



Airports Economic Regulatory Authority of India

**In the matter of Provision of Compensation in lieu of Fuel Throughput Charges at
Chhatrapati Shivaji Maharaj International Airport, Mumbai**

19th May, 2020

**AERA Building
Administrative Complex
Safdarjung Airport
New Delhi – 110 003**

AERA



1. Introduction

The Airports Economic Regulatory Authority (AERA) is a statutory body constituted under the Airports Economic Regulatory Authority of India Act, 2008 vide Gazette Notification dated 5th December 2008. The AERA was established by the Government, to create a level playing field and foster healthy competition among major airports, to encourage investment in airport facilities, to regulate tariffs for aeronautical services etc.

2. Function of AERA

The main functions of AERA are:

- to determine the tariff for the aeronautical services
- to determine the amount of the development fees in respect of major airports
- to determine the amount of the passengers service fee levied under rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934 (22 of 1934);
- 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;

3. Back Ground

3.1 Ministry of Civil Aviation vide letter No.AV.13030/216/2016-ER (Pt.2) dated 08.01.2020 has decided to discontinue the levy of Airport Operator Charge or Fuel Throughput Charge (FTC) in any manifestation at all airports. Para 4 of the said letter reads as under:

"Keeping in view all aspects of the matter, in light of the need to uphold affordability and sustainability of air passenger and air cargo transportation as per the National Civil Aviation Policy 2016, it has been decided as follows:

- Levy of airport operator charge or fuel throughput charge in any manifestation shall be discontinued at all airports, airstrips and heliports across India with immediate effect.*
- AERA/ Ministry of Civil Aviation, as the case may be, should take into account the amount in this revenue stream and duly compensate the Airport Operator/ AAI by suitably recalibrating other tariffs during their determinations of airport tariffs."*

4. In accordance with the provisions contained in Section 13 of Airports Economic Regulatory Authority of India Act (AERA Act), 2008, the Authority determined aeronautical tariffs of Chhatrapati Shivaji Maharaj International Airport (CSMI Airport), Mumbai under the regulatory principles for the second Control Period i.e. 01.04.2014 to 31.03.2019 vide Order No. 13/2016-17 dated 23.09.2016. Further, AERA vide various orders had extended the tariff prevailing as on 31.03.2019 till 30.09.2020 or determination of tariff for 3rd control period whichever is earlier.



4.1 As detailed in Table 62 under para 12.32 of the above said order, the Authority determined Rs.6190.56 crores as the total discounted Aggregate Revenue Requirement (ARR) for the entire second control period. Fuel Throughput Charge (FTC) was one of the aeronautical component to achieve this revenue requirement along with other aeronautical services such as Landing, Parking & Housing, UDF, etc.

4.2 The Fuel Throughput charges as per the above tariff order considered by the Authority is given in table -1 below:

Table - 1

	2018-19	
Fuel Throughput projected (in '000 KL)	1545.90	
Charges per KL (in Rs)	973.54	
Revenue (Rs. in crores)	150.50	

5. Considering the above policy decision of MoCA, the Authority vide letter No. AERA/ 20015/FT/2010-11/Vol.II dated 15.01.2020 advised all major airport operators to implement the above said MoCA letter with immediate effect. AERA, also advised major Airport Operators to submit their proposal for compensation, if any, due to discontinuation of Fuel Throughput Charges for consideration of the Authority.

6. Accordingly, MIAL vide letters No. (i) MIAL/CEO/98 dated 24.01.2020, (ii) MIAL/VPR/2019-20/14 dated 26.02.2020, (iii) MIAL/CEO/109 dated 04.03.2020 and (iv) MIAL/VPR/2019-20/16 dated 11.03.2020 have informed that they have discontinued levy of FTC at CSMI Airport w.e.f.15.01.2020 and the expected revenue loss of Rs.182.16 crores on account of discontinuation of FTC at CSMI Airport, Mumbai for the period from 15.01.2020 to 31.03.2021 is proposed to be recovered from the airlines in the form of additional adhoc charges per landing. The shortfall in revenue from 15.01.2020 to 31.03.2021 calculated by MIAL is given in table-2 below:

Table - 2

	15.01.2020 to 31.03.2020	2020-21	Total
Revenue from Fuel Throughput (Rs. in crores)	31.66	150.50	182.16

6.1 MIAL vide letter dated 24.01.2020 also stated that from the perusal of MoCA letter, it doesn't seem to be a direction under provisions of Section 42 of the AERA Act. MIAL further stated that

"without prejudice to the fact that MIAL considers FTC as non-aeronautical in nature and also without prejudice to the fact that the present advice of MoCA is not a direction, we would like to submit our suggestions as follows:

Since FTC is permitted along with base airport charges, hence its identity needs to be kept distinct. As a result, we request that in lieu of FTC, the Authority may permit invoice to be raised by the airport Operator (MIAL in the present case) directly on the airlines with effect from 16th January, 2020 for adhoc charges aligned with the landing charges calculation at present. Adhoc charges could be derived from historical percentage of FTC to total landing charges. This will serve

the purpose of airlines being able to avail ITC and will retain separate identity of revenue in lieu of FTC”.

