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**MOST URGENT**

14 December 2018

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

**Kind Attention: Shri S. Machendranathan**

***Subject: Comments & Submission of the FIA tendered in response to the AERA CP.No.24/18-19 titled "In the matter of determination of Aeronautical Tariffs in respect of Bhubneshwar Airport for the first Control Period (01.04.2018 - 31.03.2023)"***

Dear Sir,

Subsequent to the issuance of the said CP, in your presence the stakeholder consultation was held on 10.12.2018 at Authority's office. The member airlines of the Federation of Indian Airlines (FIA) were duly present during the stakeholders meeting and raised objections on issues pertaining to the CP.

FIA also submits that it has not been provided with the copies of the submission of AAI dated 10.08.2018 and any future submission, if any. Accordingly, in the absence of the receipt of such submissions made by AAI, FIA unable to appreciate, assess and comprehend the facts and figures (and any comparison thereto) of the Consultation Paper in its entirety and actuality. Thus, FIA hereby request that the above mentioned MYTP submissions as submitted by the AAI may be made available to all the stakeholders (including FIA) for perusal and comments so as to ensure complete transparency and to enable FIA to submit requisite and consolidated observations / comments to the present Consultation Paper.

By way of this present submission, FIA on behalf of its member airlines submits its preliminary objections to the said CP without any prejudice and craving to submit any additional submission as and when required. FIA also reserves its rights to file a more detailed response, if so required.

Thanking You & Your sincerely,

For and on behalf of Federation of Indian Airlines,

  
Ujjwal Dey  
Associate Director

**A. BACKGROUND**

1. On 16.11.2018, the Airports Economic Regulatory Authority of India (hereinafter referred to as the "**Authority**") had issued the File. No. AERA/ 20010/ MYTP/AAI - Bhubaneswar/CP-I/2016-17 (Consultation Paper No. 24/ 2018-19) in respect of determination of aeronautical tariff of Biju Patnaik International Airport, Bhubaneswar (**BBI Airport**), owned and operated by the Airports Authority of India (**AAI**). For the purposes of this present submission, the (Consultation Paper No. 24/ 2018-19) as mentioned above shall be hereinafter be referred to as "**Consultation Paper**" or "**CP**".

2. The Authority has sought a detailed written submission from its stakeholder on the Consultation Paper by 14.12.2018.

3. Subsequent to the issuance of the Consultation Paper, the Authority held its stakeholder consultation meeting on 10.12.2018 at Authority's office in New Delhi wherein a brief presentation on background, salient features including operational parameters of BBI Airport were discussed. The member airlines of the Federation of Indian Airlines (**FIA**) were duly present during the stakeholders meeting and raised objections on various issues pertaining to the Consultation Paper.

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

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 laid under the of 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) Regulatory jurisprudence and settled principles of law creating a level playing field to foster competition, plurality and private investments in the civil aviation sector.

## **B. CONTEXT OF THE CONSULTATION**

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 later stage and subject to the following: -

- (a) In para 3.1 of the Consultation Paper, it is stated that AAI had earlier made Multi Year Tariff Proposal (MYTP) submission to the Authority for determination of tariffs for the 1<sup>st</sup> control period for BBI Airport under the Hybrid Till on 10.08.2018.

It is not denied that FIA is not the stakeholder for determination of tariff of KIA. 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:

- (a) by holding due consultations with all stakeholders with the airport;
- (b) by allowing all stake-holders to make their submissions to the authority;
- and
- (c) by making all decisions of the authority fully documented and explained.

FIA would also like to mention that in the recent Order dated 23<sup>rd</sup> April, 2018 passed by the Hon'ble Telecom Disputes Settlement & Appellate Tribunal, New Delhi in the case of *Federation of Indian Airlines vs. Airport Economic Regulatory Authority of India & Ors.* - AERA Appeal No. 6 of 2012 and *Delhi International Airport Ltd. (DIAL) vs. Airport Economic Regulatory Authority of India & Ors.* - Appeal No. 10 of 2012 (**DIAL Order**), it has been inter alia held that "...request for supply of documents by a stakeholder should ordinarily be accepted" and "...There is no doubt that the principles of fairness and transparency are very valuable and must be scrupulously followed by the Regulator in the exercise of fixation of tariffs.."

FIA submits that it has not been provided with the copies of the submission of AAI dated 10.08.2018 and any future submission, if any. Accordingly, in the absence of the receipt of such submissions made by AAI, FIA unable to appreciate, assess and comprehend the facts and figures (and any comparison thereto) of the Consultation Paper in its entirety and actuality. Thus, FIA hereby request that the above mentioned MYTP submissions as submitted by the AAI may be made available to all the stakeholders (including FIA) for perusal and comments so as to ensure complete transparency and to enable FIA to submit requisite and consolidated observations / comments to the present Consultation Paper.

7. Pursuant to the enactment of the AERA Act, the Authority has been established to perform the functions vested under the AERA Act including Section 13 of the Act, which includes determination of tariff for aeronautical services, viz.-
- (a) Section 2(a) of the AERA Act defines "aeronautical services".
  - (b) Section 13 (1)(a) of the AERA Act provides that the tariff for such aeronautical services at a major airport is to be determined by the Authority after taking into consideration various factors, being:-
    - (i) The capital expenditure incurred and timely investment in improvement of airport facilities;
    - (ii) The service provided, its quality and other relevant factors;
    - (iii) The cost for improving efficiency;

- (iv) Economic and viable operation of major airports;
- (v) Revenue received from services other than the aeronautical services;
- (vi) The concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;
- (vii) Any other factor which may be relevant for the purposes of the AERA Act.

**8. '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. However, in the present case, the Authority has proposed to allow various expenditures/projections like Operating Expenditure, Traffic projections, Asset allocation, etc. merely on the basis of AAI's submissions and but has failed to provide any justification of its own or analysis for the same. In fact it appears that the Authority has failed to initiate/conduct an independent assessment or obtain an expert opinion in order to determine or conclude in a reasonable determination of such costs/projections. 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 document and make decision which are fully documented and explained. In this regard 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. 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)**.

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

9. To the dismay of the Stakeholders (including airlines), the Authority vide the present Consultation Paper has *simplicitor* accepted AAI's claims under the MYTP without conducting its own independent financial study and prudence check or commissioning experts, for eg. in

**FIA's submission towards the Authority's Consultation Paper No. 24/2018-19 titled  
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matters relating to evaluation capital and operating expenditure, allocation of aeronautical and non – aeronautical assets, non-aeronautical revenue, traffic projections etc.

**10.** It is regrettable that the Authority in the year 2012 i.e. at the time of issuance of DIAL Tariff Order (No.3/2012-13) had decided to commission its own experts has failed to do so till now.

### C. ISSUEWISE SUBMISSIONS

#### I. AUTHORITY HAS NOT DISCUSSED THE MEANS TO RECOVER SHORTFALL IN AERONAUTICAL REVENUE (18% OF ARR). SHORTFALL STEMS FROM ACCEPTANCE OF AAI'S SUBMISSION IN ALL BUILDING BLOCKS LEADING TO HIGHER ARR. IF SHORTFALL IS MET THROUGH INCREASE IN TARIFFS, VIABILITY AND AFFORDABILITY OF THE AIRPORT FOR AIRLINES AND PASSENGERS WILL BE HAMPERED

FIA submits that as per Proposal 12 of the CP, Authority has considered the ARR and its resultant shortfall of INR 112.91 crores. This shortfall represents 18% of the ARR (refer table below).

