



Federation of Indian Airlines

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MOST URGENT

09 November 2020

To,
The Chairperson,
Airports Economic Regulatory Authority of India (AERA),
AERA Building, Administrative Complex,
Safdarjung Airport,
New Delhi - 110003

Kind Attention: Shri. B S Bhullar, IAS

Subject: FIA's submission towards AERA CP.No. 35/2020-21 titled "In the matter of determination of aeronautical tariffs in respect of Chhatrapati Shivaji International Airport, Mumbai for the Third Control Period (01.04.2019-31.03.2024)"

Dear Sir,

The AERA on 21.09.20 issued CP.No. 35/2020-21 in respect of determination of aeronautical tariffs of MIAL for their Third Control Period (01.04.2019 to 31.03.2024). And on 16.10.2020, AERA issued the Annual Tariff Plan/Tariff Card filed by MIAL for the purposes of this present submission, post which AERA held a virtual Stakeholder Consultation Meeting on 26.10.2020 (**Stakeholder Meeting**). FIA and its member airlines were present in the said meeting and have expressed their views on the Consultation Paper.

Further to which FIA on behalf of its member airlines submit its written submission (PFA) to AERA for perusal and kind consideration.

Thanking you,

Yours sincerely,

For and on behalf of Federation of Indian Airlines,


UJJWAL DEY
Associate Director

A. BACKGROUND

1. On 21.09.2020, the Airports Economic Regulatory Authority of India (hereinafter referred to as the "**Authority**") had issued the File. No. AERA/20010/MYTP/MIAL/CP-III/2018-19 (Consultation Paper No. 35/2020-21) in respect of determination of aeronautical tariffs of Chhatrapati Shivaji International Airport, Mumbai (**Mumbai Airport**) for the Third Control Period (01.04.2019 to 31.03.2024) (**TCP**), owned and operated by the Mumbai International Airport Limited (**MIAL**). On 16.10.2020, the Authority issued the Annual Tariff Plan/Tariff Card filed by MIAL. For the purposes of this present submission, the Consultation Paper No. 03/2019-20 as mentioned above shall be hereinafter be referred to as "**Consultation Paper**" or "**CP**".

2. The Authority held a virtual Stakeholder Consultation Meeting on 26.10.2020 (**Stakeholder Meeting**). FIA and its member airlines were present in the said meeting and have expressed their views on the Consultation Paper.

3. As mentioned in para 1.4.1 and 1.4.2, the Authority had finalised the MYTP of the for First Control Period (**FCP**) and Second Control Period (**SCP**) of Mumbai Airport, vide Consultation Paper Order no. 32/2012-13 & 13/2016-17 dated 15th January 2013 and 23rd September 2016, respectively. As noted by Authority, MIAL has filed appeals against Authority's Order, for FCP and SCP, which are in various stages of adjudication, including before Hon'ble Supreme Court. Authority has considered all orders passed by Hon'ble TDSAT till date of issuance of Consultation Paper.

4. By way of this present submission, FIA on behalf of its member airlines submits its objections to the Consultation Paper, without any prejudice and craving to submit any additional submission as and when required.

B. CONTEXT OF THE CONSULTATION

5. At the outset, it is noteworthy that the Authority is under a bounden duty to determine the tariff in terms of: -

- (a) Statutory provisions under the Airports Economic Regulatory Authority of India, Act, 2008 (**AERA Act**);
- (b) AERA (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011 (**AERA Guidelines**);
- (c) Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Services Provided for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft) Guidelines 2011 (**CGF Guidelines**); and
- (d) Normative Norms and Orders affecting determination of Tariff for major airports as issued by Authority, regulatory jurisprudence and settled principles of law creating a level playing field to foster competition, plurality and private investments in the civil aviation sector.

6. To assist the Authority in appreciating these submissions on the Consultation Paper, FIA would like to state that the present submissions are without prejudice to our right and contentions, reserving FIA's right to submit additional submissions/objections at a later stage and subject to the following: -

- (a) In para 1.5.1 of the Consultation Paper, it is stated that Mumbai Airport filed its original MYTP submission on 8.06.2019 for the TCP and further revised the MYTP with submissions dated 19.03.2020. FIA submits that Consultation Paper does not provide the stakeholders with various information including - detailed MYTP or financial model to compute the target revenue, computation of 'X' Factor/CPI-X, split of target revenue between various aero charges and UDF to understand the tariff card charge, computation of tariff between heads from ANTR proposed in CP for different type of aeronautical service, bid documents for privatization of Mumbai Airport (as also sought in previous control periods) *etc.*

FIA is a stakeholder for determination of tariff of Mumbai Airport. FIA submits that as per a catena of judicial pronouncements, it is a well settled principal of doctrine of natural justice – ‘**audi alteram partem**’ (meaning, hear the other side), that before taking any decision/action affecting the rights and liabilities of an individual/entity, an opportunity of showing cause and to submit response thereto has to be afforded to the person whose rights and/or liabilities may be affected. This principal is further enshrined under section 13 (4) of the AERA Act, which provides that the Authority shall ensure transparency while exercising its powers and discharging its functions, *inter alia*:

- (i) by holding due consultations with all stakeholders with the airport;
- (ii) by allowing all stakeholders to make their submissions to the Authority; and
- (iii) by making all decisions of the Authority fully documented and explained.

FIA request that various information as sought by FIA as mentioned herein is provided prior to determination of tariff of Mumbai Airport for TCP.

- (b) It is pertinent to mention that FIA has challenged the Order passed by Hon’ble TDSAT pertaining to Tariff Order for FCP of Mumbai Airport before Hon’ble Supreme Court vide Civil Appeal No. 6658 of 2019 and other connected matters, wherein MIAL is also a party. Authority may kindly note that outcome of the abovementioned litigations before the Hon’ble Supreme Court will have a bearing/impact the tariff determination for the TCP, and accordingly submissions made herein are without prejudice to right to FIA to make additional submissions, as and when required.

7. ‘Determination’ by the Authority:

- (a) Section 13(1) (a) of the AERA Act requires the Authority to ‘determine’ the tariff for aeronautical services. Any ‘determination’ by a statutory authority must clearly show the application of mind and analysis carried out by the Authority.

FIA submits that "to determine tariff" in terms of Section 13 (1)(a) of the AERA Act, the Authority has to carry out a scientific exercise by deducing past performance on the basis of historical data balancing diverse policy objectives and evaluating the comparative weight to be ascribed to the interests of all stakeholders.

FIA submits that however, in the present case, the Authority has proposed to allow various expenditures/projections like Capital Expenditure, Traffic Projections, Non-Aeronautical Revenue etc. merely on an 'ad-hoc' basis or MIAL's submissions and has failed to provide any justification of its own or detailed analysis for the same with the help of an independent study.

(b) It is to be noted that to ensure transparency while exercising its discharge of functions by the Authority under AERA Act it is implied obligation to produce all relevant documents and make decisions which are fully documented and explained.

In this regard, the judgment of the Hon'ble Supreme Court in the case of *Ashok Leyland Ltd. vs. State of Tamil Nadu & Anr. reported as (2004) 3 SCC 1 (FB)* (at Paragraph No. 94) is noteworthy.

The Hon'ble Supreme Court has held that the word 'Determination' must also be given its full effect to, which pre-supposes application of mind and expression of the conclusion. It connotes the official determination and not a mere opinion or finding.

The Hon'ble Telecom Dispute Settlement Appellate Tribunal (**TDSAT**) has also held that determination requires application of mind in the Judgment dated 16.12.2010 in Appeal No. 3(C) of 2010 titled as *Zee Turner Ltd. vs. TRAI & Ors.* (at Paragraph No. 150).

(c) Further, Section 13(1)(4)(c) of the AERA Act mandates that any decision by the Authority must be fully documented and explained.

