



Federation of Indian Airlines

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22 May 2014

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

Kind Attention: Shri. Alok Shekhar

Sub: Comments and submission of the Federation of Indian Airlines (FIA) tendered in response to the Consultation Paper No. 1/2014-15 titled "Consultation Paper No. 01/2014-15 - Determination of Aeronautical Tariffs in respect of Chaudhary Charan Singh International Airport, Amausi, Lucknow for the 1st Control Period (01.04.2011-31.03.2016)"

Dear Sir,

First of all, the FIA would like to extend its gratitude towards the authority for granting an extension till 22nd May 2014 for submitting the response w.r.t the above mention Consultation Paper.

The enclosed submission is submitted by FIA on behalf of its member airlines for authority's kind consideration. FIA thereby request AERA to kindly take a note of the enclosed submission and fix tariff in line with the need of the hour. Also, respectfully crave leave to file any additional/supplementary response, if required at a later date.

Thanking you,

With best regards,

For and on behalf of the Federation of Indian Airlines,



Ujjwal Dey
Associate Director

SUBMISSIONS ON BEHALF OF THE FEDERATION OF INDIAN AIRLINES

1. On behalf of its member airlines, FIA is hereby placing submissions in response to the Consultation Paper No.1/2014-15 dated 21.04.2014 and titled "Determination of Aeronautical Tariffs in respect of CCSI Airport, Amausi, Lucknow ("**CCSI Airport**") for the 1st Control Period (01.04.2011-31.03.2016) ("**CP No.1/2014-15**")" with respect to the Multi Year Tariff Proposal and Annual Tariff Proposal in respect of submitted by Airports Authority of India ("**AAI**").

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

- (a) Section 13 of the Airports Economic Regulatory Authority of India, Act, 2008 ("**AERA Act**");
- (b) AERA's Order No.13/2010-11 dated 10.01.2011 'In the matter of Regulatory Philosophy and Approach in Economic Regulation of Airport Operators' ("**Airport Order**")
- (c) AERA (Terms and Conditions of Determination of Tariff of Airport Operators) Guidelines, 2011 ("**AERA Guidelines**") dated 28.02.2011;
- (d) Regulatory jurisprudence and settled principles of law.

3. In the context of CP No.1/2014-15, it is respectfully submitted that the following gaps/lacunae must be addressed by the Authority before concluding the present proceedings:-

- (a) Authority has placed reliance on the Letter and Order of Ministry of Civil Aviation to arrive at its decision without its own analysis. It is not befitting for independent sectoral regulator to place absolute reliance on a document which is not a policy direction under Section 42 of AERA Act. Authority is required to apply its own mind to arrive at its decisions.
- (b) The detailed tariff model has not been made available along with the Consultation Paper to understand the exact computation of tariff proposed by AAI. AERA must provide the required documents including the tariff model to assess the basis of justification of the decisions proposed by the Authority.
- (c) Authority has considered AAI's submission for Initial Regulatory Asset Base of Rs.69.30 crores. This is contrary to the AERA Guidelines which mandate the

Authority to scrutinize the submissions of airport operator and satisfy itself with the evidentiary data.

- (d) Authority should conduct an independent technical evaluation and an in-depth scrutiny of project cost proposed by AAI.
- (e) Authority has proposed the determination of tariff for 5 years commencing from the Financial Year ("FY") 2011-12, which is proposed to be effective from 01.06.2014 (except the rate of domestic UDF after consultation with the stakeholders and taking into account their responses along with the attendant shortfalls). In doing so, Authority has failed to take into account that control period of 60 months (5 years) has been reduced to 22 months, which increases the burden on users of the airport including airlines.
- (f) Inefficient means of financing has led to Weighted Average Cost of Capital ("WACC") to 14%, which is on higher side than allowed at even the privatized airports.
- (g) Depreciation up to 100% of the value of assets has been taken into account which is contrary to AERA Guidelines.
- (h) Authority has accepted the Operating Expenditure as forecasted by AAI without its own analysis and taking into account past trends, productivity improvements and cost drivers. Such acceptance of Operating Expenditure without any independent assessment by the Authority is also contrary to the AERA Guidelines (Clause No.5.4.2).
- (i) In the present Consultation Paper, there is no clarity with respect to the existing exemption from landing charges for the aircrafts with a maximum certified capacity of less than 80 seats.

ISSUES FOR CONSIDERATION OF THE AUTHORITY

I. Process Issues

4. A perusal of the CP No. 1/2014-15 points out that Authority has:-

- (a) Relied upon Ministry of Civil Aviation's:-
 - (i) Order dated 18.02.2014 on the issue of expenditure out of Passenger Service Fee (Security Component) Escrow Accounts.
 - (ii) Comments received by the Authority by letter No. AV 20036/19/2013-AD dated 24.09.2013 in response to Authority's Consultation Paper No.14/2013-

14 dated 26.06.2013 dated 26.06.2013 'In the matter of Determination of tariffs for Aeronautical Services in respect of Bengaluru International Airport, Bengaluru, for the first Control Period (01.04.2011 to 31.03.2016)'.