6.2 MIAL has requested AERA to allow adhoc landing charges w.e.f. 16.01.2020 as given in table-3 below. Further MIAL has proposed an escalation by WPI with a maximum cap of 7% and minimum of 5% for F Y 2020-21.

Table - 3

	Adhoc charges per Landing for FY 20 (Rs)
Domestic	5200
General Aviation	2600
International (Category of Aircraft)	
Code C	18800
Code D	20700
Code E	37600
Code F	60200

Authority's Examination

7. The Authority carefully examined the proposal of MIAL in reference to the letter No. AV.13030/216/ 2016-ER (Pt.2) dated 08.01.2020 issued by MoCA.

7.1 The Authority as per Order No.13/2016-17 had expected that MIAL would generate revenue from Landing and FTC during F Y 2018-19 of the second control period as detailed below:

Table – 4 (Rs in crores)

	2018-19
Revenue from Landing	764.53
Revenue from FTC	150.50

7.2 The Authority observes that tariff determination of MIAL for the 3rd control period (01.04.2019 to 31.03.2024) is in progress and finalization may take some more time, accordingly orders are issued to extend the tariffs of 2nd control period up to 30.09.2020 or determination of tariff for 3rd control period, whichever is earlier. Since, the tariff of FY2018-19 still continues, the expected shortfall in revenue from FTC may not be more than the revenue projected for FY 2018-19 vide tariff order No.13/2016-17. Accordingly, the Authority expects a maximum shortfall of Rs. 31.35 crores for the period from 15.01.2020 to 31.03.2020 and Rs. 75.25 crores for the period April to September, 2020. AERA noted that the shortfall in revenue from FTC expected by MIAL is Rs. 106.60 crores for the period from 15.01.2020 to 30.09.2020 which is 27.88% of expected landing revenue of RS 382.26 crores for the period from April 2020 to September 2020.



7.3 The Authority is of the view that FTC is one of the operating expenditure of airlines charged by Oil suppliers as a pass through expenditure. At present Airport Operators are charging FTC as a royalty in addition to land rent from oil suppliers. With the abolition of FTC the cost of ATF is expected to get reduced to that extent and avoid cascading effect of taxes which in turn would benefit airlines. The airlines would also benefit from input tax credit on GST to be charged by Airport operator on proposed additional landing charges. In view of above, the Authority proposed to compensate this shortfall by increasing the landing charges by 27.88% as additional adhoc landing charges from 01.04.2020 to 30.09.2020 which shall be trued up while determining tariffs of CSMI, Airport for the 3rd control period.

7.4 Regarding the statement of MIAL at para 6.1, the Authority has noted that MoCA has conducted numerous rounds of stakeholders consultations and considered the deliberations of two industry working groups representing airline operators, airports, fuel infrastructure facility providers, oil marketing companies etc. without prejudice to the outcome of judicial proceedings on the matter of classification of FTC as aeronautical or non-aeronautical services.

8. The Authority considered the submissions made by MIAL and issued the Consultation Paper No. 24/2019-20 dated 20.03.2020 proposing the following for stakeholders consultation:

- (i) The Authority proposes additional charge as "adhoc charge per Landing" at Chhatrapati Shivaji Maharaj International Airport, Mumbai, for the period from 01.04.2020 to 30.09.2020 or till determination of aeronautical charges for the 3rd control period whichever is earlier, to recover the shortfall of Rs. 106.60 crores.
- (ii) To true up revenue based on actuals while determining tariff for third control period.