C. ISSUEWISE SUBMISSIONS

I. CLARIFICATIONS/AMENDMENTS REQUIRED UNDER ANNUAL TARIFF PLAN (ATP)/TARIFF CARD

8. FIA submits that per para 12.2.5 of the CP, Authority directed MIAL to submit the tariff card within ten (10) days of the issuance of Consultation Paper, to be further reviewed and issued by the Authority. Subsequently, MIAL submitted the proposed ATP/Tariff card for TCP basis the NTR calculated by the Authority vide its letter dated 15.10.2020, as issued by Authority vide Public Notice No. 15/2020-21 dated 16.10.2020. FIA submits that Authority should review the ATP/Tariff Card submitted by MIAL and accordingly consider/clarify the following issues:

(a) Clause 2.1: Charge per Landing in Lieu of FTC (both domestic and international)

At the outset, FIA wishes to state that the basis of 'Charge per landing in lieu of FTC', has not been explained in the CP. It is pertinent to note that the Authority vide Order No. 7/2020-21 dated 19.05.2020 had ordered the levy of 'Ad-Hoc Charge per landing' to recover expected revenue loss/shortfall (Rs. 106.60 Cr.) on account of discontinuation of FTC at Mumbai Airport (w.e.f 15.01.2020), for a period of 1.06.2020 to 30.09.2020 or till determination of tariff for TCP whichever is earlier. This was further extended by Authority vide Order No. 47/2020-21 for a period of three (3) months w.e.f 1.10.2020 to 31.12.2020 or till determination of tariff for TCP, whichever is earlier, to recover the said shortfall. In view of the above, FIA wishes to understand whether the FTC shortfall has been fully recovered or whether any additional recovery is sought by MIAL through levy of additional landing charges in lieu of FTC for TCP.

Without prejudice to the above, FIA noted that for TCP, tariff rate proposed is not aligned with the methodology of calculation of 'Charge per landing in lieu of FTC' of

*FIA's submission towards the Authority's Consultation Paper No. 35/2020-21 titled
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Mumbai for the Third Control Period (01.04.2019 - 31.03.2024)"*

FY20, which was 27.88% of the landing revenue. FIA further noted that Year On Year (YoY) increase in charges is also not consistent (c.4.7% in FY22, c.8.8% in FY23 and c.1.3% in FY24) (Refer Table below).

Hence, FIA requests MIAL/Authority to clarify how charge per landing in lieu of FTC as a % of landing revenue has been computed for TCP and also to clarify the basis of YoY increase in charges.

Charge per landing in lieu of FTC (Domestic)

Category of Aircraft	INR								%				%		
	Charge in lieu of FTC (Domestic)				Landing charges (Domestic)				% of landing charges				YoY (%)		
	FY21	FY22	FY23	FY24	FY21	FY22	FY23	FY24	FY21	FY22	FY23	FY24	FY22	FY23	FY24
Upto Code C	10,560	11,060	12,030	12,190	23,850	24,900	26,000	27,140	44.3%	44.4%	46.3%	44.9%	4.7%	8.8%	1.3%
Code D	13,200	13,830	15,040	15,230	58,660	61,240	63,930	66,740	22.5%	22.6%	23.5%	22.8%	4.8%	8.7%	1.3%
Code E	15,840	16,590	18,050	18,280	111,950	116,880	122,020	127,390	14.1%	14.2%	14.8%	14.3%	4.7%	8.8%	1.3%
Code F	21,210	22,120	24,060	24,370	200,190	209,000	218,200	227,800	10.6%	10.6%	11.0%	10.7%	4.3%	8.8%	1.3%

Charge per landing in lieu of FTC (International)

Category of Aircraft	INR								%				%		
	Charge in lieu of FTC (International)				Landing charges (International)				% of landing charges				YoY (%)		
	FY21	FY22	FY23	FY24	FY21	FY22	FY23	FY24	FY21	FY22	FY23	FY24	FY22	FY23	FY24
Upto Code C	10,560	11,060	12,030	12,190	110,250	46,090	48,120	50,240	9.6%	24.0%	25.0%	24.3%	4.7%	8.8%	1.3%
Code D	13,200	13,830	15,040	15,230	121,275	50,700	52,930	55,260	10.9%	27.3%	28.4%	27.6%	4.8%	8.7%	1.3%
Code E	15,840	16,590	18,050	18,280	220,500	92,180	96,240	100,470	7.2%	18.0%	18.8%	18.2%	4.7%	8.8%	1.3%
Code F	21,210	22,120	24,060	24,370	352,800	147,480	153,970	160,740	6.0%	15.0%	15.6%	15.2%	4.3%	8.8%	1.3%

Further, FIA submits that:

- (i) any compensation in lieu of FTC, if any, may be given by way of pass through charges; and
- (ii) The proviso to the 'Charge per Landing in lieu of FTC' provides that such charges are payable by all aircraft including helicopters and aircraft with maximum certified seating capacity below 80 and operated by domestic scheduled operators. In view of the above, smaller aircrafts with less than 80 seats capacity (For e.g. ATRs) will now be chargeable with amount mentioned for Code C. However, it may be pertinent to note that all aircrafts with less than 80 seats capacity are exempted by Govt. of India vide Order no. G.17018/7/2001-AAI dated 09.02.2004. Hence, it is submitted that

exemption in additional 'Charge per landing in lieu of FTC', should be provided to aircrafts less than 80 seats.

(b) **Clause 1.2: Parking Charges**

Clause (b) of the Note to the Parking Charges provide that the Parking Charges shall be calculated from 'Chocks On till Chocks Off'. FIA submits that tariff orders passed by Authority for various major airport including for Mumbai airport, provide for standard exemption of fifteen (15) mins before and after take-off and touch down respectively as below:

- a) No Parking Charges shall be levied for the first two hours. While calculating free parking period, standard time of 15 minutes shall be added on account of time taken between touch down time and actual parking time on the parking stand. Another standard time of 15 minutes shall be added on account of taxing time of aircraft from parking stand to take off point. These periods shall be applicable for each aircraft irrespective of the actual time taken in the movement of aircraft after landing and before takeoff.

Similar exemption is also provided under Schedule 8 of State Support Agreement dated 26 April 2006 (**SSA**) for Mumbai Airport. FIA submits that present Clause (b) of the Note should be amended in line with the above to provide for fifteen (15) minutes standard time w.r.t after touchdown and takeoff to maintain uniformity with other AERA Orders and provisions of SSA.

(c) **Clause 4.1: UDF and Ad Hoc UDF**

At the outset, FIA wishes to submit that the issue of levy of UDF at Mumbai Airport has been opposed by FIA in the FCP (along with detailed reasons) and is presently sub-judice before the Hon'ble Supreme Court in the Civil Appeal 10902 of 2018 tagged with Civil Appeal No. 6658 of 2019 and other connected matters for Delhi and Mumbai Airport. Without prejudice to the above, FIA submits that:

- (i) Under Clause (c) of the Note it is provided that '*Airlines would be eligible for collection charges if the Passenger data is shared by 3rd day post completion of the*

billing week. Airlines are liable to pay penal charges @ Rs. 10,000 per day for delay in submission of passenger data for billing'.

FIA submits that the above clause does not provide for exception for delay on account of unintentional or unforeseen events, like technical delays with or without prior intimation etc. It is requested that a suitable exemption clause is provided in relation to the same. Further, a clarification is required that whether the eligibility will resume after providing data after such delay or whether the collection charges will be permanently forfeited. Further, it is also requested that the penal provisions may be removed.

(ii) It is requested that exemption categories of in the levy of UDF are not covered in Tariff Card. Further it needs to be clarified whether the UDF will be applicable from the travel date or the date of issuance of tickets. The above clarifications are in view of similar provisions of Tariff Orders passed by Authority for other major airports; and

(iii) FIA submits that certain building blocks can be reviewed by the Authority which has led to higher ANTR and shortfall, like operating expenses, traffic, Non – Aeronautical Revenue (NAR). FIA has conducted analysis on each of the building blocks and recommended measures to review the same, as discussed below. Accordingly, FIA submits that the Authority should review the measures to contain the shortfall in the revenue and the corresponding increase in the levy of UDF/Ad- Hoc UDF by adjusting the current building blocks (as discussed below). FIA submits that the levy of UDF/Ad-Hoc UDF will impact the viability and affordability of the Mumbai Airport for airlines and passengers.

(d) **Aviation Security Fee**

FIA submits that the Tariff Card should clarify the rates and exemptions for levy and collection of Aviation Security Fee at Mumbai Airport in line with latest government regulations.

- (e) Further, the Authority is requested to clarify the break-up of the NTR among the Tariff heads or collection of aeronautical revenue considered for the purpose of arriving at ATP/Tariff Card, separately.

II. ADJUSTMENT/ REDUCTION TO TRAFFIC ON ACCOUNT OF COVID-19 ARE NOT EXPLAINED WITH A SCIENTIFIC BASIS OR JUSTIFICATION. AUTHORITY IS REQUESTED TO CONDUCTED INDEPENDENT STUDY OF ITS OWN

9. FIA submits that per para 9.2.1 and 9.2.2 of the CP, the Authority has analysed the traffic growth – passenger and ATM for last two control periods (FCP and SCP). Due to the constraints in runway and terminal capacity, Authority concluded that it may not be practical to apply CAGR of the previous control periods for projecting traffic of MIAL for TCP. Further, Authority stated that *'Hence there is a requirement to determine the best and most scientific methodology to project traffic for third control period for Mumbai'*.

