



Federation of Indian Airlines

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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.23/18-19 titled "In the matter of determination of Aeronautical Tariffs in respect of Vishakapatnam 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 submissions of Vizag Airport dated 12.09.2017 & 18.07.2018 and any minutes of AUCC consultation (except dt:07.06.18 AUCC Minutes obtained by FIA from AAI). Project Investment File (PIF), as applicable. Accordingly, in the absence of the receipt of such submissions made by Vizag Airport, FIA is unable to appreciate, assess and comprehend the facts and figures (and any comparison thereto) of the CP in its entirety and actuality. Thus, FIA hereby request that the above mentioned MYTP submissions as submitted by the Vizag Airport 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 CP.

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 15.11.2018, the Airports Economic Regulatory Authority of India (hereinafter referred to as the "**Authority**") had issued the File. No. AERA/ 20010/ MYTP/AAI - Vishakhapatnam/ CP-II/2016-17 (Consultation Paper No. 23/ 2018 - 19) in respect of determination of aeronautical tariff of Vishakhapatnam Airport (**Vizag Airport**), owned and operated by the Airports Authority of India (**AAI**). For the purposes of this present submission, the Consultation Paper No. 23/ 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 Vizag 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, 3.2 & 3.3 of the Consultation Paper, it is stated that Vizag Airport filed its original MYTP submission on 12.09.2017 for the first control period from 01.04.2016 to 31.03.2021. It is further stated that due to the elapse of 2 years in the proposed first control period (1.04.2016 to 31.03.2021), which in Authority's view might require a significant change in tariff during the remaining control period, the Authority vide letter to AAI dated 25.06.2018 has proposed that the first control period for Vizag Airport should be from 01.04.2018 to 31.03.2023. The Authority also clarified that the shortfall, if any, for the first two years may be taken to consideration for tariff determination. Subsequently, Vizag Airport filed its revised MYTP on 18.07.2018 for the control period from 01.04.2018 to 31.03.2023. Further, Vizag Airport in its revised MYTP submission has calculated shortfall w.e.f. 01.04.2016 to 31.03.2018 and included it in the present value of ARR for the first control period.

It is not denied that FIA is not the stakeholder for determination of tariff of Vizag Airport. FIA submits that as per a catena of judicial pronouncements, it is a well settled principal of doctrine of natural justice - '**audi alteram partem**' (meaning, hear the other side), that before taking any decision/action affecting the rights and liabilities of an individual/entity, an opportunity of showing cause and to submit

response thereto has to be afforded to the person whose rights and/or liabilities may be affected. This principal is further enshrined under section 13 (4) of the AERA Act, which provides that the Authority shall ensure transparency while exercising its powers and discharging its functions, inter alia:

- (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 23rd 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 submissions of Vizag Airport dated 12.09.2017 & 18.07.2018 and any minutes of AUCC consultation (except dt:07.06.18 AUCC Minutes obtained by FIA from AAI). Project Investment File (PIF), as applicable. Accordingly, in the absence of the receipt of such submissions made by Vizag Airport, FIA is 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 Vizag Airport 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, Tariff Rate Card, allocation of Assets, non-aeronautical revenue etc. merely on the basis of Vizag Airport'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 Vizag Airport's claims under the MYTP without conducting its own independent financial study and prudence check or commissioning experts, for eg. in matters relating to evaluation 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. TARIFF CARD FOR 1ST CONTROL PERIOD – REVIEW OF CHARGES TO BE BORNE BY AIRLINES. 114% IN HOUSING & PARKING CHARGES & 10% INCREASE IN FTC. UDF INCREASED BY 97%. AUTHORITY SHOULD CONSIDER 25% & 16% YOY GROWTH RATE FOR DOMESTIC PASSENGERS & ATM RESPECTIVELY AND OTHER COMPONENTS OF ARR

FIA submits that following are the Schedule of Charges proposed to be charged at Vizag Airport from the effective date to be decided by the Authority:

**FIA's submission towards the Authority's Consultation Paper No. 23/2018-19 titled
"In the matter of determination of Aeronautical Tariffs in respect of Vishakapatnam Airport for the first Control
Period (01.04.2018 - 31.03.2023)"**