#### ARR and Yield as per Authority

Table #41 on Page 45 of CP No. 24/2018-19

		INR crores						
S. No.	Particulars	FY19	FY20	FY21	FY22	FY23	Total	% of ARR
A	Average RAB	129.15	172.74	248.26	296.37	721.14		
B	Fair Rate of Return	14%	14%	14%	14%	14%		
C	Return on average RAB	18.08	24.18	34.76	41.49	100.96	219.47	32%
D	O&M expenses	68.25	72.09	76.16	80.52	85.19	382.21	56%
E	Depreciation	13.85	17.47	22.67	25.26	48.49	127.74	19%
F	Tax expense	-	-	-	7.80	12.77	20.57	3%
G	Subtotal [C+D+E+F]	100.18	113.74	133.59	155.07	247.41	749.99	110%
H	Less: 30% NAR	(10.94)	(11.91)	(12.91)	(14.02)	(15.35)	(65.12)	(10%)
I	Aggregate Revenue Requirement (ARR) [G+H]	89.24	101.84	120.68	141.05	232.08	684.87	100%
J	Add: True up	107.37						
K	PV of ARR based @14%	196.61	89.33	92.86	95.20	137.41	611.40	
L	PV of Aeronautical revenues	57.74	104.80	108.20	111.87	115.88	498.49	
M	Shortfall (L-K)	(138.87)	15.47	15.34	16.67	(21.53)	(112.91)	(18%)
N	Total traffic [in millions]	3.79	4.42	5.16	6.02	7.05	26.43	
O	Yield per passenger (Y) (INR) ((K/N)*10)	519.00	202.21	180.08	158.03	195.01	231.31	
P	Shortfall per passenger (Y) (INR) ((M/N)*10)	(366.58)	35.02	29.76	27.67	(30.55)	(42.72)	

However, the Authority has not discussed or suggested the means to recover such a significant shortfall. FIA submits that if the shortfall of 18%, is met through increase in tariffs, viability and affordability of airport for airlines and passengers will be significantly hampered.

FIA further submits that the one of the key reasons of shortfall is acceptance of AAI's submission in all building blocks like higher RAB, higher FRoR, operating expenditure, and lower non-aero revenue. All such factors have led to a higher ARR. If the current shortfall is to be recovered from airlines and passengers through increase in tariffs, the rates will be higher than that of other comparable airports.

Also, FIA has noted that revenue from cargo operations and air navigation services have not been formed part of tariff proposal, which has led to an increase in shortfall during control period. FIA has conducted analysis on each of the building blocks in subsequent issues mentioned below.

FIA submits that the Authority should expressly comment about the measures to contain this shortfall by adjusting the current building blocks as it will impact the viability and affordability of BBI Airport vis.-a-vis. tariffs, for airlines and passengers.

**II. TARIFF CARD FOR 1ST CONTROL PERIOD – INCREASE IN CHARGES BORNE BY AIRLINES & UDF AS PROPOSED BY BBI AIRPORT HAS BEEN ACCEPTED BY THE AUTHORITY. PROPOSED PERCENTAGE INCREASE HAS NOT BEEN MENTIONED IN CP. AUTHORITY SHOULD CONSIDER 17.9% YOY GROWTH RATE FOR DOMESTIC PASSENGERS, OTHER COMPONENTS OF ARR TO REEVALUATE INCREASE IN CHARGES**

FIA noted that the Authority has accepted the tariffs proposed by AAI. However, Authority has not mentioned the percentage increase in proposed tariff versus existing tariffs.

Further, the Authority has also proposed INR 350 as UDF per domestic and INR 400 per international embarking passenger, an increase of 133% from the existing rate of INR 150

per domestic passenger. In this regard, FIA submits that Authority should reduce the proposed rates of UDF, bearing in mind the YoY growth rate of 17.7% for domestic passengers while computing aeronautical tariffs.

Further, as per "*Charges for airport services (major / non major airports) effective from 1 April 2017*" as issued by AAI, it was noted that existing tariff rates at BBI Airport are based on the following slabs: (i) upto 40 MT, (ii) Above 40MT upto 100MT and (iii) Above 100MT. Since, weight slabs mentioned for existing charges as per AAI tariff card are different from the ones mentioned in Schedule of charges on Page 46-49 of the CP and no bridge has been provided between these slabs, FIA requests the Authority to substantiate the percentage increase for first control period over the existing tariff rates.

FIA submits that the Authority ought to confirm applicable tariff for CUTE charges. Further, the Authority should consider 17.9% YoY growth rate for domestic passengers while computing the said charges.

FIA also submits that to give due consideration to other issues highlighted by FIA in the present submission, while proposing a new tariff card in the Order.

### **III. REVENUES FROM AIR NAVIGATION SYSTEM (ANS) & CARGO OPERATIONS HAVE NOT BEEN INCLUDED IN COMPUTATION OF AERONAUTICAL REVENUES, THEREBY RESULTING IN THE INCREASE OF THE PROJECTED SHORTFALL**

FIA submits that as per para 3.2 & 3.3 of the CP, it is observed that the tariff proposal submitted by AAI did not consider revenues, expenses & assets related to air navigation services provided by AAI and cargo services provided by AAI Cargo Logistics and Allied Services (AAICLAS), a wholly owned subsidiary of AAI.

*As per section 2 of AERA Act, 2008, under sub-section (a), "aeronautical services means any services provided-*

*(i) For navigation, surveillance and supportive communication thereto for air traffic management*



*(iv) for ground handling services relating to aircraft, passengers and cargo at an airport*

*(v) for the cargo facility at an airport"*

Considering the above provisions, FIA submits that revenue from both services (ANS & cargo services) should form part of aeronautical revenues and accordingly the Authority should take into account of the corresponding revenue and revise tariff card accordingly.

As highlighted in Para 57 of DIAL TDSAT judgment, "...Even if DIAL engages in providing an Aeronautical Service through its servants or agents, in essence the service must be deemed to be one provided by DIAL". Hence applying the same principle at BBI Airport, cargo operations which have been transferred to AAI Cargo Logistics and Allied Services (AAICLAS), services will be deemed to be provided by AAI. Therefore, revenue from cargo services should be considered for determining tariff for first control period.

Accordingly, FIA submits that Authority should consider the revenue from air navigation services and cargo services while determining tariff for first control period & propose a new tariff card accordingly.

**IV. TRAFFIC PROJECTIONS ARE BASED ON THE DATA RECEIVED FROM AAI AND AUTHORITY HAS NOT CONDUCTED INDEPENDENT STUDY OF ITS OWN. PROJECTED GROWTH RATES FOR PASSENGER TRAFFIC ARE NOT IN LINE WITH THE HISTORICAL 5-YEAR CAGR OF DOMESTIC TRAFFIC.**

FIA submits that in respect of the projections of traffic, the Authority sought historical passenger & ATM traffic from FY 08 to FY 18 and its projections for the first control period from BBI Airport. FIA observed that the Authority has done an upward revision in BBI airport for YoY growth rates for domestic passenger traffic from 10% to 16% in FY23 and from 20% to 35% in FY23 in case of international passenger growth (refer table below). For FY19 to FY22, growth rate projections submitted by AAI for passenger traffic have been accepted by the Authority.