10. FIA submits that the Authority has further considered factors like runway closure and utilization, exclusion of certain Taxiways, impact of opening of new airport at Navi Mumbai, suspension of Jet Airways, reconstruction of T1- B in arriving at traffic projections under Table 146 of the CP. Further, such projection has been further revised in view of impact of COVID – 19 Pandemic under Table 147 and Table 148 of the CP. Accordingly, FY21 and FY22 has been projected at 50% and 75% of FY20 traffic, respectively.

FIA submits that no detailed analysis or a scientific basis for the above COVID – 19 related adjustment, has been given by the Authority. While FIA appreciates that due to the unprecedented pandemic of this nature, traffic projection may result in an ad-hoc projection, any conservative estimation in the same will lead to higher tariff, thereby adversely impacting the passengers and the airline industry.

11. FIA submits that, the Authority despite acknowledging the need for a scientific study to determine traffic for Mumbai Airport (Para 9.2.2 of the CP), have not initiated the same.

FIA submits that in view of the above and provisions of the AERA Act, **Authority should conduct an independent scientific analysis, which may take into account the growth of traffic due to various factors including:**

- (a) Positive indicators of operational resumption of Jet Airways, keeping in view the approval of the resolution plan of Jet Airways (India) Limited is approved by the Committee of Creditors in terms of the 'Insolvency and Bankruptcy Code, 2016' (**Code**) and now awaits further process under the Code; and
- (b) Gradual easing of capacity restrictions in domestic operations and robust movement of traffic under 'Vande Bharat Mission' and 'Air Bubble Arrangement'. The same may further be verified from official traffic data for the year 2020, as released by government authorities/DGCA on the respective websites.

12. Without prejudice to the above, FIA submits that the until the traffic projection is conducted through an independent study, Authority instead of taking a conservative traffic estimate, may apply the actual traffic number for FY 20 till FY 22 and true up accordingly.

III. CONSERVATIVE AD-HOC ADJUSTMENT FOR PROJECTING NON-AERONAUTICAL REVENUE ON THE BASIS OF CONSERVATIVE TRAFFIC GROWTH. WITH RESPECT TO CONTRACT RELATED REVENUES REDUCTION CANNOT BE DIRECTLY PROPORTIONAL TO PASSENGER TRAFFIC. INDEPENDENT STUDY TO BE CONDUCTED FOR DETERMINING NAR

13. FIA submits that as per para 7.3.2 of CP, the Authority has proposed to consider Non-Aeronautical Revenues (**NAR**) under Table 135 of CP, which have been further adjusted/revised the NAR determined under Table 130 of CP, keeping in view the impact of COVID – 19 on traffic. As a result, FIA observed that NAR was decreased by INR 2,651.38 crores (22.4% of originally proposed NAR), from INR 11,819.94 crores to INR 9,168.56 crores. FIA submits that such reduction is directly in proportion to reduction in passenger traffic which is done on an 'Ad-hoc' basis. Thus, it implies that reduction in NAR is also on 'Ad-hoc' basis.

14. FIA further observed that in TCP, Authority has accepted submission of MIAL for various revenue as which comprises 59.0% (refer table below) of total NAR proposed by Authority for TCP. Further, the Authority has proposed to true-up the actual NAR at the time of tariff determination for the next Control Period.

MIAL submission of non aeronautical revenue accepted by Authority

Reference from Table 135: Page 163 of CP No. 35 MIAL

Particulars	FY20	FY21	FY22	FY23	FY24	INR crores
						SCP
F&B	138.00	72.04	112.81	157.03	178.57	658.44
Retail concession	154.00	80.39	125.89	175.24	199.27	734.78
Car Rentals & Taxi Service	24.00	12.53	19.62	27.31	31.05	114.51
Duty Free Shops	370.00	147.34	277.78	489.66	525.03	1,809.81
Car Parking	24.86	9.80	18.54	33.09	36.40	122.68
Land Rent & Lease	113.08	47.22	86.27	128.67	134.33	509.57
Hangar Rent	15.30	8.20	18.51	28.42	30.56	100.99
Cute counter charges	13.70	6.85	10.27	13.70	14.94	59.46
Cargo Building Rent & Other Building rent	35.74	15.37	28.91	44.40	47.73	172.17
Perishable Cargo	19.96	20.22	20.50	21.22	24.33	106.24
International Cargo Revenue	228.88	88.43	154.32	264.94	287.99	1,024.55
Total NAR accepted by Authority	1,137.52	508.39	873.42	1,383.68	1,510.20	5,413.20
Total NAR projected						9,168.54
% of total NAR accepted by Authority						59.0%

Note - In these cases, Authority has proposed COVID adjustment after accepting original submission

15. FIA further submits that Authority should not propose adjustment to NAR which is not dependent on traffic but are derived from agreements and reverse COVID adjustment to rent & licenses revenue by INR 227.60 crores. This is because, these rentals income are not dependent on traffic but are derived from agreements/Lols/LoAs.

16. FIA further submits that as per section 2 of AERA Act, 2008, under sub-section (a), "aeronautical services means any services provided-

iv) for ground handling services relating to aircraft, passengers and cargo at an airport..(v) for the cargo facility at an airport"

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FIA submits that considering the above provisions, revenue from Cargo services and Ground handling services including CUTE charges, should not be treated as Non – Aeronautical and instead form part of aeronautical revenues. Accordingly, the Authority should take into account of the corresponding revenue and revise the tariff card. FIA submits that considering revenue from cargo and ground handling services and CUTE charges as aeronautical revenue will reduce NTR by INR 1,491.01 crores (19.1%) and INR 41.62 (0.5%) respectively (Refer Table below).

Impact of Treating revenue from cargo and Ground Handling as Aeronautical Revenue

Reference from Table # 135 on Page 163 of CP 35/2020-21

Particulars	FY20	FY21	FY22	FY23	FY24	TCP	NTR as	
							per CP 35	% Change
Cargo revenues	332.16	151.61	242.65	380.96	418.43	1,525.81		
Ground Handling Revenues	126.63	66.10	103.52	144.10	163.86	604.21		
Total Revenues considered as non - aeronautical (A)	458.79	217.71	346.17	525.06	582.29	2,130.02		
Cross Subsidization @ 30% considered for tariff determination (B)	137.64	65.31	103.85	157.52	174.69	639.01		
Amount by which NTR would decrease (A-B)	321.15	152.40	242.32	367.54	407.60	1,491.01	7,799.38	19.1%

Impact of Treating revenue from cute counter charges as Aeronautical Revenue

Reference from Table # 135 on Page 163 of CP 35/2020-21

Particulars	FY20	FY21	FY22	FY23	FY24	TCP	NTR as	
							per CP 35	% Change
Cute counter charges	13.70	6.85	10.27	13.70	14.94	59.46		
Cross Subsidization @ 30% considered for tariff determination (B)	4.11	2.06	3.08	4.11	4.48	17.84		
Amount by which NTR would decrease (A-B)	9.59	4.80	7.19	9.59	10.46	41.62	7,799.38	0.5%

17. FIA further submits that per Para 8.7 of AERA Order No. 13/2016-17 for SCP, it is observed that other income primarily pertains to Bank Deposits, interest on investments, etc. hence this seems to be have no correlation between passenger traffic or COVID, hence it is submitted that accordingly entire INR 472 crores should be considered in NAR without any COVID-19 adjustment.

18. The Authority has sought stakeholder consultation on treatment of security deposits collected from Cargo and Ground handling concessionaires on NAR. However, for discussing on matter regarding impact of such security deposits, FIA would need forecast of surplus/deficit of cashflows in case security deposits is collected/not collected and impact on total NAR if security deposit is not taken from concessionaires. Hence, it is submitted to Authority to provide details of cash flow projections and impact on NAR on release of security deposits collected from concessionaires.

19. Further, FIA observed that in SCP that cross subsidized NAR portion was under projected by 16.0% i.e. by INR 297.85 crores which was primarily due to acceptance of MIAL submissions by Authority. Please refer to table below.

