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14/06/17



Federation of Indian Airlines

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12 June 2017

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भारतीय विमानपत्तन प्राधिकारिक विनियामक प्राधिकरण
सफादरजंग एयरपोर्ट, नई दिल्ली-110003

प्राप्त
कार्य नं०: 9044
तारीख: 13/06/17

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

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Kind Attention: Shri S. Machendranathan, IAS

**Subject: Comments & submissions of the FIA tendered in response to the AERA CP.
No.06/2016-17 – Determination of Aeronautical Tariffs in respect of Cochin
International Airport (COK) 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.6/2016-17. 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.6/2016-17 without any prejudice and craving to submit any additional submission as and when required.

Thanking you,

Yours Sincerely,

For and on behalf of Federation of Indian Airlines,


Ujjwal Dey
Associate Director

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FIA's submission towards the Authority's Consultation Paper No. 06/2017-18 titled "Multi Year Tariff Proposal for Determination of Aeronautical Tariffs in respect of Cochin International Airport for the Second Control Period (01.04.2016 -31.03.2021)"

A. BACKGROUND

1. On 12.05.2017, Airports Economic Regulatory Authority to be called as "Authority" had issued the File. No. AERA/ 20010/ MYTP/ CIAL/ CP-II/2016-17/Vol.IV (Consultation Paper No.6/2016-17) in respect of determination of aeronautical tariff of Cochin International Airport, Cochin Limited (CIAL), who has been developing, maintaining and operating the airport. The Authority held its stakeholder consultation meeting on 7 June 2017, seeking a detailed written submission from its stakeholder by 12 June, 2017.

2. Member airlines of FIA were duly present during the meeting and raised objections on various issues pertaining to the Consultation Paper No.6/2016-17. In addition to sharing their views/inputs during the meeting, FIA on behalf of its member airlines hereby submits its preliminary objections including those views/inputs to the Consultation Paper No.6/2016-17 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. 6 of 2016-17 ("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 TVM'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 *simpliciter* accepted CIAL'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

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- (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. CIA 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,

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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. CIAL's first control period is not over yet, wherein AERA stated that CIAL rates will continue at the existing level on adhoc basis. It further states that MYTP for the second control period will be determined by incorporating the actual financials of 2014-15, which would be examined by the AERA along with the aggregate revenue requirement for the first control period. This means AERA need to do the true-up of first control period financials, which is pending before finalizing the tariff for second control period.

17. We witnessed a substantial jump in the landing charges of 54% & cargo charges in the very first year, which should rather be increased gradually over the period.

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- 18. AERA proposes FRoR of 11.17% to CIAL, whereas the financials submitted by CIAL depicts that there is a substantial jump in Dividend payout from 18% (Rs. 55 crores) to 27% (Rs. 135 crores) during the period 2011 to 2014. Therefore, financial requirement should be first met out from internal accruals rather than increase in tariff charges.
- 19. CIAL is the only airport which charges for X-ray in addition to the PSF. In parity with other airports the X-ray charges should be withdrawn, when PSF is being collected.
- 20. CUTE charges @ Rs. 80 per pax is highest in India, whereas in CCU and MAA it is in the range of Rs. 43 per pax. It was also pointed out that all these contracts are awarded to SITA.
- 21. In addition to the above, there is substantial increase in Salary, Electricity Charges and water charges, which needs rationalization.
- 22.

	Para	Comments / Observation
1	1.3.4 read with Table 10	AERA has mentioned that after the commissioning of the new International Terminal, the existing International Terminal would be converted as the new Domestic Terminal, with a five-fold increase in area. However, projected growth of pax during the second control period is only 44% (for Domestic) and 48% (for international). Thus, there is no significant justification of the proposed expansion.
2	Tariff order 18/2015-16 date of issue 22.06.2015 Para 2.1.6; 2.1.7; 2.2.1 & 3.1.2	AERA for the first control period (01.4.2011 – 31.03.2016) had issued its order 18/2015-16 on 22.06.2015 which was almost 6 months from the closure of the first control period - had vide para 12.1 (iii) directed CIAL to submit the MYTP for the Second Control Period well in time as per Guidelines by incorporating the actual financials of 2014-15 which would be examined by Authority along with Aggregate Revenue Requirement for the first control period. It may kindly be noted that CIAL has submitted its proposal on November 2015 (5 months from the order) and further AERA allowed CIAL to submit details and clarifications including