Schedule of Charges for Vizag Airport on Page 47 of CP No. 23/2018-19

Category	Unit	Basis and nature	Existing rates (considering the % increase mentioned in CP)	Proposed rates by airport operator for control period	Proposed rates by Authority for control period	% increase in rates
Parking charges						
Up to 25 MT	INR / hour / MT	1. Increase of 114% from the existing rates for control period w.e.f 1 December 2018	1.40	3.00	3.00	114% from existing rates & 4% increase year on year
Above 25 MT up to 50 MT	INR / hour / MT		35.00 + 1.87 in excess of 25 MT	75.00 + 4.00 in excess of 25 MT	75.00 + 4.00 in excess of 25 MT	
Above 50 MT up to 100	INR / hour / MT		81.00 + 3.74 in excess of 50 MT	175.00 + 8.00 in excess of 50 MT	175.00 + 8.00 in excess of 50 MT	
Above 100 MT to 200 MT	INR / hour / MT		268.00 + 4.67 in excess of 100 MT	575.00 + 10.00 in excess of 100 MT	575.00 + 10.00 in excess of 100 MT	
Above 200 MT	INR / hour / MT		735.00 + 5.14 in excess of 200 MT	1,575.00 + 11.00 in excess of 200 MT	1,575.00 + 11.00 in excess of 200 MT	
Housing charges						
Up to 25 MT	INR / hour / MT	1. Increase of 114% from the existing rates for control period w.e.f 1 December 2018	2.80	6.00	6.00	114% from existing rates & 4% increase year on year
Above 25 MT up to 50 MT	INR / hour / MT		70.00 + 3.74 in excess of 25 MT	150.00 + 8.00 in excess of 25 MT	150.00 + 8.00 in excess of 25 MT	
Above 50 MT up to 100	INR / hour / MT		162.00 + 7.48 in excess of 50 MT	350.00 + 16.00 in excess of 50 MT	350.00 + 16.00 in excess of 50 MT	
Above 100 MT to 200 MT	INR / hour / MT		536.00 + 9.34 in excess of 100 MT	1,150.00 + 20.00 in excess of 100 MT	1,150.00 + 20.00 in excess of 100 MT	
Above 200 MT	INR / hour / MT		1,470.00 + 10.28 in excess of 200 MT	3,150.00 + 22.00 in excess of 200 MT	3,150.00 + 22.00 in excess of 200 MT	
Fuel Throughput Charges						
FTC rate	INR / Kiloliter	10% increase from the existing rates	143.08	157.39	157.39	10% from existing rates
UDF Charges						
UDF- Domestic Passenger	INR / embarking passenger	97% increase from INR 150 to INR 295 for control period	150.00	355.00	295.00	97% from the existing rates
UDF- International Passenger	INR / embarking passenger	UDF for international passengers introduced at INR 295 for control period	0.00	355.00	295.00	-

FIA submits that the existing rates for parking and housing have been derived based on 114% increase from existing rates as mentioned in Table 48 of the CP, however the existing rates have not been mentioned in the CP. Further, as per "Charges for airport services (major / non major airports) effective from 1 April 2017" as issued by Airports Authority of India, it was noted that existing tariff rates at Vizag airport are based on the following slabs: (i) upto 40 MT, (ii) Above 40MT upto 100MT and (iii) Above 100MT. Since, the weight slabs mentioned for Parking and housing charges as per AAI tariff card are different from the ones mentioned in Schedule of charges on Page 47 of CP and no bridge has been provided between these slabs, FIA would request Authority to confirm the manner in which the increase of 114% has been computed for first control period over the existing tariff rates of parking & housing charges.

FIA further submits that as per assumptions under Table 48 of the CP, "On account of increase in average housing and parking charges and increment in aircraft movement, these charges are proposed to increase by 114% from existing rates and an increase of 4% thereafter on YoY basis from FY20 onwards", the Authority has accepted these rates for the first control period. Year on year growth rate proposed by the Authority for domestic air traffic movement ("ATM"), which forms 90% of total ATM, is only 9% as compared to the historical 5-year CAGR of 15.93% mentioned in Table 5 of the CP. FIA understands this conservative approach considered towards estimation of domestic ATM may have

resulted in 114% increase in the housing and parking charges. FIA submits that Authority should consider a 16% year-on year growth rate for domestic ATM and re-evaluate the 114% increase in housing and parking charges.