Estimation error in Non aeronautical revenue of SCP

Reference from i) Table # 55 on Page 71 of CP 35/2020-21 and Table # 58 on Page 74 of CP 35/2020-21 INR crores

#	Particulars	FY15	FY16	FY17	FY18	FY19	SCP
A	Estimated in Order No. 13	305.94	327.90	375.06	408.90	448.68	1,866.48
B	Actual 30% of Non aeronautical revenue	306.04	373.98	430.04	504.60	549.67	2,164.33
C	Excess projection	(0.10)	(46.08)	(54.98)	(95.70)	(100.99)	(297.85)
D	% Difference (C) / (A)	(0.0%)	(14.1%)	(14.7%)	(23.4%)	(22.5%)	(16.0%)
E	TR as per Order 13						7,813.93
F	% change in TR (C) / (E)						(3.8%)

20. FIA further submits that per para 7.2.8 that Authority has also accepted MIAL submission that *"refurbishment of T1B would also not result in any significant changes in traffic and nonaeronautical space within the terminal"*. FIA submits that the above claims may be verified by an independent consultant.

21. FIA further submits that as per clause 5.6.1 of the AERA Guidelines, the Authority's review of forecast of revenues from services other than aeronautical services may include scrutiny of bottom-up projections of such revenues prepared by the Airport Operator, benchmarking of revenue levels, commissioning experts to consider where opportunities for such revenues are under-exploited, together with the review of other forecasts for

operation and maintenance expenditure, traffic and capital investment plans that have implications for such activities.

22. FIA submits that FIA submits that NAR is one of the major components for determining NTR (i.e. ~ 35.3% of NTR of TCP). Further, only traffic cannot be the complete driver or determining factor of NAR. In view of the above, FIA submits that Authority should commission an independent study which may examine/review growth in NAR keeping in view above factors/recommendations.

IV. DISPROPORTIONATE ADJUSTMENT TO O&M EXPENSES FOR COVID I.E. BY INR 38.58 CRORES (0.9% ONLY) VS 23.0% REDUCTION IN PASSENGER TRAFFIC. O&M PER PAX HAS INCREASED TO INR 216.06 IN TCP AS COMPARED TO INR 165.15 IN SCP. NO COST RATIONALIZATION MEASURES HAVE BEEN PROPOSED IN O&M EXPENSE PROJECTIONS

23. FIA observed that the overall O&M expenses have increased from INR 3,646 crores in SCP to INR 4,301 crores in TCP (COVID adjusted). FIA submits that increase of 18% in O&M expenses in TCP over SCP does not appear prudent and needs to be further reviewed by the Authority.

Operation & Maintenance costs per passenger

Particulars	FY10	FY11	FY12	FY13	FY14	FCP	FY15	FY16	FY17	FY18	FY19	SCP	FY20	FY21	FY22	FY23	FY24	TCP	
Total O&M* (in crores)	374.98	190.58	311.46	382.04	502.71	1,761.77	820.12	578.56	705.18	722.07	820.32	3,646.25	756.46	858.62	875.68	889.11	921.46	4,301.33	
Passengers [^] (Domestic + International) (in mn.)	25.61	29.07	30.75	30.21	32.22	147.86	36.64	41.67	45.16	48.50	48.83	220.79	45.88	22.94	34.41	45.88	49.97	199.08	
O&M per pax (INR)	146.42	65.56	101.29	126.46	156.02	119.15	223.83	138.84	156.15	148.88	168.00	165.15	164.88	374.29	254.48	193.79	184.40	216.06	
Growth																			
Total O&M (in crores)	(49.2%)	63.4%	22.7%	31.6%			63.1%	(29.5%)	21.9%	2.4%	13.6%	15.7%	(7.8%)	13.5%	2.0%	1.5%	3.6%	3.4%	
Passengers (Domestic + International) (in mn.)		13.5%	5.8%	(1.8%)	6.7%			13.7%	13.7%	8.4%	7.4%	0.7%	8.3%	(6.0%)	(50.0%)	50.0%	33.3%	8.9%	(2.0%)
O&M per pax (INR)		(55.2%)	54.5%	24.9%	23.4%			43.5%	(38.0%)	12.5%	(4.7%)	12.8%	6.7%	(1.9%)	127.0%	(32.0%)	(23.8%)	(4.8%)	5.5%

* - O&M of FCP and SCP is the actual amount taken in true up tables (Table 8 and Table 58 of CP No. 35/2020-21) and O&M of TCP is COVID adjusted amount proposed in table 153 of CP No. 35/2020-21

[^] - Passenger of FCP and SCP is the actual traffic taken in Table 142 of CP No. 35/2020-21 and passenger of TCP is COVID adjusted traffic proposed in table 148 of CP No. 35/2020-21

24. FIA further submits some of the reasons attributable to increase in Operating Expenditure Cost per pax (INR 165.15 per pax in SCP to INR 216.06 per pax in TCP) is attributable to following:

(a) As seen from Table 121 of the CP, the Authority has accepted submission of MIAL for various O&M expenses which comprises 35.9% (refer table below) of total O&M as proposed by Authority. Further, the Authority has proposed to true-up the actual O&M expenses at the time of tariff determination for the next Control Period;

MIAL submission of Aeronautical O&M expenses accepted by Authority

Reference: Table 121: Page 147 of CP No. 35 MIAL

INR crores

Particulars	FY20	FY21	FY22	FY23	FY24	Total
Rents, Rates & Taxes	37.91	39.11	56.45	65.47	66.18	265.12
Administrative Expenses	65.07	67.93	70.92	74.04	77.30	355.25
AOA Fees	8.16	8.32	8.48	8.64	8.80	42.40
Consumption and Store Expense	6.22	7.07	7.51	8.02	8.64	37.46
Operating Expenditure	136.54	142.86	149.47	156.39	163.63	748.89
VRS Payment Amount to AAI	1.27	-	-	-	-	1.27
Financing Charges	15.66	15.66	15.66	15.66	15.66	78.28
Loss on scrapping of assets	-	40.56	-	-	-	40.56
Total	270.83	321.51	308.49	328.22	340.21	1,569.23
Less: COVID adjustment	(0.15)	(14.47)	(7.24)	(2.89)	(1.90)	(26.65)
Revised total (A)	270.68	307.04	301.25	325.33	338.31	1,542.58
Total O&M projected (B)						4,301.34
(A/B)						35.9%

(b) 23% decline in passenger traffic projection of TCP (specifically of FY21 and FY22) on account of COVID against which aeronautical O&M expenses has been reduced by only 0.9%. FIA submits that adjustments for COVID-19 where passenger traffic has been reduced by 23.0% and O&M expenses has been reduced by only 0.9% is not in line with prudent and efficient business principles;

(c) Neither MIAL nor the Authority has proposed any cost rationalization measures or renegotiation of contractual expenses on account of COVID – 19, including but not limited to:

(i) **Advertisement Expenses** - The Authority has duly acknowledged the fact that Advertisement expenses is an unreasonable expenditure which has no relevance to

promote aeronautical activities since the airport is already operating at its peak capacity and airport being an essential utility service its use does not depend on advertisement given or lack of it. Also, FIA noted from Table 118 of the CP that 91.44% of advertisement expenses have been classified as aeronautical expenses. Hence, it is submitted that the Authority should not consider any amount of advertisement expense as aeronautical expense, on account of the same being unreasonable and not justified for aeronautical activity. FIA On exclusion of advertisement expense under aeronautical head would reduce NTR by INR 22.86 crores.