9. Stakeholders Comments

In response to the Consultation Paper No. 24/2019-20 dated 20.03.2020 the comments have been received from the following stakeholders:

9.1 Federation of Indian Airlines (FIA)

FIA stated that AERA should not implement increase of airport charges/tariff, of any nature whatsoever, due to the adverse financial impact on the airlines in the wake of Corona virus outbreak. FIA further submitted the following, in case AERA is desirous to implement any increase in airport charges:

- (a) "firstly, the consultation paper may kindly be placed in abeyance till the aviation industry experiences normalcy and;
- (b) Thereafter, as and when the consultation exercise on the consultation papers are resumed, the following needs to be ensured:"
 - (i) Analysis on identification of tariff component for effecting amendments:- FIA stated that the consultation paper fails to provide any cogent reasons for MIAL's proposal to levy adhoc landing charges instead of any other airport



charges. The consultation paper ought to provide/discuss (a) whether airport operator has considered other aeronautical tariff components instead of adhoc landing charges for the purpose of seeking compensation? If yes, provide reasons for not proposing the same for tariff revision, along with any cost benefit analysis on such tariff component? (b) whether airport operator has considered compensation by way of revision of non-aeronautical sources? (c) AERA's scrutiny on revision of other tariff components including the alternate possibility of compensation through non-aeronautical sources.

FIA further submitted that the revision of tariff, if any, should be made only in the pass-through elements of the airport charges e.g. UDF, PSF-Facilitation etc. which will avoid any adverse impact on airline industry.

- (ii) FIA also submitted that AERA invited written submissions from stakeholders on the consultation paper without convening stakeholders meeting. FIA stated that AERA is bound to hold due consultation with the stakeholders while discharging its functions in terms of Section 13(4) of AERA Act, 2008.

FIA also stated that there has been no stakeholder consultation on the issue of tariff adjustment pursuant to the abolishment of FTC by MoCA as stated in para 7.3 of the consultation paper. It is essential that a suitable stakeholders consultation meeting is convened by AERA, preferably for identifying a common tariff component.

9.2 International Air Transport Association (IATA):

IATA requested to defer any increase in airport charges as compensation in lieu of FTC for the remaining period of this control period due to outbreak of COVID-19 and consequential disruptions in the aviation industry. IATA also suggested that Airport Operators should equally play their role in this situation by lowering their profit expectations and help to provide the much-needed financial relief to airlines through reductions or rebates to airport charges.

9.3 Association of Private Airport Operators (APAO):

APAO stated that the airport operators have suffered a setback on their revenues with discontinuance of FTC which was initiated at the request of airlines, while the airlines have gained towards the loss of GST thereon. APAO also stated that since no consultation process was followed for discontinuation of FTC, there was no need to go into this consultation process as the FTC was forming part of revenue requirement fixed by the Authority and no new charge is being proposed by the Authority.

9.4 Bangalore International Airport Ltd (BIAL)

BIAL stated that the Authority should also consider the time value of the shortfall already suffered by the airport operator so that the airport is duly compensated for the actual shortfall without waiting for the final true up at the end of the control period.

9.5 **Bharat Petroleum Corporation Ltd.:** stated that they have no objection to the proposal of AERA.



10 MIAL's view on stakeholders comments:

10.1 MIAL has stated that, the Authority was supposed to compensate Airport Operators for loss of revenue due to withdrawal of FTC as per the direction of MoCA. APAO has also pointed out that since no consultation process was followed for discontinuation of FTC, there was no need to initiate the consultation process for allowing a charge in lieu of FTC.

10.2 MIAL further stated that the reason for issue of consultation paper by the Authority is only to decide modality to compensate airport operator. Any objection by any stakeholder for compensatory charge per se is not justified as it is in violation of direction of MoCA which is binding on the Authority and stakeholders, hence such objection needs to be dismissed ab initio.

10.3 MIAL also stated that, the genesis of all this exercise was burden of GST on supply of fuel to airlines as the same is not eligible for input tax credit. The proposed modality for compensation of MIAL was based on most tax friendly proposition as airlines will be able to take input tax credit of GST. Any insistence by airlines to levy compensatory charge on passengers defeats the very purpose of whole exercise as individual passengers will not be able to take input tax credit of GST.

10.4 The Consultation Paper has adequately explained the reason for proposed levy of compensatory charge as ad hoc charges, hence the contention of stakeholders to defer the proposal is not tenable and needs to be outrightly rejected because the proposal does not put any additional burden on airlines. MIAL further stated that, relief to airlines and airports on account of COVID-19 is to be considered by the Government of India and not by the Authority.

11. Authority's view on Stakeholder's Comments.

11.1 The Authority carefully examined the comments of stakeholders and is of the view that AERA had considered FTC as one of the aeronautical charges to recover the target revenue. The present crisis due to COVID 19 outbreak affected all the stakeholders across aviation industry including airport operators. The ARR for the Airport operator was calculated taking into account the income from FTC and not paying compensation for the same would be revenue loss for the Airport operator, while the Airlines are expected to benefit financially from the abolition of FTC. Hence any delay in implementation of this order is not appropriate.