**FIA's submission towards the Authority's Consultation Paper No. 24/2018-19 titled  
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**Traffic forecast**

Table #5 on Page 10 of CP No. 24/2018-19

Particulars	FY 19	FY 20	FY 21	FY 22	FY 23	Grand Total	Common size	YoY				5-year CAGR FY 19 - FY 23	
								FY 20	FY 21	FY 22	FY 23		
Passenger traffic													
Domestic	3,664,343	4,250,637	4,930,739	5,719,658	6,634,803	25,200,180	95%	16%	16%	16%	16%	16%	16%
International	123,821	167,158	225,663	304,645	411,271	1,232,558	5%	35%	35%	35%	35%	35%	35%
<b>Total</b>	<b>3,788,164</b>	<b>4,417,795</b>	<b>5,156,402</b>	<b>6,024,303</b>	<b>7,046,074</b>	<b>26,432,738</b>	<b>100%</b>	<b>17%</b>	<b>17%</b>	<b>17%</b>	<b>17%</b>	<b>17%</b>	<b>17%</b>
ATM													
Domestic	25,912	29,799	34,268	39,409	45,320	174,708	95%	15%	15%	15%	15%	15%	15%
International	841	1,135	1,533	2,069	2,794	8,372	5%	35%	35%	35%	35%	35%	35%
<b>Total</b>	<b>26,753</b>	<b>30,934</b>	<b>35,801</b>	<b>41,478</b>	<b>48,114</b>	<b>183,080</b>	<b>100%</b>	<b>16%</b>	<b>16%</b>	<b>16%</b>	<b>16%</b>	<b>16%</b>	<b>16%</b>

### Passenger traffic-Domestic

FIA submits that The Authority has noted that domestic passenger traffic growth rate proposed by AAI is closer to 10 year CAGR, and hence the Authority does not propose a change in the same, except the last year's projection, which the Authority proposes to change from 10% to 16%. However, the historical 5 year CAGR for passenger growth rate is 17.9%. FIA submits that considering the above, we recommend Authority to conduct an independent study on passenger growth rate, as the ATM growth has been projected at c.16% (YoY) (refer table above) which is higher than both 5-year CAGR and 10-year CAGR. FIA wish to submit that any increase in ATM growth will tantamount to increase in passenger throughput over the control period. Hence, FIA submits that the Authority should consider the historical 5-year CAGR of 17.9% for YoY growth rate projections for domestic passenger traffic for first control period.

### Passenger traffic- International

FIA has noted that the BBI Airport was accorded international status in October, 2013. However, based on Table 1 of the CP, FIA understands that the international operations have started in FY16. Hence, the 5-year CAGR or 10-year CAGR could be computed for the control period. However, FIA noted that the volume for traffic international passengers have increased by 78% in FY17 & 218% in FY18 i.e. CAGR of 138% during 2 years. However, the Authority has considered the growth rate of 35% for the control period which is significantly lower than past trends. Further, the basis of proposed growth at 35% in international passenger traffic has not been mentioned in the CP. Hence, in the absence of long term trends, it becomes necessary to conduct an independent expert study to

predict the growth rate during control period in order to avoid burdening the passengers due to lower projections.

Traffic projections are based on the data received from the AAI. Authority has not conducted its own independent study on traffic projections and broadly relied on the data provided by AAI. Further, as per Proposal 1(b) of the CP, the Authority has proposed to true up the passenger and ATM for first control period based on actuals. FIA submits that Authority should conduct an independent study in the future and should not defer the detailed evaluation under garb of truing up.

It is further submitted that the Authority has computed the growth rates based only on traffic numbers of past years and has applied the same for projections that too on lower side, however, the Authority has not considered qualitative factors affecting the traffic growth such as the UDAN scheme, double digit growth in passengers across Indian airports in the last 4 years (as per the DGCA domestic traffic reports), BBI Airport presently being the 15<sup>th</sup> busiest in India.

FIA further submits that, since the traffic projections are critical in ascertaining the tariffs and CAGR considered by Authority is lower than past CAGR, the Authority must appoint an independent consultant to evaluate traffic forecasts. Also, the expert study would be scientific, as apart from past trends of traffic, it will also consider various qualitative factors affecting macro environment of the aviation sector like; (a) impact of new civil aviation policy (b) commencement of operations from new airlines (b) future changes in economic environment (c) population growth (d) trends of increase in disposable income.

**V. DUE PROCESS IN AUCC MEETING NOT FOLLOWED. DISCREPANCIES IN THE CAPITAL EXPENDITURES PROJECTED BY AAI IN THE CP. AUTHORITY HAS ACCEPTED THE PROPOSED CAPITAL EXPENDITURE ON BASIS OF HIGH LEVEL REVIEW: A) WITHOUT FIRM**

**FINANCIAL CLOSURE B) WITHOUT DETAILED TECHNICAL EVALUATION & C) WITHOUT KEY INITIAL PROCESS LIKE CONSTRUCTION SCHEDULE, PHASING ETC.**

FIA submits that the on the review of the minutes of the meeting of the Airport Users Consultative Committee (**AUCC**) held at BBI Airport on 3.07.2018 and 9.10.2018, it was observed that BBI Airport has not followed the due process of AUCC as prescribed under AERA Guidelines, in terms of the following:

- (i) BBI Airport has failed to share a Project Investment File (**PIF**) with the AUCC stakeholders. In terms of the AERA Guidelines, the final PIF submitted to the Authority, should clearly specify the process of consultation undertaken and highlight suggestion, areas of concerns and decision made by the AUCC. The PIF shall need to highlight the rational for the final position and the next steps in the project development;
- (ii) BBI Airport has failed to provide the following information in relation to the capital expenditure projects:
  - (a) Justification for the project, including if it will result in improvement in the quality of service at the airport;
  - (b) Options for development
  - (c) Airport traffic forecast and methodology thereof
  - (d) Relevant benchmark for project costs.
  - (e) Likely impact on Tariff including UDF/PSF, if any
  - (f) Proposed funding mechanism
- (iii) The AUCC conducted by BBI Airport failed to undertake the three stages prescribed under AERA Guidelines i.e. Needs Identification Stage, Options Development Stage and Detail project design stage.

FIA submits that in view of the above deficiencies, it is apparent that the AUCC meetings have not been conducted following the due process laid down under the AERA Guidelines. Accordingly, FIA submits that Authority should direct BBI Airport to re-convene the AUCC by following the due compliance of AERA Guidelines.

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Without prejudice to the above, FIA submits the following table on the comparison of certain major capital expenditure project costs as seen from the minutes of meeting of AUCC and compared with costs of projects stated by AAI under the present CP.

