



Federation of Indian Airlines

I-1734, First Floor,
Chittaranjan Park,
New Delhi - 110019.

Website: www.fiaindia.in

11 July 2017

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

Kind Attention: Shri S. Machendranathan, IAS

Subject: Comments & submissions of the FIA tendered in response to the AERA CP. No.07/2017-18 (Determination of Aeronautical Tariffs in respect of Calicut International Airport) & AERA CP. No.08/2017-18 (Determination of Aeronautical Tariffs in respect of Jaipur International Airport) for the Second Control Period (01.04.2016-31.03.2021)

Dear Sir,

As your kind self would be aware that the member airlines of Federation of Indian Airlines (FIA) were duly present during the meeting and raised objections on various issues pertaining to the Consultation Paper No.7/2017-18 (Calicut International Airport for the Second Control Period) & Consultation Paper No.8/2017-18 (Jaipur International Airport for the Second Control Period). In addition to sharing their views/inputs during the meeting, FIA on behalf of its member airlines submits its response to the Consultation Paper No.7/2017-18 and Consultation Paper No.8/2017-18 as attached.

FIA sincerely apologises for the inadvertent delay and the submission a day after due to technical fault beyond our control. Therefore, FIA would sincerely request the authority to kindly consider our submission without any prejudice and crave to submit any additional submission as and when required.

Assuring the best of our cooperation, we remain,

Yours Sincerely,

For and on behalf of the federation of Indian Airlines,


Ujjwal Dey
Associate Director

A. BACKGROUND

1. On 16.06.2017, Airports Economic Regulatory Authority to be called as "Authority" had issued the File. No. AERA/ 20010/ MYTP/ AAI-Jaipur/ CP-II/2016-17 (Consultation Paper No.8/2017-18) in respect of determination of aeronautical tariff of Jaipur International Airport, Jaipur (JIA), who has been developing, maintaining and operating the airport. The Authority held its stakeholder consultation meeting on 03 July 2017, seeking a detailed written submission from its stakeholder by 10 July 2017.

2. Member airlines of FIA were present during the meeting and raised objections on various issues pertaining to the Consultation Paper No.7/2017-18. In addition to sharing their views/inputs during the meeting, FIA on behalf of its member airlines hereby submits its preliminary objections to the Consultation Paper No.7/2017-18 without any prejudice and craving to submit any additional submission as and when required.

3. 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

4. To assist the Authority in appreciating these submissions on the CP No. 7 of 2017-18 ("CP"), 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: -

5. 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.

6. 'Determination' by the Authority:

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 like Operating Expenditure, General Capital Expenditure, Tariff Rate Card, etc. merely on the basis of JIA's submission but has failed to provide any justification of its own or analysis for the same. 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)**.

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

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

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:

Authority ought to follow Single Till Model for determination of Aeronautical Tariff

7. Hybrid till is followed, which is in contravention to AERA tariff guidelines. In this context, the following facts are noteworthy:

8. It is noteworthy that in a matter pending adjudication before the Hon'ble Airports Economic Regulatory Authority Appellate Tribunal ("AERAAT"), MoCA had submitted by way of its Counter-Affidavit that the Authority is an independent regulator and suggestions of Government of India/ MoCA are not legally binding on it. Further, it has submitted that MoCA has no role to play with respect to determination of aeronautical tariff. The Authority being a party to the said matter is aware of the contents of MoCA's Counter Affidavit in the said matter.

9. 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) AERA in its Single Till Order has held that "*Single Till is most appropriate for the economic regulation of major airports in India*".

10. 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. JIA's approach of Hybrid Till deserves to be discarded.

11. 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:

(a) Comprehensively evaluated the economic model and realities of the airport – both capital and revenue elements.

(b) Taken into account the legislative intent behind Section 13(1)(a)(v) of the AERA Act.

(c) Concluded that the Single Till is the most appropriate for the economic regulation of major airports in India.

(d) 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.

12. 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.

13. 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.

14. FIA therefore submits as under:

(a) Single Till Model ought to be applied to ALL the airports regulated 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.

(b) 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.

(c) 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.

15. 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.

16. AERA vide its order 16/2015-16 dated 17.04.2015 had decided to continue existing tariffs on ad-hoc basis and advised AAI to submit MYTP for the 2nd control period well in time.
17. It may kindly be noted that AAI has submitted its proposal on 08.12.2015 (7.5 months from the order) and almost 4 months well before start of 2nd control period and further AERA allowed AAI to resubmit the MYTP under hybrid till on 08.03.2017 (with a time gap of 15 months from first submission) post release of NCAP (June, 2016) and revised submission on 21.04.2017. AERA circulated this Consultation Paper on 16.06.2017 (almost 18 months from the first submission). This can be treated as an intentional delay, allowing AAI to move from Single Till to Hybrid Till.
18. AERA proposed to conduct a study based on which the treatment to be given to cost of land can be determined on a sound reasoning. AERA should share the timelines of the study and likely date of the report.
19. There was runway closure (from 1200 hours to 2000 hours) between 18.09.2015 to 28.02.2017. Still actual traffic growth for FY 16-17 was 20% (DOM) and 14% (INTL).
20. But AERA has taken 50% of the future growth rate from FY 17-16 onwards, at time when there will be no runway closure. Therefore, AERA needs to re-examine the traffic growth projection.
21. Further, AERA agrees to true-up the actual growth achieved in the 2nd control period while determining tariff for the 3rd control period. But same the principle is not been implemented while determining tariff for the 2nd control period – ignoring actual growth rate for FY 16-17 (1 year of the 2nd control period).
22. Authority proposes to consider FRoR at the rate of 14%. Cost of equity at 14% pa for State is unreasonable and without any justification. AAI being a State Undertaking is under the Constitutional obligation to cater the public interest and not commercial interest. Therefore, cost of equity of 14% pa is very high and are arbitrary.
23. We witnessed a substantial jump in landing charges (31% & 26%- Domestic, 26% & 24% International sector for JIA).
24. User Development Fee (UDF): FIA members pointed out that collection charges of Rs.5/- per pax in case of UDF and 2.5% on PSF was decided almost a decade back. During last decade, these charges kept on increasing, whereas collection charges remained static.

Rather in some cases it used to be exclusive of tax, now in recent orders of AERA they are inclusive of tax - 18% in GST. The same needs to be looked into by AERA.

25. Passenger Service Fee (PSF): In case of JIA, 2.5% collection charges on PSF security was not mentioned in the consultation paper, FIA requested AERA to clarify the same and spell out in the order.

26. There was a note specified under the UDF charges stating that in case of **ANY OUTSTANDING**, carrier will not be entitled for collection charges. FIA members pointed out that in a going concern there will always be dues and some of them may be disputed. This line should be removed from the note.

27. The issue of delay in settlement of collection charges by airport operator was raised by the member airlines. It was stated that if AERA or airport operator specifies that PSF/UDF should be paid within 15 days, they should also include the reciprocate condition that collection charges should be settled within 15 days of submission of invoice by carrier as in certain cases sometime it is pending for more than one year and never settled before 3 months. Members stated, else airport operator should pay 18% interest.

28. Members raised the issue of steep hike in UDF charges by almost 100% in Jaipur on account of USD pax.

29. Member pointed out that with the introduction of GST the industry has an additional impact of Rs 3000/- crores, the substantial part of which may not be set-off due to restricted ITC on economy class and will sit in our financial statement as cost. The airport operator has recently revised their land rates by 270%, which may not be in the prerogative of AERA but all these things will lead to passing on the burden to customer. Over & above if UDF charges are increased, it will be detrimental to industry interest. AERA needs to consider the overall market scenario.