11.2 The suggestion of FIA to compensate by way of revising non-aeronautical tariffs may not be feasible as AERA is mandated to determine aeronautical tariffs only. AERA considers FTC as one of the aeronautical charges, hence, the shortfall can be compensated through aeronautical services only. FTC was a part of fuel cost for airlines and abolition of FTC and consequent avoidance of cascading effect of taxes has direct benefit for airlines, hence to compensate the airport operator, charging passengers may not be appropriate. The Authority also noted that presently no UDF is levied from domestic passengers at CSMI Airport, Mumbai. Imposing any new charges would require extensive stake holders consultation.

11.3 Regarding FIA's suggestion for holding stakeholders meeting the Authority decides not to conduct the same in view of following:

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- a) The Authority observed that MoCA has conducted numerous rounds of stakeholder's consultations and considered the deliberations of two industry working groups representing airline operators, airport operators, fuel infrastructure facility providers, oil marketing companies etc. before abolishing the FTC.
- b) Abolition of FTC, which directly benefits the airlines and aas they can avail input tax credit, necessitates recalibration of other tariffs to compensate/cover the shortfall in revenue of the Airport Operator.
- c) The Authority, by putting up a consultation paper and inviting detailed comments, had given an opportunity to all the stakeholders to express their views on the Consultation Paper.

11.4 The Authority has also decided to true up this revenue base on actual figure considering time value of money while determining tariff for the third control period.

11.5 Accordingly, the Authority decides to compensate MIAL Rs.106.60 crores by increasing the Landing charges by 27.88% as additional adhoc landing charges as detailed in Table given below:

Additional Adhoc Charges per Landing

	Unit	As per Order No. 13/2016-17	Additional Adhoc Charges per Landing
Landing Charges – International			
Code C	Per Landing	Rs. 110250	Rs 30738
Code D	Per Landing	Rs 121275	Rs 33811
Code E	Per Landing	Rs 220500	Rs 61475
Code F	Per Landing	Rs 352800	Rs 98361
Landing Charges – Domestic			
Up to 100 MT	INR per MT	760.73	212.09
Above 100 MT	INR per MT	76073 +Rs.1019.81 per MT in excess of 100 MT	21209 + 284.32 per MT in excess of 100 MT



ORDER

Upon careful consideration of material available on record, the Authority, in exercise of powers conferred by Section 13(1) (a) of the AERA Act, 2008 hereby orders that:

- (i) The Authority has decided to allow additional charge as "ad hoc charge per Landing" at Chhatrapati Shivaji Maharaj International Airport, Mumbai, for the period from **01.06.2020** to 30.09.2020 or till determination of aeronautical charges for the 3rd control period whichever is earlier, to recover the shortfall of Rs. 106.60 crores. In case the determination of Tariff is not completed within 30.09.2020, the Authority will issue a separate/fresh order for this component/charge to be levied effective October 2020. The Ad hoc Charge per Landing is annexed as "**Annexure I**".
- (ii) To true up revenue based on actuals while determining tariff for third control period.

By the Order and in the name of the Authority.



सत्यमेव जयते

Ram Krishan

(Ram Krishan)

Director (Policy & Statistics)

To

Mumbai International Airport Limited
Santacruz (E).
Mumbai - 400 059
(Through: Sh. Rajeev Jain, Chief Executive Officer)

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AERA



Additional Landing Charges per landing for the period from 01.06.2020 to 30.09.2020 in respect of Chhatrapati Shivaji Maharaj International Airport, Mumbai

	Unit	As per Order No. 13/2016-17	Additional Landing Charges per Landing
Landing Charges - International			
Code C	Per Landing	Rs. 110250	Rs 30738
Code D	Per Landing	Rs 121275	Rs 33811
Code E	Per Landing	Rs 220500	Rs 61475
Code F	Per Landing	Rs 352800	Rs 9836.1
Landing Charges – Domestic			
Up to 100 MT	INR per MT	760.73	212.09
Above 100 MT	INR per MT	76073 +Rs.1019.81 per MT in excess of 100 MT	21209 + 284.32 per MT in excess of 100 MT

Fuel Throughput Charges for FY 2020-21: **NIL**

The additional landing charges per landing are in addition to landing charges prevailing as per order No.13/2016-17 dated 23.09.2016.

All other charges as determined and terms & conditions vide order No.13/2016-17 dated 23.09.2016 shall remain applicable.

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