Nature of work	Capex as per		Gap	Remarks
	2nd meeting of AUCC minutes	Capex as per AAI in Table 12 of CP 24		
Expansion of terminal T2 for integrated operation using PBB	62	87.21	(25)	Project cost of INR 25 crores is mentioned in 1st AUCC held on 03.07.2018 which has been subsequently increased to INR 62 crores. No explanation has been mentioned for such increase.
SITC of substation equipment, DG sets and associated works for link building T1, T2 and new ATC tower (new scheme)	8	-	8	
Inline x-ray baggage	12.5	12.5	-	
Control tower, technical block, fire station and E&M workshop	64.24	31.65	33	Capital expenditure for control tower & technical block cannot be mapped in CP 24.
Parallel taxi track (PTT), rapid exit taxi way (RET) & apron for parking of 08 nos., code C aircraft	147	147.08	(0.08)	
Construction of hangars	10.74	Could not be mapped	11	
Shaded walkway and tensile canopy for vehicular lanes in front of T-1	2	Could not be mapped	2	
Rotunda building & fixed finger including provision and installation of 02 nos, passenger boarding bridge	10	10.08	(0.08)	
New domestic terminal building T3	450	935.39	(485)	Area mentioned in AUCC PPT is 58,000 sqm (excluding basement). However, area mentioned in CP is 78,800 sq mt. No explanation has been given by AAI for such increase.
Recarpeting of runway	35	Could not be mapped	35	
Design, supply, installation testing and commissioning of grid connected ground mounted solar PV power system	41	41.24	(0.24)	
<b>Sub Total</b>	<b>842.48</b>	<b>1265.15</b>	<b>(423)</b>	
Other capital expenditure mentioned in CP		23.02	(23.02)	
<b>Total</b>	<b>842.48</b>	<b>1288.17</b>	<b>(446)</b>	

FIA submits that, from the above table it is observed that in respect of certain projects mentioned in the minutes of AUCC meetings and those claimed by AAI in the CP:

- (i) There is an astronomical increase in the costs of project (for eg. New Terminal building (T3) i.e. from INR 450 cr. To INR 935.39 cr., expansion of Terminal (T2) from INR 62 cr. to INR 87.21 cr.). AAI has not explained as to how the costs shown in the AUCC in October, 2018 has increased manifolds during the consultation stage under the CP; and
- (ii) Certain projects were projected in the AUCC, however the same have not been dealt under the CP (for eg. Construction of hangars, re-carpeting of runway etc). FIA submits that the status of such projects and the manner in which the same will be capitalized under RAB, present or next control period is not known.

FIA would like to submit that the very purpose of conducting an AUCC is to ensure transparency and fairness in the process of executing works for major capital expenditure at an airport. Keeping in view the significant deviation in the projection and submissions of AAI in the AUCC and the CP, it may be stated that AAI has not conducted the AUCC at BBI Airport in an efficient, complete, fair and transparent manner.

**In view of the above, FIA reserves its rights to comment on the capital expenditure project which need to be duly scrutinized by the Authority, pursuant to an AUCC which needs to be re-convened by AAI following the due process under AERA Guidelines. Without prejudice to the above, FIA submits its view on the capital expenditure projects considered by the Authority under the CP as below:**

**(i) New terminal Building of INR 935.39 crores - Deferment of capitalisation to next control period**

FIA submits that as highlighted by AAI in Para 7.3.1, a new terminal building (T3) spanning across 78,800 square metres has been proposed with an estimated expenditure of INR 935.39 crores. New terminal building is proposed to be capitalised during FY22 by AAI.

FIA further submits that the Authority has tried to estimate the cost of terminal building by considering normative cost of INR 1,00,000 per sq. mt. at FY18 prices which is further indexed to 5% inflation. However, as per 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, the ceiling cost per sq. metre for terminal building is INR 65,000. FIA submits that no basis has been provided by Authority to calculate the normative cost of INR 1,00,000 per sq. mt. Also, based on Authority's calculation, projected cost of terminal building is INR 919.3 crores. But no consideration to Authority's own calculation has been given while calculating average RAB.

Hence, per Proposal 4, new terminal building has been capitalised considering the total cost of INR 935.39 crores (as projected by AAI). Authority has proposed to split the cost of new terminal building between terminal building and electrical installation in the ratio of 65:35. No basis or benchmarking has been mentioned by Authority to split the total capex

under two heads. FIA would like to highlight that this split cannot be on a high level basis, as it will impact depreciation as the useful life of electrical installation (10 years) is different from other assets like building (30/60 years), Plant & machinery (15 years).

Per Para 7.3.1, Authority has examined *"the project is in initial stages, with only preliminary approvals in place. Some initial processes like construction schedule, investment planning and phasing etc have not been carried out."* Therefore, Authority has proposed to defer the capitalisation to FY23.

Hence, it is very clear that basic planning & financial closure for the said expansion has not been initiated. Also, per Para 10.3, Authority understands the fact *" it may not be reasonable to expect AAI to contract large amounts of debt over a short period of time"* and there are losses in previous years & in first few years of control period. Accordingly, Authority has assumed that project can be delayed by one year i.e. FY23, however, no basis has been mentioned in the CP for this assumption.

It is evident that Authority has considered AAI proposal without conducting a technical evaluation. As the project is in initial stages, FIA cannot comment upon the numbers computed by Authority in absence of detailed breakup. It is submitted to Authority to conduct detailed technical evaluation, although we have requested for deferment of capex.

It is submitted that lack of basic planning, financial closure for new terminal building has not been achieved yet for capex to be incurred in first control period, this can lead to deferment of capex to subsequent control period.

Hence it is submitted that the Authority to consider the proposed capitalisation of new terminal building in next control period and true up the expenditure/capitalisation based on actuals in second control period.

**(ii) Runways, Aprons and Taxiways**

FIA submits that AAI has proposed to construct a new apron for parking of 8 numbers of Code C aircraft. Phase 1 of the project has already been awarded and will be completed by FY21 and phase 2 will be completed by FY23.

No area of aprons has been mentioned in the CP and the Authority has accepted the cost as projected by AAI. No benchmarking with similar airports/ normative order has been conducted by Authority to check the reasonableness of the proposed capital expenditure.

It is submitted to Authority to mention the area and conduct benchmarking study with comparable airports and normative order. In the absence of key information, FIA cannot comment on proposed capital expenditure on aprons proposed by Authority.

**(iii) Other assets**

FIA submits that the Authority has not mentioned the detailed breakup of other assets of INR 77.25 crores. Also, the split of these other assets under various categories mentioned in table 13 of the CP has not been provided. These assets have been considered 100% aeronautical, for which no basis has been given by Authority. Also, the categorisation for these assets has not been provided under the CP & no allocation has been proposed by Authority into aeronautical & non-aeronautical assets.

It is submitted to Authority to give a detailed breakup of each category of additions along with year of capitalisation & the same shall be considered for the purpose of calculation of depreciation.



**VI. AUTHORITY HAS BROADLY RELIED ON BBI AIRPORT'S SUBMISSION ON ALLOCATION OF RAB ADDITIONS BETWEEN AERONAUTICAL AND NON-AERONAUTICAL WITHOUT CONDUCTING TECHNICAL STUDY BY INDEPENDENT AGENCY**

**Allocation of additions to RAB into aeronautical & non-aeronautical assets**

Asset	Gross value	Allocation ratio	INR crores	
			Aero asset	% to total Aero asset
New terminal building	608.0	90:10	547.2	46%
New terminal building-electrical installation	327.4	90:10	294.6	25%
New link building between T1 & T2-building	56.7	90:10	51.0	4%
New link building between T1 & T2-electrical installation	30.5	90:10	27.5	2%
Solar power plant	41.2	100:0	41.2	3%
Runways, Aprons and Taxiways	147.1	100:0	147.1	12%
Other assets	77.3	100:0	77.3	7%
<b>Total</b>	<b>1288.2</b>	<b>92.1%</b>	<b>1185.9</b>	<b>100%</b>

FIA submits that the Authority has proposed to bifurcate the new terminal building & new link building in ratio of 65:35 to building & electrical installation respectively. Further, the Authority proposed to allocate the terminal building & new link building in aeronautical & non-aeronautical in the ratio of 90:10. No basis, benchmarking or independent study has been conducted by Authority for ascertaining this ratio.