- (ii) **Employee Expense** - Authority has allowed increments in salaries for TCP. It is submitted that in view of losses suffered by aviation industry due to COVID-19, Authority should not allow increments in salaries for TCP (or suitable period determined thereof) and encourage MIAL to implement cost reduction measures for TCP. FIA noted that if increase in salary rate is excluded, NTR would reduce by INR 161.58 crores of TCP;
- (iii) **Power Expense** - Authority has removed the power consumption for Terminal 1 for the year FY 21 based on the average power consumption of Terminal 2 in SCP and accordingly reduced power consumption by 0.24 crores Kwh. However, FIA noted that based on Authority proposal of COVID-19 adjustment, consumption should have been reduced by 8.52 crores Kwh. In terms of amount, short adjustment to power cost is INR 104.33 crores. Hence, it is submitted Authority should revisit calculation for proposing adjustment to power cost on account of COVID-19 and reduce power cost further by INR 104.33 crores;
- (iv) **Administrative Expenses** - it is submitted that Authority should exclude extraordinary expenses and use normalized expenses for the purpose of projecting administrative expenses and should also consider inputs from independent study which highlights that administrative expenses have showed a declining trend and

should not allow YoY inflationary increase. It is further submitted that the Authority has not adjusted Administrative expenses on account of COVID-19, however FIA noted that Travelling & lodging, conveyance and hospitality constitute 25% of administrative expenses which should be adjusted for COVID-19 impact;

- (v) **Airport Operator Assistance (AOA) Fee** – Although the Authority has acknowledged the fact that MIAL is managing and operating airport for last two control periods (10 years) and has gained sufficient experience, the Authority has considered AOA fees as part of efficient Operation & Maintenance expenditure and proposed to consider AOA fees for true up. Therefore, it is submitted that the Authority should discourage airport operator to incur expenses which can be saved by sincere efforts of Airport operator and should exclude AOA fees from Operation & Maintenance expenses;
- (vi) FIA noted per para 6.2.50 that *"MIAL is undertaking a major capital expenditure program in Terminal 1B at a cost of Rs. 890.01 crores"* and also from Table 121 we noted that INR 340.62 crores of capital expenditures have been considered as operating expenditure by Authority. However, Authority has not considered impact of these significant refurbishment and repairs work to reduce forecast of repairs & maintenance expenses of TCP. Hence, it is submitted that the Authority should not use past trend to forecast repairs & maintenance expenditure of TCP as post incurrence of significant expenditure on refurbishment & recarpeting work in TCP, R&M expense should decrease; and
- (vii) Reduction other operating costs on account of negotiation of contracts during COVID-19, if any, shut down of T1 during FY21 and due independent scrutiny to be conducted on works claimed by MIAL as part of capital expenditure work allowed as operating expenditure.

25. Segregation of Costs – FIA submits that the total cost segregated into aeronautical and non- aeronautical O&M expenses has been done on the basis of Adjusted Gross Fixed Asset Ratio and Weighted Average Floor Area Ratio being INR 3,943 crores (31.8% of total SCP O&M cost). FIA would like to highlight that both Weighted Average Floor Area Ratio and

Adjusted Gross Fixed Asset Ratio has been computed using inputs from MIAL. Hence, FIA submits that the floor area ratio used by consultant to segregate common cost into aeronautical & non aeronautical has not been executed independently by Authority's consultant, and instead has been used basis inputs from MIAL. Thus, FIA submits that Authority should independently derive floor area ratio to segregate cost into aeronautical and non-aeronautical heads for SCP true up and TCP tariff determination.

26. In response to para 6.2.49 of the CP, FIA further submits that the allocation ratio of SCP is not appropriate to be used for TCP as nature of expenses in TCP, gross fixed asset ratio and floor area ratio for TCP will differ from SCP and accordingly, it is submitted that Authority should recalculate allocation ratio of O&M for TCP.

27. Further, it is pertinent to note that total floor area of Terminal 1 as computed by MIAL was 103,131 sq meters and that computed by IR Class was 97,621 sq meters, which has been considered as basis for allocation by Independent Study. FIA submits that the reason for reduction in floor area has not been explained by the Authority. Further, FIA seeks to understand as to how the reduction in the floor area will impact asset allocation ratios and whether the same has been duly factored in the independent study. FIA submits that such ratios have a direct bearing on the computation of O&M expenses.

28. Shortcomings of MIAL's Cost Accounting System - FIA further submits that per para 2.7 of independent study on O&M that Consultant has highlighted that Consultant work was based on cost records produced by MIAL and there were certain shortcoming in MIAL's cost accounting system like *Non-usage of ERP for cost accounting, Inadequate cost centre allocation for regulatory purposes, Inadequate cost centres* and cost reduction measure for trolley Management costs (para 3.4.3 (h) on page 94 of the report). FIA submits that the Authority should undertake consider the shortcomings highlighted by consultant on the base of which segregation ratios have been calculated in its study and factor the impact of such shortcomings in segregation ratio for SCP and TCP; if any. Further, the Authority should

consider the cost reduction measure highlighted by consultant in its study and factor such recommendation impact on projections of O&M expenses for TCP.

29. FIA submits that as per clause 5.4.2 of AERA Guidelines, while reviewing forecast of operating expenditure the Authority has to assess (a) baseline operation and maintenance expenditure based on review of actual expenditure indicated in last audited accounts and check for underlying factors impacting variance over the preceding year; and (b) efficiency improvement with respect to such costs based on review of factors such as trends in operating costs, productivity improvements, cost drivers as may be identified, and other factors as may be considered appropriate.

30. FIA submits that the Operating Expenditure is one of the major components for determining NTR (i.e. constituting approx. 55.1%). Hence, the Authority should evaluate the O&M expenses in detail in line with the recommendations mentioned above.

V. AUCC MEETING FOR THE PROPOSED CAPITAL EXPENDITURE FOR TCP IS NOT YET CONDUCTED. OUT OF TOTAL CAPEX ADDITION TO RAB OF INR 2,508.71 PROPOSED BY MIAL, CAPEX ADDITIONS AMOUNTING TO INR 1,373.65 CRORES HAS BEEN CONSIDERED EITHER AS IS BY THE AUTHORITY OR NO DETAILS HAVE BEEN PROVIDED. DEVIATIONS FROM NORMATIVE NORMS NOT JUSTIFIED

31. FIA submits that per Para 4.2.73 of CP, the Authority has proposed projected capex amounting to INR 2,508.71 crores against the amount of INR 5,636.58 crores submitted by MIAL. Out of proposed additions, Aeronautical asset additions are proposed to be INR 2,030.56 crores. FIA observed that of the total amount proposed by the Authority, capex amounting to INR 1,373.65 crores (c.54.8%) has been considered either as is by the Authority or no details have been provided in the CP. Such projected costs primarily relate

to Mandatory projects (INR 315.05 crores), Compliance requirement projects (INR 274.50 crores), IT assets (INR 113.01 crores), efficiency enhancement projects (INR 98.01 crores) and Other projects (INR 131.60 crores).

32. FIA submits that the Authority has either not conducted detailed analysis for the above-mentioned expenditures or has not provided any explanation with regard to capitalization of proposed asset additions in TCP. Further, it is not evident whether MIAL has determined the costs in relation to these projects as per publicly available standards like CPWD norms for scheduled items and market rate analysis for non-scheduled items (as per Note (c) of Annexure 1 of Normative Approach Order 07/2016-17).

33. FIA further submits that MIAL has failed to conduct a meeting of Airport Users Consultative Committee (**AUCC**) for discussing and deliberating the requirements of capital expenditure projects, which are more than 5% of RAB or 50 Crores, whichever is lower, in accordance with AERA Guidelines. Accordingly, until the AUCC meeting with stakeholders are held, discussing, clarifying and justifying in detail, the need, options, project design, forecast of cost and other impacts for each project etc., Authority should not capitalize the cost for such capital expenditure in the TCP. Needless to state, while utilizing the AUCC meeting and in light of impact of COVID - 19 on the growth in traffic, the stakeholders and MIAL must jointly identify the non-essential projects and defer the construction and capitalization of the same in the next control period.

34. FIA further submits that per para 4.2.37 of the CP, in arriving at cost reconstruction of Terminal 1-B, Authority has stated that ceiling cost per sq. meter for terminal building of INR 65,000 as stated under Authority's Normative Order No. 07/2016-17 "*In the matter of normative approach to building blocks in economic regulation of major airports – capital costs reg.*" dated 13.06.2016 (**Normative Order**), '*might not hold good*'. Further, the Authority has proposed to provide inflation adjusted normative costs for each year in the

TCP to address time value of money. FIA submits that Authority has (a) failed to provide any justification for adopting costs higher than those prescribed under the Normative Order and (ii) failed to appreciate that no adjustment due to inflation is provided under Normative Order except to the extent of cost index for Civil and Electro Mechanical works published by Government, which has not been referred under the CP.

Further, FIA understand that per para 4.2.35 of the CP that need for reconstruction of Terminal 1B is as per the '*Structural Audit Report*' and that such reconstruction would not result in capacity enhancement in T1B and the amount is being spent only for quality enhancement, efficient operations and passenger satisfaction. While the need for the reconstruction may be further discussed in the AUCC, it is requested that Authority undertakes an independent scrutiny or technical audit for the costs involved in Terminal 1-B.

35. FIA further submits that it is noted that projects costs amounting to INR 711 crores (5.9% of total approved project costs) approved for FCP, and projects costs amounting to INR 890.12 crores (55.3% of total approved project costs for SCP) were either not taken up by MIAL till the completion of SCP or deferred to TCP. From the above it apparent that MIAL is adopting inefficient practices while planning its capital expenditure. Also, Authority should disallow the approved capital expenditure which is not incurred within the proposed control period.

