents have suggested that 95% of asset value be allowed for computing depreciation or only a nominal minimal residual value (e.g. 1%) should be retained as replacement / revitalisation of the asset may be equally or more expensive than new construction. Depreciation on assets funded by grants/ development funded assets should be allowed as the same is permitted in other regulated sectors (e.g. Power).	The Authority had detailed its considerations and decision on the issue of depreciation in its Order No. 13/2010-11 dated 12 th January 2011.



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Confidentiality of information	29.	<p>Notwithstanding the right of the operator to request confidential treatment of submissions, the Authority should define in consultation with the stakeholders which kind of submissions could be considered commercially sensitive and hence should be treated as confidential.</p> <p>Security related information should also be treated as confidential.</p>	<p>The Authority had already considered this aspect and will be guided by provisions under Clauses 2.14 and 3.2 of the Guidelines.</p>
Future capital expenditure	30.	<p>An important Regulatory Building Block component for the control period should also plan future investment for expansion, modernisation or meeting regulatory safety/security requirements. Securing of funds for future investments may have to be carried out during a control period even when investments fall into a subsequent control period.</p> <p>Airports must be allowed access to sufficient funds to finance the investments which are needed to meet projected demand. In some cases, pre-financing of airport infrastructure projects through raising airport charges during or before the period of construction is appropriate, in line with the guidelines set out in ICAO Doc. 9082.</p>	<p>The Authority draws attention to Clause 6.8.7 as modified and Clause 6.8.8 of the Guidelines which enunciate the Authority's position on pre-funding. The Authority will have due regard to requirements for funding capital expenditure programs at airports and would address them on a case to case basis depending upon the nature of the airport and requirements thereof.</p>
Services subject to separate control	31.	<p>Authority has required the airport operator to maintain separate account for the aforementioned three services. This is an onerous exercise and may please be dispensed with.</p>	<p>The Authority believes that it cannot discharge its duties under the Act and determined tariffs for such services in absence of such account separation.</p>
	32.	<p>Clarity is also sought in circumstances where a service provider is providing service to end users who have all signed agreements and a soft touch regulation has been approved and later on a new end user joins who do not have user agreements. It is presumed that once the approval is received for 5 years it will prevail.</p>	<p>The Authority has considered this submission and believes that it will not be possible to specify a uniform approach without reference to the specific context of service provision at any given airport. Accordingly, the Authority cannot confirm the stated presumption and will take a view in such a scenario on a case to case basis.</p>



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	33.	The consultation process in a scenario where competition is already there does not have any purpose and the same may be dispensed with	The Authority believes that its remit under the Act requires due focus and adherence to requirements for stakeholder consultations specified by it.
Service Quality Rebate Term	34.	Monthly assessment of meeting performance standards may not be appropriate as some of the performance indicators such as ASQ passenger ratings are carried out on a quarterly basis. The ASQ programme does not allow for monthly results which in effect mean the airport operator would have to duplicate the activities in order to obtain monthly feedback. The airport operator should therefore have an option to choose the frequency with which performance related feedback is provided ranging from monthly to quarterly feedback according to practicality and cost.	The Authority is cognizant of this aspect and has specified monitoring of subjective parameter on a quarterly basis (Clause 6.14.3 of the Guidelines).
	35.	A further issue to be considered is seasonality. Monthly or quarterly variations in performance may be due to seasonal factors (e.g. variations in passenger numbers during high & low season, weather related issues, etc.). Hence, performance comparisons should be made not on the basis of the previous month/quarter but with regards to the previous year.	The Authority draws attention to provisions on operationalizing the Service Quality Rebate term incorporated in the Guidelines. The Service Quality Rebate term is determined based on absolute benchmarks rather than comparison with previous month / quarter.