FIA submits that the allocation of the airport assets between Aeronautical or Non-Aeronautical categories is critical under Shared Till approach, hence the same should be carried out on the basis of independent study rather than on tentative basis.

FIA understands entire other assets additions during the control period has been considered as aeronautical by Authority. Although, this has not been specifically mentioned in the CP. Hence, certain additions which could have been allocated to non-aero has not been considered by Authority. Hence, on an overall basis 92.1% of total additions are considered as aeronautical assets on a tentative basis.

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FIA submits that rather than proposing tentative allocation, the Authority to consider the asset allocation ratio of 80% : 20% in the 1<sup>st</sup> control period to reduce ARR & minimize shortfall and conduct an independent study on asset allocation which may be used for truing up in the 2<sup>nd</sup> control period.

**VII. RATIOS USED FOR CALCULATING INITIAL RAB ARE NOT CORRECT. AUTHORITY HAS ACCEPTED THE RATIOS GIVEN BY AAI WITHOUT ANY INDEPENDENT STUDY**

FIA submits that under Para 5.2 of the CP, AAI has divided its initial RAB assets with a gross block of INR 267.19 crores, accumulated depreciation of INR 249.24 crores & net block of INR 96.45 crores as on 01 April 2016 into aeronautical, non-aeronautical and common assets.

**Initial RAB considered by Authority**

Table #11 on Page 17 of CP No. 24/2018-19

S.No.	Asset category	Ratio used for allocation of common assets	INR crores				
			Total assets (A)	Aero assets (B)	% Aero assets (A/B)	Accumulated depreciation (C)	Opening net block (B-C)
1	Freehold Land	-	3.42	-	0%	-	-
2	Runways, Aprons and Taxiways	-	42.05	42.05	100%	39.33	2.72
3	Road, Bridges & Culverts	86% quarter ratio, 14% terminal area ratio	42.49	33.49	79%	21.36	12.13
4	Building - Terminal	90.5% terminal area ratio, 9% integerated office building ratio, 0.3% quarter ratio, 0.3% employee ratio	74.45	70.01	94%	29.09	40.92
5	Building - Residential	100% quarter ratio	6.21	6.00	97%	2.46	3.54
6	Boundary Wall - Operational	100% quarter ratio	3.46	3.46	100%	2.62	0.84
7	Boundary Wall - Residential	-	3.47	3.47	100%	0.77	2.70
8	Computer - End user	-	0.75	0.75	100%	0.50	0.26
9	Computer - Servers and networks	-	0.59	0.59	100%	0.54	0.05
10	Intangible Assets - Software	-	0.38	0.38	100%	0.37	0.01
11	Plant & Machinery	99% terminal area ratio, 1% employee ratio	17.56	17.53	100%	13.81	3.71
12	Tools & Equipment	73% employee ratio, 27% integerated office building ratio	0.93	0.92	99%	0.65	0.27
13	Furniture & Fixtures: other than trolley	99% integerated office building ratio, 1% quarter ratio	3.01	2.95	98%	2.30	0.65
14	Furniture & Fixtures: Trolley	-	0.54	0.54	100%	0.43	0.11
15	Vehicles	-	0.75	0.75	100%	0.55	0.20
16	Electrical Installations	61.8% terminal area ratio, 35.9% integerated office building ratio, 2.4% quarter ratio	51.68	50.93	99%	25.20	25.73
17	Other Office Equipment	98% employee ratio, 2% terminal area ratio	0.81	0.78	97%	0.49	0.30
18	X Ray Baggage System	-	1.85	1.85	100%	1.78	0.07
19	CFT/Fire Fighting Equipment	-	12.79	12.79	100%	10.53	2.26
	<b>Total</b>		<b>267.19</b>	<b>249.24</b>	<b>93%</b>	<b>152.79</b>	<b>96.45</b>

FIA submits that Aero assets include the clearly identified aeronautical assets and a portion of common assets at the airport bifurcated on the basis of above mentioned ratios.

AAI has allocated the common assets of initial RAB based on four ratios namely terminal area ratio, employee ratio, quarter ratio & integrated office building. However, the basis of calculating two ratios are apparently wrong and accordingly the allocation of initial RAB into aeronautical & non-aeronautical assets have been wrongly computed.

FIA submits that the following two ratios have been wrongly calculated by Authority:-

- **Employee Ratio:-** This is a ratio of staff providing non-aeronautical services (i.e. commercial and land management) to total staff employed at the airport excluding ANS and cargo. As per Para 12.7 of the Consultation Paper, the Authority examined the correct ratio for allocation of payroll expenses should be 7:105 instead of 7:98. Hence, the corrected ratio i.e. 7:105 should be used for allocating the common assets into aeronautical and non-aeronautical assets.
- **Quarter Ratio:-** This is a ratio based on number of non-aeronautical staff to aeronautical staff residing at the residential quarters at the airport. To arrive at the correct ratio, denominator should be total staff (aeronautical staff & non-aeronautical staff) rather than just non- aeronautical staff. Therefore, the corrected ratio should be 5:60 rather than 5:55. Hence, the correct ratio of 5:60 should be used for allocating the common assets into aeronautical and non-aeronautical assets.

After the allocation of common assets, 93% of total assets are aero assets & balance are non-aero assets as depicted in the table above.

**VIII. USEFUL LIFE OF 30 YEARS CONSIDERED FOR TERMINAL BUILDING AND APRONS ACCEPTED BY AUTHORITY IS A CONSERVATIVE VIEW. CONSIDERING TERMINAL BUILDING & APRONS HAVE USEFUL LIFE UP TO 60 & 99 YEARS RESPECTIVELY IN INTERNATIONAL AIRPORTS, 60 YEARS USEFUL LIFE FOR TERMINAL BUILDINGS AND APRONS OUGHT TO BE CONSIDERED BY AUTHORITY**

FIA submits that on an overall basis, average useful life ranging between 10-15 years during control period accepted by the Authority, is lower considering the international airports & new additions.

FIA's review of RAB additions & its allocation indicated that shorter useful lives, incorrect capitalization have been broadly considered by Authority. Further, a detailed component level breakup has not been provided by Authority & accordingly the same has been considered for the purpose of depreciation. Broad heads of capitalization has been provided. Hence, we understand that depreciation has also been computed as per depreciation order on basis of useful life of these asset heads rather than useful life of these components. This might lead to accelerated depreciation. For instance, solar power plant has been classified under electrical installation rather than component level.