As per assumptions taken by Vizag Aiport under Table 48 of the CP, 'Ground handling' services are assumed to grow year-on-year at the rate equivalent to the combined growth rate of ATM traffic and CUTE charges are assumed to grow year-on-year at the rate equivalent to the growth rate of total passenger traffic. This assumption has been accepted by the Authority as it is, except growth rate of traffic for CUTE charges has been considered on basis of Authority's forecast. However, tariff rates applicable for each of Ground Handling and CUTE have not been mentioned by the Vizag Airport/ Authority in the CP. FIA submits that Authority ought to confirm applicable charges for CUTE and ground handling for stakeholder review. Also, Authority should consider 16 % & 25 % Year on Year (YOY) growth rate for domestic passengers & ATM respectively while computing the said charges.

Further, FIA submits that the Authority has proposed INR 295 as UDF per domestic and international embarking passenger, a 97% increase from the existing rate of INR 150 per domestic passenger. Accordingly, it is submitted that Authority should consider 25% YoY growth rate for domestic passengers while computing UDF. FIA further requests the Authority to confirm if landing charge for the first control period is NIL.

II. AUTHORITY HAS ACCEPTED THE ASSET ALLOCATION RATIO SUBMITTED BY VIZAG AIRPORT WITHOUT CONSIDERING A) ANY TECHNICAL STUDY BY INDEPENDENT AGENCY AND B) NORMATIVE ORDER PARAMETERS

FIA submits that as per Para 6.5 and Para 6.6 of the CP, common assets other than terminal building have been bifurcated into aeronautical and non-aeronautical basis actual utilization of assets by Vizag airport. For the terminal building, the allocation is based on the spaces earmarked for each activity. 6.85% of the Terminal building is earmarked for non-aeronautical activities and accordingly allocation of assets between aeronautical and

non - aeronautical for terminal building is considered as 93.15% and 6.85% respectively by the Vizag airport. For the opening RAB, the Authority has considered this allocation based on earmarked areas for terminal building and essentially relied on assumptions of Vizag airport. In respect of Authority proposes to use Average RAB as given in Table 27 of the CP for calculation of ARR.

Also, with respect to additions, Authority has proposed to allocate the expansion of terminal area into aero and non-aero in ratio of 93.15% to 6.85%. FIA submits that even in the case of terminal area allocation, the Authority has relied on submissions of Vizag Airport. However, FIA understands that entire capex additions during the control period (except terminal expansion mentioned as above) has been considered as Aeronautical by the Authority. Hence, certain additions which could have been allocated to non-aero has not been considered by Authority.

FIA submits that given the criticality of allocation of the airport assets between aeronautical and non-aeronautical in shared till approach, the Authority should carry out allocation of assets on the basis of independent study rather than on the basis of submissions by Vizag airport.

Without prejudice to the above, FIA submits that if an independent study cannot be conducted due to paucity of time, it is submitted that Authority consider aero allocation of 80% as per Proposal 6(a) of CP 5/2014-15 "*In the matter of Normative Approach to Building Blocks in Economic Regulation of Major Airports*" for the first control period and true up the allocation ratio based on independent study in the second control period.

**FIA's submission towards the Authority's Consultation Paper No. 23/2018-19 titled
"In the matter of determination of Aeronautical Tariffs in respect of Vishakapatnam Airport for the first Control
Period (01.04.2018 - 31.03.2023)"**

III. WITHOUT CONSIDERING PAST TRENDS, PRODUCTIVITY IMPROVEMENTS AND COST DRIVERS, THE AUTHORITY HAS ACCEPTED THE OPERATING EXPENDITURE SUBMITTED BY VIZAG AIRPORT AS IS, WHICH WAS FORECASTED ON VERY BROAD BASIS BY VIZAG AIRPORT. ALLOCATION RATION AND BASIS OF ALLOCATION OF GROSS OPERATING EXPENDITURE HAS NOT BEEN MENTIONED BY THE AUTHORITY

FIA submits that Operating expenditure is one of the major component for determining ARR (61% of ARR), hence, the Authority should have evaluated these expenses in detail rather than accepting projections and basis provided by Vizag Airport on an "as is" basis.