36. FIA submits that per para 4.2.72 of the CP, the Authority proposes to introduce a penalty clause whereby if the project is committed to be completed by MIAL in each control period and if the same is not completed, then the ARR/target revenue shall be reduced by 1% penalty of the total project cost. In view of the delays and inefficiencies in completion of projects which are attributable to MIAL, Authority may review imposition appropriate penalty (higher than proposed in the CP) retrospectively from the FCP, as deemed fit.

37. As per Para 3.5.18 of CP 35, the Authority notes that the internal processes in MIAL needs strengthening in order to map project wise cost break-up to capitalized asset base in books of accounts and further there is need for close-coordination between finance and projects teams. It is submitted that in independent study, basis of asset allocation is the project assets recorded in FAR, above comment of the Authority raises the question on the accuracy on FAR or other project related assets submitted either to Independent Consultant for study on ratios or to the Authority for control period.

38. In view of the above, FIA request Authority may review the capital expenditure and allow the capital expenditure only after the same is passed through the process of AUCC meetings, as applicable, and further after an independent audit on costs analysis for capital expenditure projects.

VI. DEPRECIATION COMPUTED BY MIAL FOR SCP AND TCP ACCEPTED AS IS BY THE AUTHORITY. USEFUL LIFE FOR RAB IS AS PER TECHNICAL EVALUATION OF MIAL AND FOR ADDITIONS IT IS AS PER DEPRECIATION ORDER 35. TECHNICAL EVALUATION OF MIAL SUGGESTS USEFUL LIFE WHICH IS HALF OF THE LIFE SUGGESTED IN DEPRECIATION ORDER 35. TECHNICAL EVALUATION OF USEFUL LIFE REFLECTED IN FINANCIAL STATEMENTS OF MIAL IS HIGHER THAN CP 35 TECHNICAL EVALUATION. HIGHLY INFLATED RAB

A. Depreciation proposed for calculating NTR for Second Control Period

39. FIA submits that per Para 3.7.3 of CP 35, depreciation as per MIAL financial statements has been considered for purpose of true up in SCP. Accordingly, depreciation of INR 2,158 crores has been accepted.

40. FIA submits that as per page 90 of MIAL FY19 Audit Report, w.e.f 1 April 2018, MIAL has used Depreciation Order 35, however it also states that assets has been depreciated as

per useful life suggested by technical expert assessment and management estimate, which FIA noted is lower than life suggested by Authority's Order 35/2017-18 "*In the matter of determination of useful life of Airport Assets*" dated 12.01.2018. Hence, Authority has accepted the depreciation computed by MIAL in its financial statements w.r.t true up of SCP. FIA submits that Authority should analyze the incremental depreciation charged by MIAL in case the Depreciation Order 35 would have been applied by MIAL in SCP.

B. Depreciation proposed for calculating NTR for TCP

41. FIA submits that from a perusal of para 4.5.4, 4.5.6, 4.5.13, 4.5.14 of the CP, FIA observed that the depreciation policy has been inconsistently applied while computing depreciation on RAB for TCP. Further, the useful life determined by the technical expert is also based on management estimate of useful life of assets.

42. FIA further submits that it is evident from the table below that the useful life determined through recent technical evaluation is significantly lower than the useful mentioned in Authority's Order 13/2017-18 and it is almost half of the life suggested in the said Order. FIA wishes to understand how the technical evaluation of assets resulted in decline of useful life of assets year on year basis. FIA submits that from the above it is implied that if the technical evaluation suggested by MIAL in CP is accepted then the airport operator/MIAL will have to incur capital expenditure twice over the term of 30 years of the Concession agreement on buildings and similarly 4 times over a term of 60 years of the Concession agreement. FIA submits the Authority to review the above.

*FIA's submission towards the Authority's Consultation Paper No. 35/2020-21 titled
"In the matter of determination of aeronautical tariffs in respect of Chhatrapati Shivaji International Airport,
Mumbai for the Third Control Period (01.04.2019 - 31.03.2024)"*

Comparison of technical useful life assessment by the valuer vis-à-vis that as per Order 35/2017-18

Audited financial statement for FY19; Table 94 Page 118 of CP No. 35 MIAL

Asset class	Useful life as per audited FS of MIAL for FY19	Technical useful life assessment as per the valuer (years)	Useful life as per Order 35 / 2017-18 (years)	Times capex will have to incurred over the concession agreement period
	A	B	C	D = C/B
Building	5-30	5-15	30 / 60	2/4
Electrical installations and equipment equipment	5-10	5	10	2
Taxiways, runways, aprons	3-30	7	30	4
Taxiways, runways, aprons	3-30	20	30	1.5
Taxiways, runways, aprons	3-30	3	5	1.6
Plant and machinery	7.5	7.5	15	2
Office equipments (mobile handsets)	2	2	5	2.5

* Sub asset class and componentization is not available in the audited financial statements for FY19 hence the useful lives could not be compared with useful lives determined under technical assessment and as mentioned in Order 35/2017-18

43. FIA submits that it is pertinent to note here that the Authority has proposed different useful life to be considered while computing depreciation on Opening RAB for the third control period i.e. useful life as determined in technical evaluation has been used while calculation depreciation on opening balance of RAB for third control period and useful life as mentioned in Order 13/2017-18 has been used for calculating depreciation on projected capital expenditure / additions for third control period. This will result in enhanced depreciation on opening RAB.

44. In view of the above, FIA submits that Authority should re-evaluate the depreciation amount computed for the purposes of calculation of NTR for TCP by considering the useful life as per Order 13/2017-18 on both the opening amount of RAB and project capital expenditure. FIA submits that consistent approach should be applied by the Authority and MIAL while computing critical building block depreciation.

45. FIA further submits that that Authority should provide detailed calculations for depreciation charged on opening RAB & additions made therein, rather than just giving a consolidated number.

46. FIA submits that FIA's review of useful life of assets at various international airports like London Heathrow, Sydney airport and Amsterdam airport indicated that terminal buildings have useful life of as long as 60 years and aprons have it for as long as 99 years. FIA submits that the useful life of terminal building for Kannur and Cochin airports have been considered 60 years by Authority. FIA submits that in the interest of consumers, the Authority should consider useful life of buildings as 60 years instead of taking a conservative view. FIA submits that, as per table below, increase in useful life of the asset to 30 years would reduce the NTR by INR 1,443.54 crores and similarly, if we consider another 30 years useful life i.e. of 60 years, NTR would decrease by INR 1,898.28 crores.

							INR crores
Particulars	Ref.	FY20	FY21	FY22	FY23	FY24	Total
Depreciation & amortization charge	A	579.27	567.83	494.74	491.92	470.14	2,603.90
Average RAB for return	B	5,878.11	5,714.99	5,691.51	5,651.61	5,512.19	
Average rate of depreciation [(A) / (B)]	C	9.9%	9.9%	8.7%	8.7%	8.5%	
Average useful life of assets [100% / (C)]*	D	10.15	10.06	11.50	11.49	11.72	
Depreciation considering 30 years useful life [(B) / 30]	E	195.94	190.50	189.72	188.39	183.74	948.28
Increase in NTR due to accelerated depreciation [(A) - (E)] *	F	334.23	328.99	265.95	264.65	249.71	1,443.54
Depreciation considering 60 years useful life [(B) / 60]	G	88.17	85.72	85.37	84.77	82.68	426.73
Increase in NTR due to accelerated depreciation [(A) - (G)]	H	428.19	420.35	356.93	354.99	337.82	1,898.28

* Increase in NTR is net of decrease in NTR due to change in return on RAB

Note : In absence of detailed financial model, aforementioned sensitivity analysis is carried out on best effort basis after taking certain assumptions as per data provided in CP 35 and is indicative in nature.

VII. INCORRECT INCLUSION OF HRAB

47. FIA submits that It is submitted that principles laid out in the SSA with respect to HRAB are inconsistent with the Authority's regulatory philosophy and approach as stated in its AERA Act or AERA Guidelines. It is pertinent to note that under AERA Act and AERA guidelines for tariff determination, there is no concept of HRAB. Further, Authority may appreciate that in case HRAB is included in RAB, there would be increase in depreciation and return on RAB of airport operator, which would consequently increase the target revenue. Hence, it is submitted that the Authority should not consider HRAB as part of target revenue

*FIA's submission towards the Authority's Consultation Paper No. 35/2020-21 titled
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Mumbai for the Third Control Period (01.04.2019 - 31.03.2024)"*

as the principles laid out in the SSA are inconsistent with the Authority's regulatory philosophy, with respect to HRAB computation.