**Depreciation on new terminal building**

FIA submits that as per Para 8.12 of the CP, depreciation from FY18 onwards has been computed as per rates prescribed under AERA Order No. 35/ 2017-18 *"In the matter of Determination of Useful life of Airport Assets"* dated 12 January 2018. Further, half yearly rates of depreciation have been considered for additions to RAB in the first year of capitalization. For terminal building and other buildings, while Order 35 states useful life as 30 or 60, the useful life consider by AAI and accepted by Authority has been 30 years in the CP. For reference FIA would like to highlight, life of buildings as 30 years, considered by Authority, is not in accordance with Part C of Schedule II of Companies Act, 2013, which provides useful life of buildings having Reinforced Concrete Cement (RCC) frame structure to be 60 years. It is submitted that there is no mention with respect to the structure of buildings, although it is highly unlikely that the terminal buildings are not built with RCC

technology.

Hence, Authority has taken adopted conservative view with respect to useful life of terminal and other buildings. Accordingly 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.

Further, our review of useful life of assets at various international airports like London Heathrow, Sydney airport and Amsterdam airport indicated that terminal building have useful life of as long as 60 years and aprons have it as long as 99 years. Also, the useful life of terminal building for Kannur & Cochin airports have been considered 60 years by Authority. However as per the present CP, average life of airport assets additions between FY18 to FY23 is ranging between 10-15 years during the control period which primarily comprises of Terminal & other buildings and Aprons. Hence, FIA accordingly submits that, in the interest of consumers, Authority could consider useful life of buildings as 60 years instead of taking a conservative view.

As submitted under RAB section, to defer the capitalization of new terminal building of INR 841.85 crores (90% of INR 935.39 crores) to next control period in absence of key necessary processes (construction schedule, investment planning and phasing etc.) performed till date. It is submitted to Authority to not to consider new terminal building for the purpose of capitalization and accordingly, revise depreciation calculation for FY23.

**Depreciation on correct allocation ratio.**

Allocation of assets:- The Authority has given a tentative allocation of RAB additions for first control period. As submitted under RAB allocation section, *"to consider the asset allocation ratio of 80%:20% in the 1st control period"*, it is submitted that Authority to re-compute the depreciation basis the allocation of RAB assets in the ratio of 80:20 for this control period. Also, the allocation of initial RAB assets under aeronautical and non - aeronautical assets has been done on incorrect ratios. Hence, FIA submits that the Authority should revise the depreciation on initial RAB based on revised/corrected ratios.

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### Depreciation on solar power plant

FIA noted that solar power plant of INR 41.24 crores has been considered as electrical installation by virtue of which its useful life has been considered as 10 years. However, FIA submits that as per CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017, the useful life of solar power plants is 25 years whereas the Authority has considered the life of such assets as 10 years under electrical installation. Hence, FIA submits to revise the depreciation on solar plant considering the life of solar power plant as 25 years instead of 10 years.

FIA further submits that Authority should provide detailed calculations for depreciation charged on opening RAB & additions made therein, rather than just giving a consolidated number. In the absence of detailed calculations for depreciation, FIA cannot comment on the depreciation considered for tariff determination.

### IX. WITHOUT CONSIDERING PAST TRENDS, PRODUCTIVITY IMPROVEMENTS AND COST DRIVERS, THE AUTHORITY HAS ACCEPTED THE OPERATING EXPENDITURE SUBMITTED BY AAI ON AN "AS IS" BASIS, WHICH WAS FORECASTED ON VERY BROAD BASIS. BASIS OF ALLOCATION OF OPERATING EXPENDITURE HAS NOT BEEN MENTIONED BY THE AUTHORITY

Operation and maintenance (O&M) expenditure as revised by the Authority

Table #33 on Page 39 of CP No. 24/2018-19

INR crores

Particulars	Pre control regulatory period		Control period					Total	Opex per passenger (INR)	% of total	basis of projection for first control period	YoY					
	FY17	FY18	FY19	FY20	FY21	FY22	FY23					FY18	FY19	FY20	FY21	FY22	FY23
Payroll expenses - non CHQ/RHQ										25%	With the implementation of 7th revised pay commission for non-executive grade, overall growth of 17% has been assumed for FY19. For balance period, 5% has been proposed	29%	17%	5%	5%	5%	5%
Payroll expenses - CHQ/RHQ	11.65	15.02	17.59	18.49	19.41	20.38	21.40	97.27	36.80	4%	5% increase YoY	5%	14%	5%	5%	5%	5%
Administration and General expenses - non CHQ/RHQ	2.60	2.73	3.11	3.26	3.43	3.60	3.78	17.18	6.50	7%	7% increase YoY from FY20 onwards	92%	6%	7%	7%	7%	7%
Administration and General expenses - CHQ/RHQ	2.19	4.21	4.47	4.76	5.08	5.43	5.82	25.56	9.67	41%	5% increase YoY	5%	5%	5%	5%	5%	5%
Repairs and maintenance	25.64	26.92	28.26	29.68	31.16	32.72	34.35	156.17	59.08	15%	10% increase YoY	45%	10%	10%	10%	10%	10%
Utilities and outsourcing expenses	5.88	8.51	9.36	10.29	11.32	12.45	13.70	57.12	21.61	7%	2% increase YoY from FY20 onwards	9%	0%	2%	2%	2%	2%
Other outflows - Collection Charges on PSF	4.71	5.12	5.11	5.20	5.29	5.39	5.50	26.49	10.02	1%	16% increase YoY	182%	16%	16%	16%	16%	16%
<b>Total</b>	<b>52.77</b>	<b>62.81</b>	<b>68.25</b>	<b>72.09</b>	<b>76.16</b>	<b>80.52</b>	<b>85.19</b>	<b>382.21</b>	<b>144.60</b>	<b>100%</b>		<b>19%</b>	<b>9%</b>	<b>6%</b>	<b>6%</b>	<b>6%</b>	<b>6%</b>

### **Issue 1:- Reasonableness of operating expenditure**

FIA submits that the Operating expenditure is one of the major component for determining ARR (56% of ARR), hence, the Authority should have evaluated these expenses in detail rather than accepting projections and basis provided by AAI on an "as is" basis. The Authority should have scrutinized the expenses in detail instead of leaving it for true up in the next control period.

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 maybe considered appropriate.

Accordingly, FIA submits that keeping in view the approach of the Authority, it is submitted that in order to assess efficient operating expenditure the Authority should have conducted independent analysis in accordance with AERA Guidelines.

FIA submits, that the BBI Airport has already completed a significant period of operations, hence benchmarking the costs would not be difficult for the Authority. Therefore, rather than truing up, price cap should be mandated by the Authority for each of the operating expenditures depending on the evaluation of past trends, cost drivers, productivity movements, future expansions otherwise the airport operator would not make palpable efforts to contain the costs. This would lead to additional burden on the passengers for the next control period.

### **Issue 2:- Bifurcation of expenditure into aeronautical & non-aeronautical**

FIA submits that as per Proposal 9. of the Consultation Paper, the Authority has proposed the allocation of aeronautical and non-aeronautical expenses in the following ratios:-

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**Allocation of O&M expenses as per the Authority**

Table #31 on Page 37 of CP No. 24/2018-19

Particulars	Aeronautical	Non-aeronautical	Basis provided
Payroll expenses - non CHQ/RHQ	94.25%	5.75%	Employee ratio
Payroll expenses - CHQ/RHQ	95%	5%	Employee ratio
Administration and General expenses - non CHQ/RHQ	96.20%	3.80%	Not provided
Administration and General expenses - CHQ/RHQ	95%	5%	Not provided
Repairs and maintenance	97.50%	2.50%	Not provided
Utilities and outsourcing expenses	99%	1%	Not provided
Other outflows - Collection Charges on PSF	100%	0%	Not provided

FIA submits that apart from payroll expense ratio, other ratios have been accepted without conducting an independent analysis for the expenses in the first control period, Also, we noted as per Para 12.1.12, certain expenditures have been considered tentative, no data is available by virtue of which Authority ought to have done proper analysis. Accordingly, the Authority ought to have sought the information for the purpose of computing the ratios. Hence, FIA submits that the present ratios does not have any basis and is tentative, which depicts a very lenient approach of the Authority.