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	36.	<p>The concession agreement of airport operators lays down quality parameters. The relevant provisions of the concessions have mandated the standards and time frame for achieving the same. Therefore the provisions of the relevant concession documents should be followed in this respect.</p> <p>Further any penalty for non-achievement should not be imposed over and above the penalty provisions as prescribed in the concession documents.</p>	<p>The Authority has specified that the Guidelines would be applicable to the Indira Gandhi International Airport, New Delhi, Chhatrapati Shivaji International Airport, Mumbai and the Civil Enclaves at Goa and Pune in such form and manner as the Authority may by a separate order determine. This aspect has also been recognized by the Authority in its Order No. 13/2010-11 dated 12th January 2011. Accordingly, provisions of relevant concession agreements shall be given due consideration while determining tariffs in future.</p> <p>At any rate, Airport Operators and the Authority would need to fulfill their respective statutory obligations. The Authority has stipulated the provisions with respect to Service Quality Rebate with respect to its mandate under Section 13 (1) (a) of the Act.</p>

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	37.	<p>As per the AERA Act, 2008 Authority has been mandated to only monitor the preset quality standards. Any new standard prescribed by Authority goes beyond the mandate.</p>	<p>In terms of Section 13 (1) (a) of the Act, the Authority is required to determine tariffs for aeronautical services inter alia taking into consideration “(ii) the service provided, its quality and other relevant factors”. The Authority has stipulated the provisions with respect to Service Quality Rebate with respect to its mandate under the Act under Section 13 (1) (a).</p> <p>Further, terms of Section 13 (1) (d) of the Act, the Authority is required to monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any Authority authorized by it in this behalf. While discharging its functions under Section 13 (1) (d) of the Act, the Authority would monitor the performance standards as may be set by the Central Government.</p> <p>In view of the above position, the Authority does not feel that it has gone beyond its mandate while prescribing the Service Quality Rebate term. At any rate, the quality of service is one of the most important parameters directly impinging upon the users. Therefore the Authority believes that any measures taken for ensuring good quality service at the airports would be welcomed by the Airport Operators.</p>



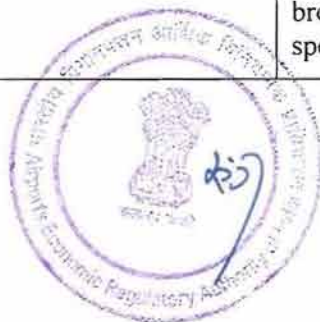
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Treatment of Dividend Income	38.	<p>Dividend from Investment is an activity outside the airport business and as such should be outside the regulatory purview. Investment in these activities as well as dividend thereof should not form part of tariff determination.</p> <p>Profits retained by the airport operator which are subsequently deployed in any non-regulated activity ought not to be under regulatory review and the income from such investments, in any form, should not be used for future tariff determination.</p>	<p>Authority is in agreement with this submission in general. However, the Authority notes that investments by the Airport Operator into an entity (sub-contractor/ JV) performing airport related services within the Airport would give returns to the Airport operator principally on account of:</p> <p>A. revenue share/ lease rentals etc. B. dividend if any declared by such sub-contractor/ JV</p> <p>Secondly, the participation of the Airport Operator in such an entity discharging airport related services within the Airport would only be on account of the fact that the Airport Operator has the sole license to manage the Airport.</p> <p>Hence, in view of the Authority, both types of income (A and B above) are arising out of the airport business and the monopoly power of the Airport Operator. Hence, such incomes ought to be taken into account.</p> <p>In addition, Authority is of the opinion that it would not be in a position to realistically review the distribution of income between A and B to enable it to appropriately prevent gaming by the Airport Operator while awarding such sub-contracts/ JV.</p>
	39.	<p>Similarly, profits retained by the airport operator which is subsequently deployed in any regulated activity should be treated as equity on which CAPM based equity return be provided and interpolated in the fair rate of return computation.</p>	<p>The Authority will consider the equity component of funding for investments. Returns on such component shall be provided based on provisions under Clause 5.1.3 of the Guidelines.</p>