Operating expenditure as considered by Authority

Reference from Table #29 on Page 29 of CP no. 23/2018-19

Particulars	FY19	FY20	FY21	FY22	FY23	Total	Opex per passenger (INR)	% of total	Basis of projection for first control period	YoY				CAGR
										FY20	FY21	FY22	FY23	
Payroll costs	979.48	1,050.33	1,123.85	1,202.52	1,286.70	5,642.88	29.67	33%	7% increase YoY	7%	7%	7%	7%	7%
Admin and other expenses	810.41	902.51	939.18	978.13	1,019.52	4,649.76	24.45	27%	10% increase from FY19 to FY23. Fixed amount of INR 5.57 lakhs from FY19 to FY23 for municipal taxes. Fixed annual conservancy charges at INR 254.32 lakhs from FY20 to FY23.	11%	4%	4%	4%	6%
Repair and maintenance	543.64	598.00	687.70	756.47	832.12	3,417.93	17.97	20%	10% increase for FY19 & FY20, 15% in FY21 due to Terminal Building expansion and 10% for remaining control period.	10%	15%	10%	10%	11%
Electricity and water charges	579.27	579.27	695.12	695.12	695.12	3,243.90	17.06	19%	Fixed charges with increase of 20% in FY21 due to expansion of Terminal Building.	0%	20%	0%	0%	5%
Other Outflows (Collection charges on PSF and UDF)	58.01	63.97	70.55	77.83	84.25	354.63	1.86	2%	10% increase YoY, in-line with traffic growth rates of passenger & ATM for control period.	10%	10%	10%	8%	10%
Consumption of stores and spares	7.19	7.90	8.69	9.56	10.52	43.86	0.23	0%	10% increase YoY	10%	10%	10%	10%	10%
Total	2,977.98	3,201.99	3,525.10	3,719.63	3,928.24	17,352.95	91.24	100%		8%	10%	6%	6%	7%

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.

FIA submits that the approach of the Authority for reviewing the operating expenditure is not in line with provision of AERA Guidelines, and accordingly it is submitted that in order to assess efficient operating expenditure the Authority should have conducted independent analysis.

Further, FIA submits that the Authority ought to have scrutinized the expenses in detail instead of leaving it for true up in the next control period. It is submitted, that airport has already completed a significant period of operations, and hence benchmarking the costs would not be difficult for the Authority. Therefore, it is submitted that rather than truing up, a 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 Vizag Airport would not make palpable efforts to contain the costs. This would lead to additional burden on the passengers for the next control period.

FIA further submits that the Gross operating expenditure, allocation ratio and basis of allocation has not been mentioned by Authority in the CP, which suggests very casual approach by Authority. Hence, FIA cannot review the trend of the increase of gross operating expenditure and allocation methodology.

FIA submits that the allocation of the operating expenditure between Aeronautical and Non-Aeronautical categories is critical under Shared Till approach, Authority ought to confirm the allocation ratio and gross operating expenditure being projected prior to the release of Order, for stakeholder review.

IV. GROWTH IN NON-AERONAUTICAL REVENUE HAS BEEN PROJECTED ON A CONSERVATIVE BASIS DESPITE 25% INCREASE IN NON-AERO REVENUE IN FY18, INCREASE IN TERMINAL AREA AND PASSENGER TRAFFIC

FIA submits that as per proposal 5(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:

**FIA's submission towards the Authority's Consultation Paper No. 23/2018-19 titled
"In the matter of determination of Aeronautical Tariffs in respect of Vishakapatnam Airport for the first Control
Period (01.04.2018 - 31.03.2023)"**