FIA submits that the allocation of the operating expenditure between Aeronautical or Non-Aeronautical categories is critical under Shared Till approach. However, till the time study is conducted, FIA would like to highlight aero allocation ratio proposed as per CP 5/2014-15 of Normative approach of 80% should be used, hence it is submitted that aero expenditure should be considered at 80% for the first control period.

Further, it is submitted that the Authority should order for independent study for determining the reasonableness of allocation ratios and consider the same at the time of passing order on Consultation Paper (on basis of that study) on issues like 'bifurcation of expenditures into aeronautical & non aeronautical instead of leaving it for truing up without assigning any cogent reasons.



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**X. GROWTH IN NON-AERONAUTICAL REVENUE HAS BEEN PROJECTED ON A CONSERVATIVE BASIS DESPITE AN INCREASE OF 29% IN NON-AERO REVENUE IN FY 18 & INCREASE IN PASSENGER TRAFFIC - NON-AERO REVENUE PER PASSENGER IS ON A CONSTANT DECLINE OVER THE CONTROL PERIOD.**

FIA submits that as per proposal 8(a) of the CP, the Authority has proposed to consider Non Aeronautical Revenues as per table below and to true up the non-aero revenue in second control period based on actual revenue of first control period.

Non-aeronautical revenues proposed by the Authority

Table #25 on Page 32 of CP No. 24/2018-19

INR crores

Particulars	Pre control regulatory period		Control period					Total	Revenue per passenger (INR)	% total	Basis of projection for first control period	YoY												
	FY17	FY18	FY19	FY20	FY21	FY22	FY23					FY18	FY19	FY20	FY21	FY22	FY23							
Trading concessions																								
Restaurant / snack bars	0.88	1.10	12.22	13.44	14.78	16.26	17.89	74.59	28.22	34%	10% increase YoY	25%	1011%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	
T.R. stall	2.08	2.84	6.68	7.35	8.08	8.89	9.78	40.78	15.43	19%	10% increase YoY	37%	135%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	
Hoarding & display	2.46	5.38	5.91	6.50	7.15	7.87	8.66	36.09	13.65	17%	10% increase YoY	119%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	
Rent and services									-															
Land leases	4.74	5.17	5.17	5.17	5.17	5.17	5.56	26.24	9.93	12%	No increase till FY22	9%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	8%	
Building (residential)	0.02	0.03	0.04	0.04	0.04	0.04	0.04	0.20	0.08	0%	5% increase YoY	50%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	
Building (nonresidential)	1.25	0.65	0.72	0.79	0.87	0.96	1.05	4.39	1.66	2%	10% increase YoY	(48%)	11%	10%	10%	10%	10%	10%	10%	10%	10%	10%	9%	
Miscellaneous									-															
Car rentals	0.36	0.65	1.21	1.52	1.67	1.84	2.02	8.26	3.13	4%	10% increase YoY as per agreement	81%	86%	26%	10%	10%	10%	10%	10%	10%	10%	10%	10%	
Car parking	1.81	2.39	2.63	2.89	3.18	3.50	3.85	16.05	6.07	7%	10% increase YoY	32%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	
Admission tickets	0.61	0.79	0.87	0.95	1.05	1.15	1.27	5.31	2.01	2%	10% increase YoY	30%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	
Other income	1.33	1.03	1.03	1.03	1.03	1.03	1.03	5.17	1.95	2%	Flat income	(23%)	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	
<b>Total</b>	<b>15.54</b>	<b>20.03</b>	<b>36.48</b>	<b>39.69</b>	<b>43.04</b>	<b>46.72</b>	<b>51.16</b>	<b>217.08</b>	<b>82.13</b>	<b>100%</b>		<b>29%</b>	<b>82%</b>	<b>9%</b>	<b>8%</b>	<b>9%</b>	<b>9%</b>	<b>9%</b>	<b>9%</b>	<b>9%</b>	<b>9%</b>	<b>9%</b>	<b>9%</b>	<b>9%</b>
30% of non aero revenue			10.94	11.91	12.91	14.02	15.35																	
Passengers (domestic + international) [in millions]			3.79	4.42	5.16	6.02	7.05	26.43						17%	17%	17%	17%	17%	17%	17%	17%	17%	17%	17%
Non-aero revenue per passenger (INR)			96.30	89.84	83.46	77.55	72.60	82.13						(7%)	(7%)	(7%)	(7%)	(7%)	(7%)	(7%)	(7%)	(7%)	(7%)	(6%)

Increase in non-aeronautical revenue is a function of passenger traffic growth, inflationary increase and real increase in contract rates. Despite all these factors increasing during the control period, on examination of the non-aeronautical revenue projected for the first control period by Authority, FIA noted that a conservative approach has been taken by the Authority.

**Issue 1:-Conservative approach while projecting growth in non-aeronautical revenue**

FIA submits that as per agreements entered by AAI with various vendors, five non-aeronautical revenue streams (namely restaurant/snack bar, T.R. stall, hoarding & display, car rentals, car parking) which contributes 81% of total non-aeronautical revenue for first control period, year on year 10% increase has been proposed by Authority between FY20 to FY23. As per Para 11.7 & 11.8, we understand that Authority has verified the

agreements with retail store vendors & car rental vendor. However, no further details & breakup pertaining to agreements have been mentioned in the CP. No details has been mentioned with respect to key terms, duration, tenure of these agreements.

BBI Airport being the 15<sup>th</sup> busiest airport in India and per table 4 of CP had registered domestic passenger growth over 5 year CAGR is 17.9% .However, as per table 5 of CP, on a conservative basis, passenger growth over the control period has been projected to be 16%-17% p.a. On comparing the passenger growth rate with the escalation clauses in agreement, we analysed that escalation clauses as per agreements is 8% to 10% during FY20 to FY23, which is far lower than year on year projected passenger growth over the control period. Therefore, non-aeronautical revenue per passenger was analyzed for each year of the first control period and a decreasing trend was noted in the same, which clearly indicated that the Authority has taken lower growth rate projections for non-aero revenue.

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.

However, on the review of CP indicated that for the purpose of determining Non-Aeronautical Revenue, Authority, rather than evaluating non-aeronautical revenue in detail as per AERA Guidelines to consider the impact of inflationary increase and real increase while projecting these Non-Aero revenue has relied on ad-hoc growth rate and basis provided by BBI Airport.