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Stakeholder Consultation	40.	Authority should ensure that there is due consultation with the stakeholders including airlines before any change in charging system/ tariff is introduced.	The Authority is in agreement with this submission and has already stipulated the requirements and process for stakeholder consultations, during the process of tariff determination, under Clauses 3.2, 3.5 and A5.2.5 of the Guidelines.
	41.	In view of the provisions of OMDA and SSA for DIAL, MIAL, BIAL and GHIAL, the following may be evolved after comprehensive stakeholder consultations: a. Airport specific regulatory regime and tariff structures including specific deviations with justifications for each deviation b. The consultation must transparently share the filings and justification for each deviation submitted by the Airport Operator and the prima facie view of the Authority	The guidelines under consultation do not ipso facto apply to airports at Delhi and Mumbai as stated in Clause 1.4 of the Guidelines. As regards airports at Hyderabad and Bengaluru, the Multi-Year Tariff Order and Annual Tariff Order in respect of these airports shall be submitted for stakeholder consultation as provided in Clauses 3.2, 3.5 and A5.2.5 of the Guidelines.
	42.	Investment in Non-Aeronautical Activities should not be part of Consultation process	The Authority is unable to accept the submission under a Single Till based regulatory framework adopted by it, vide its Order No. 13/2010-11 dated 12 th January 2011.
	43.	Consultation for Future Capex, in order to be effective should be taken up only at the time of actual implementation of the said capex. Since the master planning of the future capex is a time taking exercise Authority must mandate consultation only at the start of the actual project implementation.	The Authority believes that for effective and constructive consultation, the justification for the project itself should be evolved in consultation with stakeholders. Therefore, it has proposed AUCC to cover, inter alia, the consultation in respect of justification for the proposed project.
	44.	The stakeholder consultation process for RAB inclusion and exclusion should be defined by the Regulator in order to ensure due (and time bound) process.	The Authority will undertake stakeholder consultations on such aspects as part of the tariff determination process, on a case to case basis. The broad principles for RAB inclusion and exclusion have already been specified in Clause 5.2.1 of the Guidelines.



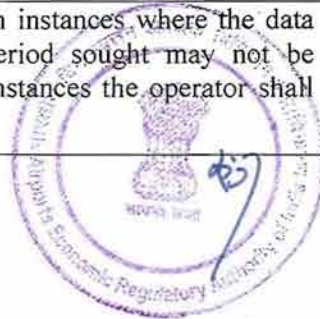
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	45.	A minimum investment floor should be given clarifying when and for which type of project a consultation process should be undertaken. Having to go through a consultative process for any type and size of investment will only hamper development.	The Authority has already considered this aspect and has accordingly specified the scope of consultation under Section A1.3 of the Guidelines.
	46.	While splitting a project into several projects in order to reduce the investment volumes below the threshold should be avoided (as is the objective of this clause), there should also be a mechanism for avoiding arbitrarily lumping unrelated projects by putative Users in order to ensure they cross the threshold and force a consultative process were none would otherwise be required.	Authority's view is that the consultation process is beneficial to the end users. Therefore, if an Airport Operator groups unrelated project for crossing the threshold limit, the end users should get benefit by giving their inputs.
	47.	The information requirement by the Airport Operator seems unduly heavy leading to considerable administrative burden and disclosure. This issue should be reviewed and simplified.	In absence of any specific suggestion, the Authority believes that the information requirement as mentioned in Section A1.5.2 of the Guidelines is optimal for a meaningful consultation process.
	48.	Airports by their very nature have a wide variety of stakeholders and customers whose overall concerns they have to keep in consideration. Individual stakeholders frequently have singular interests (e.g. low cost airlines don't want boarding bridges; all-cargo carriers don't worry about passenger infrastructure; full service carriers want differentiated services for their first, business and economy passengers). As the Airport Operator has to take a view which developments are in overall interest to the users, it has to be clear that user consultation means a true and fair hearing and assessment of user views but not necessarily agreement with those or any single stakeholder's views.	The Authority has already provided for this contingency in Section A1.6 of the Guidelines.
	49.	The referral process to the Authority should be time bound in order to avoid any project delays.	The Authority believes that in view of the uncertainty on the nature of referrals, it would not be feasible to stipulate a timeframe for such referrals at this stage. The Authority would endeavor to handle the referral process in an expeditious manner.