Non-aeronautical revenue as considered by Authority

Reference from Table #33 on Page 32 of CP no. 23/2018-19

Particulars	FY17	FY18	FY19	FY20	FY21	FY22	FY23	Total FY17-FY23	Revenue per passenger (INR)	% total	Basis of AERA's projections for 1st control period	YoY					5-year CAGR	
												INR lakhs	FY18	FY19	FY20	FY21		FY22
Hoarding & Display	123.65	231.87	360.00	360.00	414.00	414.00	414.00	2,317.52	12.18	26%	INR 360 lakhs per year in FY19 and FY20. 15% increase in FY21 due to expansion of terminal building. No further increase during control period	88%	55%	0%	15%	0%	0%	4%
Car Parking	176.16	192.14	211.35	232.49	267.36	294.10	323.51	1,697.10	8.92	19%	10% increase except 15% increase in FY21 due to expansion of terminal building	9%	10%	10%	15%	10%	10%	11%
T.R Stall	143.10	121.15	133.26	146.59	168.58	185.44	203.98	1,102.09	5.79	12%	10% increase except 15% increase in FY21 due to expansion of terminal building	(15%)	10%	10%	15%	10%	10%	11%
Building (Non- Residential)	121.64	116.20	127.83	140.61	161.70	177.87	195.66	1,041.50	5.48	12%	10% increase except 15% increase in FY21 due to expansion of terminal building	(4%)	10%	10%	15%	10%	10%	11%
Restaurant/ Snack Bars	49.60	109.38	120.31	132.34	152.20	167.42	184.16	915.41	4.81	10%	10% increase except 15% increase in FY21 due to expansion of terminal building	121%	10%	10%	15%	10%	10%	11%
Admission Tickets	78.78	87.80	96.58	106.24	122.17	134.39	147.83	773.78	4.07	9%	10% increase except 15% increase in FY21 due to expansion of terminal building	11%	10%	10%	15%	10%	10%	11%
Duty Free Shops	48.12	58.65	64.51	70.97	81.61	89.77	98.75	512.38	2.69	6%	Assumed excess billing of INR 8 lakhs pertaining to FY17 reversed in FY18. 10% increase except 15% increase in FY21 due to expansion of terminal building	22%	10%	10%	15%	10%	10%	11%
Car Rentals	48.08	35.05	38.55	42.41	48.77	53.64	59.01	325.51	1.71	4%	10% increase except 15% increase in FY21 due to expansion of terminal building	(27%)	10%	10%	15%	10%	10%	11%
Land Leases	14.64	28.10	28.10	28.10	28.10	28.10	28.10	183.24	0.96	2%	Uniform for the control period	92%	0%	0%	0%	0%	0%	0%
Other Miscellaneous Income	37.46	47.64	2.00	2.10	2.21	2.32	2.43	96.16	0.51	1%	Assumed INR 2 lakhs in FY18 with an annual escalation of 5% during the control period	27%	(96%)	5%	5%	5%	5%	5%
Building (Residential)	0.36	3.40	0.61	0.65	0.68	0.71	0.75	7.16	0.04	0%	Annual escalation of 5% during the control period	844%	(82%)	7%	5%	4%	6%	5%
Total	842.07	1,050.60	1,183.11	1,262.48	1,447.36	1,547.75	1,658.16	8,971.82	47.17	100%		25%	13%	7%	15%	7%	7%	9%
Passengers (domestic + international) [in millions]	2.36	2.48	2.85	3.28	3.77	4.34	4.78	19.02				5%	15%	15%	15%	15%	10%	14%
Non-aero revenue per passenger (INR)	35.71	42.36	41.48	38.49	38.37	35.68	34.71	47.17				19%	(2%)	(7%)	(0%)	(7%)	(3%)	(4%)
30% cross subsidization	N.A	N.A	354.93	378.74	434.21	464.32	497.45	2,129.66				0%	0%	7%	15%	7%	7%	9%

Further, FIA submits that with regard to the projected non-aero revenue from FY19 to FY23 the Authority had accepted all the key non aero revenues (Hoarding & Display, Car parking, T.R stall, Non-residential building lease, Restaurants & admission tickets) as projected by Vizag Airport except Residential building leases, where downward revision has been effected. Hence, the Authority has accepted most of the non-aeronautical revenues submitted by Vizag airport and has not evaluated the basis/assumptions for growth rates considered by the Vizag airport.

Further, FIA submits that increase in non-aeronautical revenue is function of increase in terminal building area, 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, it was noted by FIA that a conservative approach has been taken by the Authority.

Further, as per table given above, FIA states that the Authority has considered a 10% increase in FY20, 15% increase in FY21 and 10% increase in FY22 & FY23 in the first control

period in 7 non-aeronautical revenue streams (namely Car parking, T.R stall, Non-residential building lease, Restaurants, admission tickets, duty free shops and car rentals) contributing c. 70% of total non-aeronautical revenue. Hence, it is submitted that only 5% incremental growth is considered on account of terminal expansion in FY21. In case of Hoarding & Display, which is the largest revenue stream, it is submitted that only increase of 15% is considered in FY21 and no increase thereafter. Hence, on overall basis, 7% increase is considered in FY20, 15% in FY21 and 7% in FY22 and FY23. However, FIA submits that it was noted that the non-aeronautical revenues increased by 25% in FY18, which was in line with 5-year CAGR of passenger traffic growth, hence, it may be seen that the Authority has taken a very conservative approach.