FIA submits that the Authority to re-consider growth rates for non-aero revenues so as to keep them in line with the growth in passengers. Further, Authority has not commented on the real increase, inflationary increase and passenger traffic based increase for the

growth rates proposed for the first control period. Since, each of them affect the non-aeronautical revenues, FIA submits that the Authority should reevaluate the growth rates for non-aeronautical revenue on the basis of an independent expert/consultant study. However, in case of paucity of time for the purpose of issuance of the order, it is submitted that Authority to consider 17.9% YoY growth (being 5-year passenger growth CAGR) in non-aero revenue during the control period except in case of long term contracts where YoY escalation is agreed.

It is submitted that Authority should direct AAI to enter into contracts where an escalation clause is linked with passenger growth and propose true up in second control period based on actuals.

It is submitted to Authority, in the event that the capitalisation for new terminal building is done in FY23, then the Authority should re-consider the growth rates projected in FY23 as new contracts will be entered with various vendors which will lead to higher non-aeronautical income.

**Issue 2 :-Authority to check restaurant income for FY17 & FY18**

FIA submits that as per table 22 of the CP, AAI has given restaurant/snack bar income of INR 0.88 crores, INR 1.10 crores, INR 1.03 crores, INR 1.13 crores, INR 1.25 crores, INR 1.37 crores, INR 1.65 crores for FY17, FY18 , FY19 , FY20 , FY21 , FY22, FY23 respectively. Under Para 11.4, *"Authority observed that for restaurant and snack bars, AAI has awarded new master concession to a vendor. The commercial terms as examined by the Authority indicate that AAI will receive a minimum of INR 1.03 crore per month from the vendor. However, AAI has considered INR 1.03 crores as an annual figure. On further discussions with AAI, it was observed that INR 1.03 crores is indeed a monthly amount and hence the Authority proposes to consider it accordingly"*.

However, the Authority has rectified the revenue figures for FY19 onwards without making any correction in FY17 & FY18. Accordingly, FIA submits that the Authority to rectify the revenue figures for restaurant/snack bars for FY17 & FY18 (if not considered) and adjust the shortfall as computed on page 43 of the CP. Further, the Authority should

calculate the ARR for first control period based upon revised figures & propose a new tariff card accordingly.

**XI. CARRY FORWARD OF LOSSES PRIOR TO FY17 SHOULD BE ALLOWED TO SETOFF FROM FUTURE PROFITS**

FIA submits that as per Proposal 10 of CP 23, Authority has considered carry forward of losses for prior 2 years i.e. FY17 & FY18 only and setoff the carried forward losses in 3 years (INR 28.02 crores in FY20, INR 37.61 crores in FY21, INR 31.77 crores in FY22).

FIA submits that as per AERA guidelines Para 5.5.1 which states "Taxation represents payments by the Airport Operator in respect of corporate tax on income from assets/ amenities/ facilities/ services taken into consideration for determination of Aggregate Revenue Requirement." The guidelines are clear that tax payments under Income Tax Act, 1961 will be considered for calculation of target revenue.

FIA submits that Para 5.5.2 of AERA guidelines states "The Authority shall review forecast for corporate tax calculation with a view to ascertain inter alia the appropriateness of the allocation and the calculations thereof". However as per proviso to sub-section (ii) Section 72 of Income Tax Act, 1961,"if the loss cannot be wholly so set off, the amount of loss not so set off shall, in case the business so re-established, reconstructed or revived continues to be carried on by the assessee, be carried forward to the following assessment year and so on for seven assessment years immediately succeeding". Hence, business losses can be carried forward for 8 years and can be set off with profits in future years. Hence, the actual tax paid by the Company in control period shall be lower due to the set off of carry forward of losses prior to FY17.

FIA submits that losses for periods prior to FY17 (if any) that are allowed to carry forward as per Income Tax Act,1961 should be considered while computing taxation in the first control period rather than leaving it for true up in the second control period. Also, the actual payment of income taxes should be considered for true up purposes.

## **XII. Authority ought to follow Single Till Model for determination of Aeronautical Tariff**

As per para 2 of the CP, it is stated that the Authority shall determine tariffs for AAI 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. It is submitted 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)** It is submitted that determination of aeronautical tariff warrants a comprehensive evaluation of the economic model and realities of the airport – both capital and revenue elements. AERA's approach of Hybrid Till for AAI 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 in its inter alia Single Till Order has:
  - (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 air-fares on account of lower airport charges, the volume of passengers is bound to increase leading to more foot-fall 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 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, it is submitted without prejudice that determination of

aeronautical tariff on Hybrid Till basis for the First control period would set the tone and precedent for determination of aeronautical tariff in subsequent control periods contrary to the applicable legal framework. Thus, it is submitted that Authority should discard the option of determination of aeronautical tariff on Hybrid Till and follow Single Till scrupulously.

#### **D ADDITIONAL SUBMISSION**

- (a) In addition to the above submissions, it is respectfully submitted that airlines and consequently, passengers will have to bear the burden of higher Aeronautical Tariffs as proposed by AAI and the Authority. It is noteworthy that Airlines and passengers must not be burdened with any tariff to be collected to fund the capital investments of a private concessionaire.
- (b) The Authority is aware that airlines have been going through difficult times with high prices of crude oil. Increase in aeronautical tariff as proposed by the Authority will erode airlines capabilities to increase fares to sustain its operational capabilities.
- (c) FIA reiterates its submission that there is a critical relationship between passenger traffic and growth of the civil aviation sector. What would benefit both the airport operator as well as the airlines is a reasonable and transparent passenger tariff, both direct and indirect – since then the airlines will be able to attract more passengers and the airports would benefit both through higher collection of aeronautical charges as also enhanced non-aeronautical revenue at the airports. In FIA's view, the airport should be regarded as a single business as its aeronautical and non-aeronautical revenues are intertwined.
- (d) It is submitted that order passed by an administrative authority, affecting the rights of parties, must be a speaking order supported with reasons. It is well settled position of law that:
  - (i) Reasons ought to be recorded even by a quasi-judicial authority.
  - (ii) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

- (iii) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
  - (iv) Insistence on reason is a requirement for both accountability and transparency.
  - (v) Reasons in support of decisions must be cogent, clear and succinct.
  - (vi) A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
  - (vii) Requirement of giving reasons is virtually a part of 'Due Process'.
- (e) In view of the foregoing submissions, it is submitted that the Authority ought to pass reasoned order on issues mentioned above, after the stakeholders are provided with all the relevant copies of the submissions made by AAI and any study report conducted by technical experts etc. for making any additional/final submissions on this Consultation Paper.
- (f) In view of the above, it is respectfully prayed that the Authority keeps in mind the interests of the airlines and civil aviation sector before finalizing any decisions regarding increase in Aeronautical Tariffs and other charges. AAI's proposal, if accepted, will have cascading impact on the airlines and consequently, on the civil aviation industry.
- (g) FIA humbly submits that any reliance by FIA in the present submission, on the DIAL Order dated 23<sup>rd</sup> April, 2018 passed by the Hon'ble Telecom Disputes Settlement & Appellate Tribunal, New Delhi in the case of *Federation of Indian Airlines vs. Airport Economic Regulatory Authority of India & Ors.* - AERA Appeal No. 6 of 2012 and Delhi International Airport Ltd. (DIAL) vs. *Airport Economic Regulatory Authority of India & Ors.* - Appeal No. 10 of 2012, is without prejudice to its rights and contentions before the Hon'ble Supreme Court of India and any reliance on the said DIAL Order may not be treated as an admission.