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	50.	Clarification is sought that is there a need to conclude consultation process before the start of the control period with regard to the projected investment consultation process and that the time available would be too less to conclude the consultation and make a tariff filing in such a case.	The Authority draws reference to Clause 5.2.5 of the Guidelines and Section 17.5.5.a of the Authority's Order No. 13/2010-11 dated 12 th January 2011 with respect to provisions requiring consultation. In view of the submission on time requirements for such consultation, the Authority has revised the timeframes for submission of Tariff Proposals (as mentioned above).
	51.	It is difficult to understand the need for user consultation in traffic forecast which may not be stipulated.	The Authority believes that inputs from users – especially airlines, would be important to inform the Authority's assessment of traffic forecasts.
	52.	In appendix I dealing with consultation protocol it is requested that in a 1.2.3.3 "the Express Industry Council of India, and express cargo operators operating at that airport should also be included as they are the actual users.	The Authority recognizes the importance of EICI as stakeholders at major airports and accepts the submission and Section A1.2.3.3 of the Guidelines has been amended accordingly.
Information requirement	53.	The detail and volume of information to be submitted to the Regulator appears highly inflated. This will cause the operator unreasonably high additional cost and administrative effort and overhead. The type and volume of information required should therefore be reviewed and reduced. It is difficult to see how the Regulator will be able to process all the received documentation given the constantly increasing volume of air traffic resulting in an ever larger number of airports that will come within the purview of the Regulator. There is a real risk of the regulatory process becoming unduly slow and bureaucratic hampering ongoing operations and discouraging investment in new infrastructure.	The Authority believes that the information requirement as stipulated is optimal and would be required for regulatory review and discharge of its functions under the Act. In any case, no specific suggestion has been made by the respondent in this regard.
	54.	Clarification is sought on data submission in instances where the data required in the attached formats or the period sought may not be available. It is presumed that in such circumstances the operator shall submit details to the extent possible.	The Authority would require data submission as specified in the Guidelines. In any case, no specific difficulty has been highlighted by the respondent.



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	55.	Due to uncertain market conditions it may not be practical to submit 10 year capital investment plan.	It has been submitted by certain respondents that Airport Operators may require securing of funds during a Control Period for likely investments in a subsequent Control Period. In this context, the Authority is of the opinion that submission of a 10 year Business Plan would be required to enable it to assess such funding requirements and consequently determine the tariff profile.
	56.	The Authority has sought a long term 15years traffic forecast which is difficult to predict and may not be accurate. Additionally, 10 year historical data has been sought which may not be entirely available with the operators. Therefore, we request Authority to kindly re-visit the said requirement.	In view of the above response, the Authority is reiterates requirement for a 15 year traffic forecast.
	57.	According to EICI, all data gathering sheets with respect to the tariff and revenues should be recorded separately for express cargo as differential rates are charged and hence an inaccurate picture will emerge in the absence of the same. Hence, details for express cargo and the tariff charged should be collected separately and appropriate provisions made for regulation of the same.	In Form 13 (a) of the Guidelines, the Authority has provided for submission of relevant information by Airport Operators for different revenue heads. Wherever, the express cargo is separately handled and tariffs thereof are charged at rates different from general cargo, the Airport Operator would be expected to provide such information as a separate revenue head.
	58.	In appendix 5 a 5.4.1.7 sub para (g) air cargo facilities have been indicated and a separate head for revenue generating area "express air cargo facilities" should be included.	The Authority has accepted this submission and has appropriately modified Section A5.4.1.7 (g) of the Guidelines.
	59.	In the form F 12 for data gathering a specific heading for revenue generated from express cargo which could be later clubbed with cargo should be clearly specified as a subheading of cargo.	As mentioned in the Data Forms, the fields in italics are only indicative and may be populated in greater details by the Airport Operator as required on a case to case basis.