Further, as per Table 1 of the CP, the area of integrated terminal building is expected to increase by 9,250 sq. m. on account of linear expansion. This represents a 42% increase in the terminal building area. FIA submits that the Authority has considered 15% increase in non-aero revenue in FY21, which is just 5% incremental growth over past years.

FIA submits that Vizag airport being the busiest airport in Andhra Pradesh and per Table 4 of the CP had registered historical 5-year CAGR of approximately 25% for domestic passengers and 25% growth in non-aero revenue in FY18, the Authority should have considered a higher growth rate for the non-aeronautical revenues in the control period. The 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.

Further, 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, review of the CP indicated that for the purpose of determining Non-Aeronautical Revenue, the 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 primarily relied on ad-hoc growth rate and basis provided by Vizag 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 and terminal expansion. Further, Authority has not commented on the real increase, inflationary increase, terminal area based 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, it is submitted that Authority re-evaluate the growth rates for non-aeronautical revenue basis a consultant study.

Without prejudice to the above, in case of paucity of time for the purpose of issuance of the order, it is submitted that Authority to consider 25% YoY growth in non-aero revenue during the control period.

V. TRAFFIC PROJECTIONS HAVE BEEN ACCEPTED BY THE AUTHORITY AS IS WITHOUT CONDUCTING AN INDEPENDENT STUDY OF ITS OWN

FIA submits that the Authority sought historical passenger & ATM traffic from FY 09 to FY18 and its projections for the first control period from Vizag airport. FIA noted that Authority has done an upward revision in Vizag Airport projections for YoY growth rates for domestic passenger traffic from 10% to 15% from FY20 to FY22 and from 8% to 10% in FY23. Further, the growth rate projections submitted by Vizag airport for international passenger traffic and ATMs (domestic + International) have been accepted by the Authority. FIA further submits that the Authority has not conducted its own independent study on traffic projections and broadly relied on the data provided by Vizag Airport. Further, as per Proposal 1(c) of the CP, Authority has proposed to true up the passenger traffic and ATM for first control period based on actuals.

**FIA's submission towards the Authority's Consultation Paper No. 23/2018-19 titled
"In the matter of determination of Aeronautical Tariffs in respect of Vishakapatnam Airport for the first Control
Period (01.04.2018 - 31.03.2023)"**

Projected annual traffic as per Authority's examination

Table #6 and Table #7 on Page 11 of CP No. 23/2018-19

Particulars	FY 18	FY 19	FY 20	FY 21	FY 22	FY 23	Total FY 18-FY 23	Common size	YoY					6-year CAGR FY 18 - FY 23	Historical 5-year CAGR FY 14 - FY 18
									FY 19	FY 20	FY 21	FY 22	FY 23		
Passenger traffic															
Domestic	2,346,574	2,698,560	3,103,344	3,568,846	4,104,173	4,514,590	17,989,513	95%	15%	15%	15%	15%	10%	14%	25.68%
International	133,805	153,876	176,957	203,501	234,026	262,109	1,030,469	5%	15%	15%	15%	15%	12%	14%	16.73%
Total	2,480,379	2,852,436	3,280,301	3,772,347	4,338,199	4,776,699	19,019,982	100%	15%	15%	15%	15%	10%	14%	25.11%
ATM															
Domestic	17,860	19,467	21,219	23,129	25,211	26,976	116,002	90%	9%	9%	9%	9%	7%	9%	15.93%
International	1,735	1,943	2,176	2,438	2,730	3,003	12,290	10%	12%	12%	12%	12%	10%	12%	11.56%
Total	19,595	21,410	23,395	25,567	27,941	29,979	128,292	100%	9%	9%	9%	9%	7%	9%	15.51%

Passenger Traffic

FIA submits that as per Table 4 of the CP, historical 5-year and 10-year CAGR for domestic passenger traffic is 25.68% and 16.39% respectively and 5-year CAGR for international passenger traffic is 16.73%.

