



**Airports Economic Regulatory Authority of India**

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

**New Delhi: 5<sup>th</sup> October, 2016**

**AERA Building  
Administrative Complex  
Safdarjung Airport**

## **1. Introduction**

1.1 The Government of India has recently approved the National Civil Aviation Policy-2016(NCAP-2016) with the objective of taking flying to the masses. A major regional connectivity scheme has been introduced and along with other incentives the policy aims at achieving the ticketing of 300 million domestic passengers by 2022 and 500 million domestic passengers by 2027.

1.2 While the NCAP covers a large number of policy areas, the provisions that relate to economic regulation and therefore of relevance to AERA's work are the following:

- a) Till mechanism for tariff determination
- b) Assessment of competition to decide on the method of tariff regulation.

These provisions are at variance with the regulatory approach adopted by AERA and the proposal is to take them on board for future tariff determination.

## **2 Till Mechanism for Tariff Determination**

2.1 The Airports Economic Regulatory Authority of India vide para 17.5.2.a of the Order No. 13/2010-11 dated 12.01.2011 regarding Regulatory Philosophy and Approach in Economic Regulation of Airport Operators, adopted the "Single Till" regulatory regime for major airports other than Delhi and Mumbai. This was based on the rationale that for any given airport under the single till mechanism the airport charges are the lowest and therefore it is beneficial to the customers. In the case of IGI Airport, Delhi (DIAL) and CSI Airport, Mumbai (MIAL) tariff is being determined under "Shared Till" as per the provisions of the State Support Agreement signed by the concessionaires with the Govt prior to the enactment of the AERA Act.

2.2 On the advice of Govt. of India, AERA adopted a Shared till mechanism for the Bengaluru airport to fund its capital projects. Later the Govt. of India also directed AERA to adopt a shared till to determine aeronautical tariff at Hyderabad airport. In such a scenario, there were some airports where tariff were fixed under a shared till and others where the tariffs were fixed under the single till approach. This anomaly is envisaged to be addressed in the NCAP.

2.3. Para 12(c) of the NCAP-2016 states that:

*"To ensure uniformity and level playing field across various operators, future tariffs at all airports will be calculated on a 'hybrid till' basis, unless otherwise specified for any project being bid out in future. 30% of non-aeronautical revenue will be used to cross-subsidise aeronautical charges....."*

## **3. Competition Assessment in Tariff fixation for Ground handling activities**

3.1 In the case of tariff determination for Independent Service Providers (ISPs) of

Ground Handling, Cargo, Supply of fuel, etc. in major airports, AERA adopts the 'light touch approach' if the provision of the service is not material or if it is competitive.

3.2. As per para 5.1 of the Directions under Section 15 of the AERA Act, 2008, issued on 10.01.2011 for determination of tariff for services provided for cargo facility, Ground Handling and Supply of Fuel to the Aircraft, if the regulated service is being provided at major airport by two or more Service Provider(s), it shall be deemed competitive at the airport. Also for determination of number of Service Provider(s) at major airport, the Airport Operator shall also be included, if the Airport Operator is also providing Regulated Services(s) at that major airport.

3.3 Para 19(a) of the NCAP-2016 states that:

*“The airport operator will ensure that there will be three Ground Handling Agencies (GHA) including Air India's subsidiary/JV at all major airports as defined in AERA Act 2008 to ensure fair competition”.*

3.4 Since the Government's policy on provision of Ground Handling has changed, the approach of AERA for competition assessment may also need revision.

#### **4. Authority's Observation and Proposal**

4.1 The Authority observed that the provisions of NACP-2016 as brought out above have an impact on the “Single Till” regulatory philosophy adopted by the Authority for Airport Operators and the criteria for competition assessment adopted for the Independent Service Providers (ISPs). The Authority also observed that for implementing the aforementioned provisions of the NCAP-2016, no direction has been received from the Ministry of Civil Aviation under section 42 of the AERA Act, 2008.

4.2 The Authority in its 163<sup>rd</sup> meeting held on 10.08.2016 considered the NCAP-2016 and decided that AERA may adopt “Hybrid Till” regulatory regime for determination of tariffs at major airports in future in line with the new policy. However, the true up for the first control period shall be done on “Single Till” basis unless there is any direction from the Govt. of India to the contrary. It was further decided that the decision of the Authority to shift from the Regulatory philosophy of “Single till” to “Hybrid till” and also the criteria for competition assessment of the Ground Handling service providers from two competitors to three, may be put up for stakeholder consultation and a Consultation Paper may be issued for the same.