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Financing Allowance for WIP assets	60.	<p>The Authority has advocated an approach for the provision of the financing allowance i.e. cost of debt on the opening WIPAt, and on the average of the capex (net of the grants if any and commissioned assets), for the project assets under construction.</p> <p>In the line with the aforesaid approach, this principle should be extended to the existing commissioned project assets. The cost of equity on the equity financed portion of the project assets should also be capitalized based on their respective commissioning dates and this should be suitably reflected in the Initial RAB. Suitable adjustment will be made in accumulated depreciation.</p>	<p>The Authority expects that commissioned project assets would have been duly capitalized. In such a case, the commissioned assets would be included in the RAB and returns provided thereon.</p>
	Fair Rate of Return	61.	<p>The airport operators should be allowed to make reasonable estimate of the cost of their own equity capital. The airport operators should be allowed to demonstrate the reasonable assumptions considered while determining the cost of equity.</p>
62.		<p>Interest free deposits are in the nature of quasi equity contributions. Therefore, the aforesaid deposits funds utilised towards RAB should carry the cost of equity.</p>	<p>Interest free deposits may be treated by financial institutions as quasi-equity for the purpose of, inter alia, computing debt-equity ratio. They however cannot be given the same return as equity on that account.</p> <p>Their actual cost to the company would alone need to be factored for the calculation of Fair Rate of Return chargeable to users.</p> <p>The Authority shall therefore consider the actual cost of arrangement of such deposits as provided under modified Clause 5.1.5 of the Guidelines.</p>
63.		<p>The capital structure of the company shall undergo changes on account of varying gearing level due to adjustment of foreign exchange fluctuations in the outstanding debt for the respective tariff year within</p>	<p>As noted above, the Authority does not consider it appropriate to make adjustments for fluctuations in forex loans. Therefore, any ancillary effect of such fluctuations also cannot be considered.</p>



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		<p>the control period. In such circumstances, appropriate adjustment on account of revised gearing should be incorporate at the time of annual compliance.</p> <p>The Authority has proposed a uniform cost of equity during the control period as against the weighted average cost of debt. However, the ancillary effect of the change in the gearing and also due to increase/decrease of debt due to other factors would be on the equity beta which is a key input while determining the cost of equity.</p>	
	64.	<p>While the Authority maintains that it provides a fair rate of return, this contention may not be correct given that many risks are not a pass through in the true up mechanism thus leading to the situation that the fair rate of return may only be on paper. Such risks, inter alia, include:</p> <ol style="list-style-type: none"> Risk of change in traffic mix Risk of traffic within the traffic band Forex fluctuation Increase on operating costs for reasons beyond control of airport not fully compensated by WPI increase Increase in Capex/opex as mandated by government post tariff fixation. Non remunerative assets of Non Aero being excluded by the Authority Now allowance of bad debt s Disallowance in capex Changes in rate of interest 10% depreciation on RAB not being allowed Shortfall in Non Aero revenue Mandated discounts is not allowed Non achievement of X (efficiency factor) Force majeure 	<p>This is a list of various business and operation risks. The Authority has adopted an incentive based Price Cap approach to tariff determination. Truing up of all such business risks would tantamount to making it a Rate of Return approach. At any rate, if truing up is undertaken for all such business risks, thereby mitigating them, reassessment of beta may be required to reflect such reduction in risks.</p>



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		o. Change in Tax Rates and Penalties and Interest on Taxation	
Discounts	65.	Discounts which are transparent and non-discriminatory in nature, including the ones mandated by Government should be allowed to be part of tariff determination. Disallowance of the same tantamount to reduction in fair return.	Pursuant to the commencement of the Act, the power to determine tariffs in respect of the aeronautical services provided at the major airports vests with the Authority. The Authority has adopted an incentive based Price Cap approach to determining tariffs. The objective is to ensure that the Airport Operator obtains a fair return on his investment. If the Airport Operators provide discounts on the basis of guidelines given by any other Competent Authority, regulatory principles may require any shortfall to be made good by such Competent Authority.
X factor	66.	Mechanism of fixation of X Factor has not been explained in the consultation paper and may please be suitably explained. Reasonable and achievable efficiency target i.e 'X' should be given and there should be provision for a reasonable time lag to achieve efficiency.	The Authority believes that determination of X factor would be based on a range of factors, for which only general guidelines can be provided, which have been provided in Clause 6.5 of the Guidelines.
	67.	Efficiency may vary depending on many factors as pointed out by this clause. However, one important factor is congestion. As a facility becomes more congested efficiency will decrease. Countering the efficiency decrease will increase cost disproportionately until additional capacity has been provided. Performance indicators should therefore be reflective of the capacity utilisation.	In view of provision under Section 13 (1) (a) of the Act, the Authority expects that Airport Operators will make timely investment in improving airport facilities to avoid congestion and to ensure quality of service in line with the expectations of the users.
Historical Losses	68.	More clarity is required to assess how the historical losses would be covered in tariff fixation in the first control period.	The Authority does not propose to consider historical losses while determining tariffs under section 13 (1) (a) of the Act since the Control Period has been specified under Clause 2.15 of the Guidelines to commence from 1 st April 2011.
Operation and Maintenance	69.	Any substantial change in the forecasted traffic will also entail change in forecasted expenditure. An allowance to this account should also be permitted by the Authority through its error correction mechanism at annual reviews.	The Forecast Error Correction Term specified under Clause 6.15 of the Guidelines provides for sharing of associated risk.