FIA further submits that as per Para 5.5 of the CP, Authority has considered a 15% growth rate for domestic passenger from FY20 to FY22 and 10% for FY23 instead of estimates proposed by Vizag airport and has accepted the growth rate of 15% submitted by Vizag airport for international passenger. The Authority has considered growth rate of 15% for domestic/ international passenger has been proposed by Authority basis past 10 year CAGR. However, this is significantly lower than historical 5 year CAGR of 25.68% and 16.39% for domestic and international passengers

Hence, FIA submits that Authority consider the 5-year CAGR of 25% and 16% for YoY growth rate projections for domestic & international passenger traffic respectively for the first control period.

Air traffic movement

As per Table 5 of the CP, historical 5-year and 10-year CAGR for domestic ATM is 15.93% and 2.05% respectively and 5-year CAGR for international ATM is 11.56%. Further, as per Para 5.6 of the CP, the Authority has considered a 9% growth rate for domestic ATM from FY20 to FY22 and 7% for FY23 and considered a 12% growth rate for international ATM from FY20 to FY22 and 10% for FY23, thereby accepting estimates proposed by Vizag airport. However, this is lower than historical 5-year CAGR of 15.93% for domestic ATM.

Hence, FIA submits that Authority should consider the 5-year CAGR of 16% YoY growth rate projections for domestic ATM for the first control period.

FIA further submits 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), and Vizag airport presently being the busiest in Andhra Pradesh.

Without prejudice to the above, FIA submits that since, traffic projections are critical in ascertaining the tariffs and CAGR considered by Authority is significantly 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.

VI. USEFUL LIFE OF 30 YEARS CONSIDERED FOR TERMINAL BUILDING AND APRONS WHICH IS 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 as per analysis in tables given below average useful life for assets including Opening RAB for Vizag is approximately 10 to 16 years. Further, average useful life considering only additions ranges between 14 to 21 years.

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Depreciation on assets forming part of RAB as per the Authority

Reference from Tables #42 and #43 on Page 39 of CP no. 23/2018-19 INR lakhs

Asset head	#	FY17	FY18	FY19	FY20	FY21	FY22	FY23
Average RAB	A	4,040.52	5,056.37	6,743.84	9,873.78	12,092.83	11,423.52	10,660.32
Depreciation	B	404.16	462.91	599.43	710.46	777.70	765.85	760.55
Average depreciation rate	C = B/A	10%	9%	9%	7%	6%	7%	7%
Aggregate Useful life (years)	D = 1/C	10	11	11	14	16	15	14

Depreciation on additions analysis by FIA

Reference from Table #19 on Page 21 of CP no. 23/2018-19 INR lakhs

Asset head	#	FY17	FY18	FY19	FY20	FY21	FY22	FY23
Average RAB considering only additions to RAB	A	149.70	1,557.10	3,646.95	7,155.43	9,686.30	9,291.18	8,791.88
Depreciation on additions	B	10.53	73.42	184.17	368.63	495.89	499.30	499.30
Average depreciation rate	C = B/A	7%	5%	5%	5%	5%	5%	6%
Aggregate Useful life (years)	D = 1/C	14	21	20	19	20	19	18

FIA submits that as per Para 6.24 of CP, depreciation from FY19 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 Vizag airport 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 the 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 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. It is submitted that accordingly, in the interest of consumers, Authority could consider useful life of buildings as 60 years instead of taking a conservative view.

Further, FIA's review of useful life of assets at various international airports like London Heathrow, Sydney airport and Amsterdam Schiphol indicated that terminal buildings have useful life as long as 60 years and aprons have it as long as 99 years. Also, useful life of

terminal building for Kannur & Cochin airports have been considered 60 years by Authority. However as per the CP, average life of airport assets additions between FY17 to FY23 is ranging between 15-20 years during the control period which primarily comprises of Terminal & other buildings and Aprons Hence, it is submitted that accordingly, in the interest of consumers, Authority could consider useful life of buildings as 60 years instead of taking a conservative view.

VII. YIELD PER PASSENGER NOT COMPUTED FOR VIZAG AIRPORT BY THE AUTHORITY. THE SAME IN CONTRAVENTION OF CHAPTER III OF AERA GUIDELINES

As per Para 6.1 of Chapter III of the AERA Guidelines, *"The Authority shall determine Aggregate Revenue Requirement as specified in Clause 4.3 and the yield per passenger (Y), to be specified in the Multi Year Tariff Order for the Control Period as specified"*. Accordingly, FIA submits that the Authority has to determine not only ARR but also the yield per passenger for the control period.