48. FIA further submits that exclusion of HRAB will reduce net target revenue (NTR) by INR 313.66 crores (4.0%) (Refer table below).

Sensitivity analysis - Computation of target revenue for current control period excluding HRAB INR crores

Particulars	Ref.	FY20	FY21	FY22	FY23	FY24	Total	TR as per CP 35	Change	% Change
							(i)	(ii)	(iii) = (i) - (ii)	(iii)/(ii)
Total Average regulatory base	A	5,878.11	5,714.99	5,691.51	5,651.61	5,512.19				
Less: Average HRAB	B	(336.62)	(263.82)	(231.51)	(203.10)	(176.89)				
Regulatory base (excluding HRAB)	C = A - B	5,541.49	5,451.17	5,460.00	5,448.51	5,335.30				
WACC	D	12.81%	12.81%	12.81%	12.81%	12.81%				
Return on RAB	E = C x D	709.95	698.38	699.52	698.04	683.54	3,489.45	3,644.70	(155.25)	(4.3)%
Depreciation	F	537.90	532.93	465.03	464.80	444.83	2,445.49	2,603.90	(158.41)	(6.1)%
OBM Expenses	G	756.46	858.62	875.68	889.11	921.46	4,301.34	4,301.34	-	0.0%
Taxes	H	-	-	-	-	-	-	-	-	0.0%
Gross Target Revenue (GTR)	I = E + F + G + H	2,004.31	2,089.93	2,040.23	2,051.95	2,049.83	10,236.28	10,549.94	(313.66)	(3.0)%
Less: Cross subsidy from Revenue Share Assets (NAR)	J	570.48	267.46	456.10	690.77	765.75	2,750.56	2,750.56	-	0.0%
Net Target Revenue (NTR) for TCP	K = I - J	1,433.83	1,822.48	1,584.13	1,361.19	1,284.08	7,485.72	7,799.38	(313.66)	(4.0)%

Note : In absence of detailed financial model, aforementioned sensitivity analysis is carried out on a best effort basis after taking certain assumptions as per data provided in CP 35 and is indicative in nature.

VIII. FAIR RATE OF RETURN FOR TCP

49. Cost of Equity - FIA submits that per proposal 5.3.1 to consider 15.13% as cost of equity, however COVID-19 related adjustment has not been factored in by the Authority as it has changed various parameters.

Further, per independent study of IIM B Independent study on WACC, cost of equity has been considered 15.13% which has been applied only for TCP, however for FCP and SCP true up 16% has been applied. FIA submits that 15.13% should be applied for SCP and FCP.

50. Cost of Debt - FIA submits that per proposal 5.3.2, to consider cost of debt at 10.30% as submitted by MIAL along with relevant supporting for the third control period, which shall be true up subject to a cap of additional 50 bps on the existing rates. It is pertinent to note that per para 5.21.3, there was downgrade in rating of MIAL and pricing of all facilities

has been increased by 0.50% from August 2019, hence it is submitted that rate should be considered 9.80% as penalty of downgrade should not be passed on to the stakeholders.

51. FIA further submits that as at March 31, 2019, gearing ratio of MIAL is 3.19 times which has been considered as 0.92 for TCP purposes as per IIM B Study, however CP does not highlight the table post adjustments by Authority for Projected debt and equity over TCP. Thus, Authority is requested to clarify as to how the gearing ratio will decline 4 times.

52. Upfront Fee in Equity – FIA submits that Authority has failed to consider that Clause 3.1.1 of the SSA, unequivocally provides that "*the Upfront Fee and the Annual Fee paid/payable by the JVC to the AAI under the OMDA shall not be included as part of costs for provision of aeronautical services and no pass through would be available in relation to the same.*" Further, in the definition of regulatory base in the SSA with regard to returns which are admissible at the rate of WACC, it has been clarified by way of abundant caution that upfront fee and any pre-operative expense incurred by the successful bidder towards bid preparation will not be allowed to be capitalised in the regulator base.

In light of the above, FIA submits that that by virtue of including upfront fee in equity, the return on equity (16%) will be applicable on this amount and will increase the WACC. This increase in WACC will result in gaining an incremental return on RAB and further increase the Target Revenue. Hence, including upfront fee in equity will indirectly tantamount to pass through of upfront fee which is in violation of provisions of SSA.

In view of the above and considering that the matter is already sub judice before the Hon'ble Supreme Court, Authority is requested to exclude Upfront Fee in computing Cost of Equity.

53. Return on Refundable Security Deposit (RSD) - FIA submits that OMDA recognizes only debt and equity as means of finance and no other means of finance has been provided. Authority will appreciate that RSD neither qualifies as debt or equity and accordingly should not be considered for the purposes of FRoR. In view of the above and considering that the

matter is already sub judice before the Hon'ble Supreme Court, Authority is requested not provide any return on RSD.

IX. TRUE UPS FOR FCP and SCP AND DELAY IN TARIFF DETERMINATION

54. FIA submits that Authority's estimation in FCP and SCP has been on conservative side which has led to over-recovery and claw back leading to higher tariff in control periods for which tariff is determined. It is apparent from the computations shown in the CP that the Authority had over projected NTR of both FCP and SCP by INR 644.50 crores and INR 819.17 crores respectively, which is a significant deviation and detrimental to interest of passengers and airlines. FIA noted that estimation error in all building blocks of NTR was in favor of MIAL for both control period where return on RAB, O&M expenses have been over projected and NAR and traffic has been under projected, synopsis of error under each block is tabulated below:

INR crores

Synopsis of estimation error of each block in FCP and SCP

Particulars	Order of FCP		Order of SCP		Estimation error	
	Order of FCP	True up of FCP	Order of SCP	True up of SCP	True up of FCP	True up of SCP
Return on RAB	1,762.47	1,576.02	3,872.74	3,585.04	(10.6%)	(7.4%)
Depreciation	840.44	719.55	2,295.96	2,433.55	(14.4%)	6.0%
O & M Expenses	2,024.86	1,761.77	4,017.47	3,646.26	(13.0%)	(9.2%)
Cross subsidy from Revenue Share Assets (NAR)	(1,047.76)	(1,121.83)	(1,866.48)	(2,164.33)	7.1%	16.0%
Net Target Revenue (NTR)	3,580.01	2,935.51	8,319.69	7,500.52	(18.0%)	(9.8%)
Passenger (in mn)	NA	NA	212.51	220.79	NA	3.9%
ATM (in '000)	NA	NA	1,437.45	1,513.51	NA	5.3%

FIA further observed that that due to error in estimation of NTR for FCP and SCP, whereby passenger and NAR have been under projected and cost components have been over projected by Authority (refer table below), airlines and passengers have paid an excess of INR 436.30 (14.9% of ANTR) crores in FCP and INR 1,197.96 crores (17.1% of ANTR) in SCP.

*FIA's submission towards the Authority's Consultation Paper No. 35/2020-21 titled
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Comparison of building blocks of FCP order, Trued up FCP & blocks of SCP order & Trued up SCP building blocks

Reference : 1) Table 62, Page 239 of Order 13/2016-17, 2) Table 58, Page 74 of CP/2020-21 & 3) Table 153, Page 180 of CP/2020-21, 4) Table 8, Page 32 of CP/2020-21, 5) Table 124, Page 446 of Order 32/2012-13