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	70.	It is assumed that operation and maintenance of non-aeronautical assets would also be allowed irrespective by what so ever name it may be referred to.	The Authority has specified under Clause 5.4.2 (a) of the Guidelines that it will consider operation and maintenance expenditure with respect to assets and services taken into consideration for determination of Aggregate Revenue Requirement. Under a Single Till regime, operation and maintenance expenditure would be considered for attendant non-aeronautical assets as well.
Taxation	71.	<p>In the normal process of assessment of taxation, various contentious issues may come up having an impact on taxation that may need to be appealed and contested. Consequently penalties and interest on taxes may be imposed and should be allowed as a pass through vide error correction mechanism.</p> <p>In normal course of business there may be a situation that any additional tax demand may become payable due to difference in legal interpretation or assessment of past years. This should be allowed as a pass through an error correction mechanism.</p>	The Authority expects that the Airport Operators would be paying the tax due in time and as per the provisions of the laws as may be applicable. Therefore, the Authority's view is that accepting suggestions such as providing pass through of penalties, fines, etc. would tantamount to incentivising defaults under tax jurisdiction.
	72.	Any tax benefits provided by the Government to attract investment should not be taken away and the computation of taxation done without considering tax benefits and incentives.	The Authority considers that tax cannot be treated to be a revenue enhancing / generating instrument and therefore has to be considered on actual basis.
	73.	The operator should be allowed to retain the tax shield i.e notional tax on expenditure not considered in a regulatory determination.	As per Clause 5.5.2 of the Guidelines, the Authority shall review forecast for corporate tax calculation consistent with its review of other Regulatory Building Blocks.
	74.	Further, Authority has not considered any change in the corporate tax rate for the purpose of error correction in the allowable yield. We are of the view that such implication may be suitably incorporated at the time of annual review and not at the end of control period.	On balance, the Authority's view is that the existing position as stated in Clause 6.21.2 (a) of the Guidelines is more appropriate.
Incentives	75.	In order to encourage timely and efficient investments, Authority may specify a RAB adjustment. The consultation paper does not elaborate further on the mechanics of computing the said incentive which may please be done.	Reference may be made to Clause 5.2.6 of the Guidelines on Rolling forward the RAB for the Authority's view on incentive adjustment. As mentioned in the Clause, the incentive adjustment may be determined by the Authority to encourage timely investments based on

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Broad Area	S. No.	Comments given by Stakeholders	Authority Response
			effectiveness and efficiency of such investment. Therefore, the mechanics of computing the said incentive would need to be determined by the Authority on a case to case basis.
	76.	Any savings in the opex achieved by the airport operator should be allowed to be benefitting him in deciding the base airport operating expenses of the next quinquennia. Due consideration to the saving achieved in the last year of the control period must be given for incentivising the airport operator.	Such situation is not contemplated in an incentive based regulatory regime sought to be implemented by the Authority and for which there has been broad acceptance.
Scope of Regulation	77.	EICI has submitted that the licensing of warehousing space and provision of x-ray machines should fall within the purview of aeronautical services.	The broader issue with respect to licensing of warehousing space has been dealt with under Para 16.1 of the Order No. 13/2010-11 dated 12 th January 2011. The Tariff relating to x-ray machine usage and certification come under the purview of the Authority.
	78.	EICI has stated that the objective of the AERA Act was not to exclude express cargo facilities at an airport but rather to include them keeping in mind the unique requirements for processing express cargo and hence specific provisions in the Guidelines should be included with respect to express cargo as a distinct sub category within cargo.	The Authority considers express cargo industry as an important part of the airport business and in this regard suggestions by EICI have been agreed to as noted in the responses above.