4.3 In view of above the following is put up for stakeholder consultation:

- (i) In line with the provision under para 12(c) of the NCAP-2016, AERA may adopt “Hybrid Till” for determination of tariffs for Airport Operators/Independent Service Providers under the Price-cap Model from the second control period. The true up for the first control period shall be done on “Single Till” basis unless there is any direction from the Govt. of India to the contrary.
- (ii) The criteria for competition assessment for ground handling service providers may be considered as minimum 3 competitors instead of 2 as envisaged in para 19(a) of the NCAP-2016.

5. In accordance with the provisions of Section 13(4) of the AERA Act, the proposal contained in para 4.3 above is hereby put forth for stakeholder consultation. To assist the stakeholders in making their submissions in a meaningful and constructive manner, necessary documents are enclosed as **Annexure I**. For removal of doubts, it is clarified that the contents of this Consultation Paper may not be construed as any Order or Direction of this Authority. The Authority shall pass an Order, in the matter, only after considering the submissions of the stakeholders in response hereto and by making such decision fully documented and explained in terms of the provisions of the Act.

5.1 The Authority welcomes written evidence-based feedback, comments and suggestions from stakeholders on the proposal made in para 4.3 above, latest by **25<sup>th</sup>, October, 2016** at the following address:

**Secretary,  
Airports Economic Regulatory Authority of India,  
AERA Building,  
Administrative Complex,  
Safdarjung Airport,  
New Delhi- 110003  
Email: puja.jindal@nic.in  
Tel: 011-24695042  
Fax: 011-24695039**

**S. Machendranathan  
Chairperson**

## EXTRACT FROM NCAP-2016

prior approval from MoCA will be required. The designated carriers of India simply need to inform MoCA 30 days prior to starting the code-share flights. However, if it is found at any point of time that the code share agreement violates the ASA, the same shall be disallowed, notwithstanding prior intimation given to MoCA.

- d) A review will be carried out as and when required on need basis and at least once in 5 years to consider the requirement of further liberalization in code-share agreements.

**11. Fiscal Support**

MRO, ground handling, cargo and ATF infrastructure facilities co-located at an airport, (including heliport licensed by DGCA) are covered under the 'Harmonised List of Infrastructure and will get the benefit of 'infrastructure' sector.

**12. Airports developed by State Governments, Private sector or in PPP mode**

MoCA will continue to encourage development of airports by the State Governments or the private sector or in PPP mode. MoCA will also encourage the State Governments to develop new airports in their State by forming SPV with Airport Authority of India or with other interested Public Sector Undertakings/ Industry in order to create stake and ownership. Wherever so required, MoCA will endeavour to provide regulatory certainty with the following framework:

- a) MoCA will coordinate with AERA, AAI, airlines, airport operators and stakeholders like cargo, MRO, ground handling, etc to identify ways to

bring down airport charges, while abiding by the provisions of existing concession agreements and contracts.

- b) MoCA will endeavour that the future airport projects in India, both Greenfield and Brownfield, have cost efficient functionality with no compromise on safety, security and efficiency.
- c) To ensure uniformity and level playing field across various operators, future tariffs at all airports will be calculated on a 'hybrid till' basis, unless otherwise specified for any project being bid out in future. 30% of non-aeronautical revenue will be used to cross-subsidise 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.
- d) There are restrictions on the use of land allocated for commercial use of airport. MoCA will explore ways to unlock the potential of the same by liberalising the end-use restrictions for existing (excluding PPP) and future Greenfield and Brownfield airports of AAI and future Greenfield and Brownfield airport projects under PPP.
- e) MoCA will coordinate with respective ministries and state governments to provide multi-modal hinterland connectivity (road, rail, metro, waterways, etc).
- f) In future concessions/development of Airports, it will be necessary to ensure a minimum level and standard of cargo facility at the airport.

B. The following steps are also being proposed for ease of doing business and to provide further incentive to this sector:

- a) Foreign MRO/OEM experts will be provided visas promptly, and in cases of an Aircraft on Ground (AOG) situation, Temporary Landing Permits shall be issued, subject to conditions.
- b) Foreign pilots operating an aircraft to and from India for the purpose of servicing at an Indian MRO entity will be issued Temporary Landing Permits, subject to conditions.
- c) Airport Entry Passes (AEPs) for MROs will be need based and not restricted if required conditions are met.
- d) MoCA will persuade State Governments to make VAT zero-rated on MRO activities.
- e) Provision for adequate land for MRO service providers will be made in all future airport/heliport projects where potential for such MRO services exists.
- f) Airport royalty and additional charges will not be levied on MRO service providers for a period of five years from the date of approval of the policy.