Particulars	Order of FCP	True up of FCP	Order of SCP	True up of SCP	Estimation error	
					True up of FCP	True up of SCP
	A	B	C	D	B over A	D over C
RAB at end of control period	5,491.52	3612.67	6,792.35	6,285.99	(34.2%)	(7.5%)
WACC	11.45%	12.17%	11.78%	11.45%	6.3%	(2.8%)
Return on RAB	1,762.47	1,576.02	3,872.74	3,585.04	(10.6%)	(7.4%)
Depreciation	840.44	719.55	2,295.96	2,433.55	(14.4%)	6.0%
O & M Expenses	2,024.86	1,761.77	4,017.47	3,646.26	(13.0%)	(9.2%)
Taxes	-	-	-	-	-	-
Gross Target Revenue (GTR)	4,627.77	4,057.34	10,186.17	9,664.85	(12.3%)	(5.1%)
Less: Cross subsidy from Revenue Share Assets (NAR)	(1,047.76)	(1,121.83)	(1,866.48)	(2,164.33)	7.1%	16.0%
Net Target Revenue for TCP (NTR = GTR - NAR)	3,580.01	2,935.51	8,319.69	7,500.52	(18.0%)	(9.8%)
True up of FCP and SCP (cumulative) *	-	-	(505.76)	(487.33)	-	-
Adjusted Net Target Revenue (ANTR)	3,580.01	2,935.51	7,813.93	7,013.19	(18.0%)	(10.2%)
Aeronautical collections	3,371.81	3,371.81	8,211.15	8,211.15		
Excess collections *	(208.20)	436.30	397.22	1,197.96		
% of ANTR	(5.8%)	14.9%	5.1%	17.1%		
Passenger (in mn)	NA	NA	212.51	220.79	NA	3.9%
ATM (in '000)	NA	NA	1,437.45	1,513.51	NA	5.3%
NTR per Passenger (INR)	NA	NA	391.50	339.71	NA	(13.2%)
NTR per ATM (INR)	NA	NA	57,878.28	49,557.12	NA	(14.4%)

* Difference in true up amount 1436.30 vs 487.33 of FCP is on account of adjustment of carrying cost

55. In view of the above, it is submitted that instead of analysing costs and revenue heads in detail through an independent analysis, Authority decided for truing up most of the components of tariff determination. FIA submits that Truing up mechanism not only insulate the operators from any risk, however, it also dis-incentivize airport to make effort in bringing any operational cost savings. Further, the true up exercise without carrying out any prior prudence check and independent verification, unduly burdens the end users and goes against the settled principle of law, which also finds mention in the SSA, that the customer shall only pay for the facilities which he utilises.

56. Accordingly, FIA submits that Authority should carry out detailed independent analysis on the building blocks for tariff determination (as discussed above) in order to further reduce the NTR for TCP.

57. FIA further submits that per para 1.5.1 it is observed that MIAL has delayed in submission of MYTP (and revisions thereof) to the Authority leading to delayed finalisation of tariff for the TCP commencing from 1.04.2019. Authority needs to ensure that airport operators comply with provisions of the AERA Act and AERA Guidelines for timely determination of tariffs, so that no user/consumers are adversely burdened due to delay in tariff determination, as applicable.

X. AUTHORITY OUGHT TO FOLLOW SINGLE TILL MODEL FOR DETERMINATION OF AERONAUTICAL TARIFF

58. FIA submits that as per para 2.1 of the Consultation Paper, it is stated that The Authority, vide its Order No. 13/2010-11 dated 12.01.2011 (**Single Till Order**) and Direction No. 5/2010-11 dated 28.02.2011 (**AERA Guidelines**), had issued guidelines to determine tariffs at major airports based on Single Till mechanism. Subsequently, the Authority has amended guidelines vide its Order No. 14/2016-17 dated 12.01.2017 (**Hybrid Till Order**) to determine the future tariffs using Hybrid Till.

FIA submits that as per para 2.2 of the Consultation Paper, it is stated that the Authority shall determine tariffs for Mumbai Airport using the Hybrid Till model. It is to be noted that FIA has from time to time, advocated the application of a Single Till model across the airports in India. FIA submits that Single Till is premised on the following legal framework being:

- (a) Section 13(1)(a)(v) of AERA Act envisages that while determining tariff for aeronautical services, the Authority shall take into consideration revenue received from services other than the aeronautical services.

- (b) Clause 4.2 of AERA Guidelines recognizes Single Till approach which sets out the following components on the basis of which ARR will be calculated: -
 - (i) Fair Rate of Return applied to the Regulatory Asset Base;

- (ii) Operation & Maintenance Expenditure;
 - (iii) Depreciation;
 - (iv) Taxation;
 - (v) Revenues from services other than aeronautical services.
- (c) FIA submits that determination of aeronautical tariff warrants a comprehensive evaluation of the economic model and realities of the airport – both capital and revenue elements. FIA submits that the Authority's approach of Hybrid Till for Mumbai Airport deserves to be discarded.
- (d) In the Single Till Order, Authority has strongly made a case in favor of the determination of tariff on the basis of 'Single Till'. It is noteworthy that the Authority has *inter alia* in its Single Till Order:
- (i) Comprehensively evaluated the economic model and realities of the airport – both capital and revenue elements.
 - (ii) Taken into account the legislative intent behind Section 13(1)(a)(v) of the AERA Act.
 - (iii) Concluded that the Single Till is the most appropriate for the economic regulation of major airports in India.
 - (iv) The criteria for determining tariff after taking into account standards followed by several international airports (United Kingdom, Australia, Ireland and South Africa) and prescribed by ICAO.
 - (v) The Authority in its AERA Guidelines (Clause 4.3) has followed the Single Till approach while laying down the procedure for determination of ARR for Regulated Services.

In this respect, the matter must be dealt with by the Authority considering the ratio pronounced by the Constitutional Bench in the Hon'ble Supreme Court Judgment in PTC vs. CERC reported as (2010) 4 SCC 603 (please ref: Paragraph Nos. 58 to 64 at Page Nos. 639 to 641) wherein it is specifically stated that regulation under an enactment/statute, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations.

(vi) The fundamental reasoning behind 'Single Till' approach is that if the consumers/passengers are offered cheaper airfares on account of lower airport charges, the volume of passengers is bound to increase leading to more footfall and probability of higher non-aeronautical revenue. The benefit of such non aeronautical revenue should be passed on to consumers/passengers and that can be assured only by way of lower aeronautical charges. It is a productive chain reaction which needs to be taken into account by the Authority.

(e) FIA therefore submits as under:

(i) Single Till Model ought to be applied to ALL the airports regulated and operated by the Authority regardless of whether it is a public or private airport or works under the PPP model and in spite of the concession agreements as the same is mandated by the statute.

(ii) Single Till is in the public interest and will not hurt the investor's interest and given the economic and aviation growth that is projected for India, Fair Rate

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of Return (**FRoR**) alone will be enough to ensure continued investor's interest.

(iii) MoCA's view(s) with respect to any issue at best can be considered as that of a Stakeholder and by no means are binding to Authority's exercise of determination of aeronautical tariff as is admitted by MoCA itself before the AERAAT.

In view of the above, FIA submits without prejudice that determination of aeronautical tariff on Hybrid Till basis for the TCP would set the tone and precedent for determination of aeronautical tariff in subsequent control periods contrary to the applicable legal framework.

Thus, FIA submits that Authority should discard the option of determination of aeronautical tariff on Hybrid Till and follow Single Till scrupulously. FIA submits that as per sensitivity analysis indicates that by adopting single till approach, the NTR as per Consultation Paper will reduce by INR 4,624.31 crores (59.29%) (refer below).

Sensitivity analysis - Considering single till approach Instead of Shared till approach

INR crores

Sr #	Particulars	FY20	FY21	FY22	FY23	FY24	Total	As per NTR		
								determined	Change % change	
								(i)	(ii)	(i) - (ii)
A	Average RAB	7,047.07	6,864.90	6,843.26	6,800.96	6,637.65				
B	Fair rate of return	12.81%	12.81%	12.81%	12.81%	12.81%				
C	Return on Average RAB (A*B)	902.73	879.39	876.62	871.20	850.28	4,380.23	3,644.70	735.53 20%	
D	Operating Expenditure	852.03	959.39	984.36	1,004.59	1,043.22	4,843.60	4,301.34	542.26 13%	
E	Depreciation	692.75	680.25	592.84	589.97	563.98	3,119.78	2,603.90	515.88 20%	
F	Corporate tax	-	-	-	-	-	-	-		
G	Gross Target Revenue	2,447.51	2,519.04	2,453.82	2,465.77	2,457.47	12,343.61	10,549.94	1,793.67 17%	
H	Cross Subsidization of 100% of non aeronautical revenue	(1,901.61)	(891.53)	(1,520.33)	(2,302.56)	(2,552.51)	(9,168.54)	(2,750.56)	(6,417.98) 233%	
I	Aggregate Revenue requirement (G+H)	545.90	1,627.51	933.49	163.21	(950.4)	3,175.07	7,799.38	(4,624.31) (59.29%)	

Note :

1) In absence of detailed financial model, aforementioned sensitivity analysis is carried out on best effort basis after taking certain assumptions as per data provided in CP # 35 and is indicative in nature.

2) To calculate RAB under Single till approach, RAB under shared till approach has been grossed up using 82.58%