FIA noted that historically AERA has not computed or evaluated the YPP while releasing the Order for major airports. A summary of our observations are given below:

Yield per passenger (YPP) calculation for major airports

Airport	Whether computed by AERA?
DIAL	No
MIAL	No
BIAL	Yes, but only for 1st control period
HIAL	Yes
CIAL	Yes
KIAL	No
Vizag	No

FIA noted that in the CP, YPP has not been computed and submitted by Vizag airport and further not computed and evaluated by the Authority. Hence, we request authority to compute the YPP or else provide the reason for not computing the same as the same is not in accordance with AERA Guidelines.

VIII. ASQ RATINGS HAVE NOT BEEN MAINTAINED BY VIZAG AIRPORT AT THE REQUISITE LEVELS IN 2017 AND 2018. NO PENALTY HAS BEEN IMPOSED ON AIRPORT FOR THE FIRST CONTROL PERIOD

The ASQ ratings are summarized in the table below for Vizag airport for the years 2017 and 2018:

Prior period shortfall of FY17 and FY18 as per Authority's examination

Table #39 on Page 36 of CP no. 23/2018-19

Quarter	2017	2018
Q1	4.04	4.15
Q2	4.17	4.36
Q3	3.97	-
Q4	4.17	-
Average	4.09	4.26

FIA submits that, as per Memorandum of Understanding (MoU) signed between the Ministry of Civil Aviation and AAI, the target ASQ rating of 4.80 was agreed upon in relation to Vizag Airport.

As per Proposal 7(i) of the CP, "Since the ASQ ratings of Vizag Airport have been below the target rating of 4.80, the Authority advises AAI to make all out efforts to improve the Service Quality at Vizag Airport. The Authority is of the view that it will examine ASQ ratings while truing up in the next control period and if by then Vizag Airport is unable to achieve the said target, the Authority will consider imposing penalty on Vizag Airport as appropriate."

However, as per para 6.14.2 & 6.14.3 of AERA guidelines, in the event that the Airport Operator(s) performance falls below such benchmark in a quarter, appropriate percentage rebate shall be applicable for such default.

FIA submits that as the ASQ ratings (for Q1 & Q2) of Vizag Airport have not met the target rating of 4.80 as agreed upon in the, the Authority should impose suitable penalty on Vizag Airport in terms of the AERA Guidelines in the present control period, and not leave such exercise of review in the next control period.

IX. CARRY FORWARD OF LOSSES

FIA submits that As per Section 72 of Income Tax Act, 1961 business losses can be carried forward for 8 years and will be set off with profits in future years. FIA submits that carry forward losses for periods prior to FY17 (if any) should be considered in the first control period rather than leaving it for true up in the second control period.

X. AREA OF APRON EXPANSION

FIA submits that the Authority as per Table 1 of the CP, mentions apron bay area of 82,986 sq. m., which includes 56,610 sq. m. for 8 parking bays and 26,376 sq. m. for 6 new parking bays completed and commissioned on September 2018. However, as per Para 6.17 of the CP, "Vizag Airport confirmed that scope of work includes extension of apron for an area of 26,712 sq.m., construction of New link taxiway (N5) with associated shoulders, construction of vehicular lane, shoulders for the old apron, old taxiways N1 and N2, and new VIP road. The surface area of all the above pavements including the extended apron area is 52,357 sq.m".

Hence, as the areas mentioned in the CP are different, FIA requests that Authority to clarify which area for apron is accurate.

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

FIA submits that as per para 4.2 of the Consultation Paper, it is stated that the Authority shall determine tariffs for Vizag Airport using the Hybrid Till model. It is to be noted that FIA has from time to time, advocated the application of a Single Till model across the airports in India. 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 Vizag Airport deserves to be discarded.
- (d) In the Single Till Order, Authority has strongly made a case in favor of the determination of tariff on the basis of 'Single Till'. It is noteworthy that the Authority 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/Vizag Airport 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 23rd 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 and any reliance on the said DIAL Order may not be treated as an admission.