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		<p>resubmit of the MYTP under hybrid till on various dates viz. 8th August 2016, 23rd November 2016, 17th January 2017, 24th January 2017, 10th February 2017, 27th February 2017, 15th March 2017 and 25th March 2017. (additional 9 months from first submission). AERA circulated this Consultation Paper on 12.05.2017 (2 months from revised submission). The above can be treated as an intentional delay, allowing CIAL to move from Single Till to Hybrid Till.</p> <p>Going with the same logic which AERA should determine the tariff under Single Till for 2nd control period well before commencement of the 2nd control period and before release of NCAP.</p>
3	4.3.10	<p>AERA proposes to not revisit and re-compute the Aggregate Revenue Requirement for the First control period. With this AERA has not undertaken the financial study of the first control period and thus allowed CIAL to retain the revenue so earned over and above the ARR for the first control period.</p>
4	6.2.12	<p>AERA notes that area segregation done between Aeronautical usage and Non-Aeronautical usage of Terminal building needs to be technically validated and confirmed. AERA should share the timelines of the study and likely date of the report.</p>
5	Para 4.12 and Table 8, 9, 23 & 24	<p>AERA has revised depreciation rate and excluded Land from RAB. If table 9 is observed Rs 8.36 crores was ONLY reduced from the initial RAB while there is huge difference in the depreciation amount calculated by AERA (Rs 104.13 crores) and as mentioned by AAI (Rs 258.15).</p> <p>This has resultant into higher average RAB.</p> <p>Average RAB as per AAI – Rs 223.09 crores</p> <p>Average RAB as per AERA – Rs 358.82 crores</p> <p>The high average RAB also impacted opening RAB for the</p>

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		2 nd control period. Also, the impact of increase in the average RAB needs to be examined.
6	Para 4.21 and Table 13 & 9	AERA agrees to consider the tax calculation as submitted by AAL. But while doing so it has ignored the revised calculation of Depreciation mentioned in table 9. Impact of depreciation as per table 9 on tax calculation needs to be examined.
7	Table 10	AERA proposes to adopt growth rate as proposed by CIAL without taking into consideration that with introduction of new International Terminal, there would be more scope for growth in both domestic and international passenger traffics. If AERA expects a normal growth of 10%, it should justify the introduction of new International Terminal. Further, vide 5.2.5 AERA has accepted that ATM of CIAL in the year 2021 would be in line with the Pax per ATM trends at BIAL and HIAL's airports. Therefore, AERA needs to undertake comparative study of the ATMs between CIAL vis-à-vis BIAL and HIAL before accepting the traffic growth mentioned by CIAL.
8	Table 29	Depreciation on additional assets (point E) for years 2017-18 is higher than the aero additional assets (point B), while depreciation of additional is almost same to the aero assets. Further there is still depreciation on additional assets although aero additional assets is NIL.
9	Table 30	AERA for year 2017-18 has increased the aero additional assets without any justification and still allowed depreciation on additional assets although aero additional assets is NIL.
10	Table 29 & Table 30	There is sudden increase of almost 44% in the administrative expenses from the year 2016 to 2017. AERA needs to re-examine the same.
11	Table 40 & Table 41 read with	A 100% subsidiary (CIAL Duty Free and Retail Services Limited – CDRSL) was set up which commenced operations in June, 2016.

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	Para 11.1.4; 11.1.5	This we believe has been set-up in order to take the advantage of Hybrid till approach. Accordingly, there is significant reduction in the revenue that can be charged to cross-subsidize Aero cost from Rs 212.49 crores in year 2016 to Rs 60.14 crores in year 2017.
12	16.2.9	AERA had directed CIAL to submit detailed Annual Tariff proposals in line with the ARR and Yield arrived at by the Authority within 7 days of issue of the Consultation Paper. Same needs to be shared with the stakeholders at the earliest.
13	Table 60 read with Para 1.3.5; 1.4.4	AERA has determined Cost of Equity at 14%. However, looking at the healthy balance sheet of CIAL and its ability to fund the projects through internal accruals, the cost of equity is placed at a higher side. AERA should revisit the same accordingly.