#### **19. Ground handling**

The existing Ground Handling Policy/Instructions/Regulations will be replaced by a new framework given below:

- a) The airport operator will ensure that there will be three Ground Handling Agencies (GHA) including Air India's subsidiary/JV at all major airports as defined in AERA Act 2008 to ensure fair competition.

[F.No. AERA / 25013 / CP / 03 / 2009-10]

17.4.2. In respect of Bengaluru and Hyderabad airports, the article 10 of the respective Concession Agreements prescribe that Regulated Charges, i.e. Airport Charges specified in Schedule 6 of the Concession Agreement, shall be consistent with the ICAO policies. The Authority notes that in addition to the charges prescribed as Regulated Charges in the Concession Agreements relating to Bengaluru and Hyderabad airports, in terms of the provisions of the Act, it would also be required to regulate the tariffs relating to aeronautical services contained in Section 2 clause (a) sub-clauses (iii)–(vi) of the Act. Further, the the general framework for economic regulation of aeronautical services as being laid down here is consistent with the ICAO policies. Therefore, the framework being laid down here would also be applicable to Bengaluru and Hyderabad airports.

17.4.3. The overall approach and framework specified hereinafter does not apply, ipso facto, to the two Civil Enclaves (at present, Goa and Pune) within the regulatory ambit of the Authority. Appropriate views in respect of the said Civil Enclaves would be taken by the Authority with the representation of the Ministry of Defence in accordance with the provisions of sub-section (1) of Section 4 of the Act.

17.5. Regulatory Philosophy and Approach to Economic Regulation of Airports

17.5.1. Form of regulation

17.5.1.a. The Authority hereby adopts the Price Cap Regulation, also termed as incentive based regulation.

17.5.2. Regulatory till definition

17.5.2.a. The Authority hereby adopts "Single Till" regulatory regime for major airports in India.

17.5.3. Fair rate of return

17.5.3.a. The Authority will estimate the Fair Rate of Return by using a Weighted Average Cost of Capital approach to estimating the nominal post-tax cost of capital after making appropriate assumptions for inflation.

17.5.3.b. The Authority adopts the Capital Asset Pricing Model as the most appropriate approach for determining the cost of equity. However, depending on the circumstances of a particular case, the Authority will not be precluded from considering a range of evidence relating to its assessment of the cost of equity.

17.5.3.c. For estimating the cost of debt, the Authority will consider the forecast cost of existing debt likely to be faced by the airports, subject to the Authority being assured of the reasonableness of



Where 'Total Cargo Volume at Major Airports' represents the sum total cargo volume in MT per annum, handled at all major airports.

- (ii) Where the  $MI_C$ , as calculated above is 2.5% or more at a major airport, the service provided for cargo facility at major airport A shall be deemed 'material'. If  $MI_C$  is below 2.5%, then service provided for cargo facility at major airport A shall be deemed 'not material'.

4.4. Services provided for ground handling services<sup>3</sup>

- (i) The materiality index for services provided for ground handling at major airport A shall be defined as:

$$\text{Materiality Index (MI}_C\text{)} = \frac{\text{International Aircraft Movements at major airport A}}{\text{Total International Aircraft Movements at Major Airports}} \times 100$$

Where 'International Aircraft Movements' represent the total number of international aircraft movements per annum at major airport A.

Where 'Total International Aircraft Movements at Major Airports' represents the sum total international aircraft movements per annum at all major airports.

- (ii) Where the  $MI_C$  as calculated above is 5% or more at a major airport, the services provided for ground handling at major airport A shall be deemed 'material'. If  $MI_C$  is below 5%, then services provided for ground handling at major airport A shall be deemed 'not material'.

5. Competition Assessment

- 5.1. Where a Regulated Service is being provided at a major airport by two or more Service Provider(s), it shall be deemed 'competitive' at that airport. If a Regulated Service is provided by less than two Service Provider(s), it shall be deemed 'not competitive'.

Provided that the Authority may in its discretion consider such other additional evidence regarding reasonableness of competition, as it may deem fit.

Explanation: For avoidance of any doubt, the determination of number of Service Provider(s) at a major airport shall include the Airport Operator, if the Airport Operator is also providing Regulated Service(s) at that major airport.

6. Reasonableness of User Agreement(s)

- 6.1. The Authority shall consider the existing User Agreement(s) as reasonable provided that:

- 6.1.1. The Service Provider submits existing User Agreement(s) between the Service Provider and all the User(s) of the Regulated Service(s), clearly

<sup>3</sup> Reference Appendix II: Explanation for materiality assessment



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