- (b) Not appointed its own Auditor/Consultant as per Section 14 of the AERA Act.
- (c) Not undertaken the exercise of 'Determination' or given reason for its consideration towards various airport charges.
- (d) Not complied with AERA guidelines by not conducting User Consultation in respect of major capital projects.
- (e) Left most of the components of aeronautical tariff for 'Truing Up'.

I.A. Absolute Reliance upon Ministry of Civil Aviation's Order/Letter for arriving on decisions is erroneous

5. In the present Consultation Paper, Authority has placed its reliance upon Ministry of Civil Aviation's:

- (a) Order dated 18.02.2014 on the issue of on the issue of expenditure out of Passenger Service Fee (Security Component) Escrow Accounts.
- (b) Comments received by Authority by letter No. AV 20036/19/2013-AD dated 24.09.2013 in response to Authority's Consultation Paper No.14/2013-14 dated 26.06.2013 'In the matter of Determination of tariffs for Aeronautical Services in respect of Bengaluru International Airport, Bengaluru, for the first Control Period (01.04.2011 to 31.03.2016)'.

6. Firstly, a perusal of Ministry of Civil Aviation's Order dated 18.02.2014 reflects that the same has been issued with respect to the airports, which are being operated and managed by private concessionaires. There is no clarity as to:-

- (a) Whether the same will be applicable to even the airports operated by AAI or "all the airport operators" irrespective of whether it is operated by AAI or private concessionaires?
- (b) What has been the past practice been regarding the expenditure towards security systems and equipment with respect to AAI operated airports?

In this regard, a better approach would have been to first seek clarity from Ministry of Civil Aviation and then the Authority ought to have analysed the impact of such order, which in the present case is incremental capital expenditure of Rs.2.26 crores related to security in Regulatory Assets Base.

7. Secondly, Authority has relied upon Ministry of Civil Aviation's comments dated 24.09.2013 in response to Authority's Consultation Paper No.14/2013-14 dated 26.06.2013 to include the revenues from cargo, ground handling services and fuel supply as Aeronautical Revenues and considered accordingly irrespective of the providers of such Aeronautical Services. It is submitted that AERA must provide a reason for such treatment. FIA submits that the revenues from cargo, ground handling services and fuel supply must be treated as Aeronautical Revenues since these services are defined in Section 2(a) of the AERA Act, 2008 as Aeronautical Services.

8. In the context of Ministry of Civil Aviation's aforesaid Order dated 18.02.2014 and letter dated 24.09.2013, it is submitted that the Authority being an independent regulator ought to act within the four corners of the law and not merely on the basis of suggestions of Ministry of Civil Aviation. It is noteworthy that in a matter pending adjudication¹ before the Hon'ble Airports Economic Regulatory Authority Appellate Tribunal ("AERAAT"), Ministry of Civil Aviation had submitted by way of its Counter-Affidavit that the Authority is an independent regulator and suggestions of Government of India/Ministry of Civil Aviation are not legally binding on it. Further, it has submitted that Ministry of Civil Aviation 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 Ministry of Civil Aviation's Counter Affidavit in the said matter. Ministry of Civil Aviation'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 Ministry of Civil Aviation itself before the Hon'ble AERAAT.

1.B. Re: Appointment of Auditor by the Authority

9. It is submitted that the Authority ought to carry out its own assessment for determination of the aeronautical tariff. The purpose of appointing an independent and external consultant is to enhance the credibility of data being relied upon by obtaining written reasonable assurance from an independent source. It is submitted that in addition to technical competence, independence is the most important factor in establishing the credibility of the opinion. In current scenario, all the external consultants have been directly engaged by AAI which compromises the independence of opinions expressed by them.

10. It is submitted that under Section 14(b) and Section 14(c) of the AERA Act, Authority is empowered to engage its own consultants or direct any of its officers or employees to

¹Appeal No.6/2012: FIA vs. AERA & Others: FIA's Challenge to DIAL Tariff Order (No.3/2012-13)

make an inquiry in relation to the affairs of any service provider. There is nothing on record which shows that Authority has engaged any such Consultant of its own.

I.C. Re: 'Determination' by the Authority

11. 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 increase in various charges (for instance Landing, Parking and Housing Charges, UDF etc.) but has failed to provide any justification or analysis for the same.

12. In terms of Section 13(1)(4)(c) of the AERA Act as well as the settled position of law, Authority's decision must be fully documented and explained. Also, order passed by an administrative authority, affecting the rights of parties, must be a speaking order supported with reasons. Therefore, it is submitted that the Authority ought to undertake the exercise of 'Determination' by application of mind and pass reasoned order on any issue and the increase in aeronautical tariff as proposed by AERA in the present consultation process should not be given effect to.

I.D. User Consultation w.r.t Capital Expenditure should be undertaken by AAI

13. In the present Consultation paper, Authority has proposed User Consultation as per AERA Guidelines by involving all the stakeholders for all the major capital expenditure to be incurred during Financial Years 2014-15 and 2015-16 related to Integrated Cargo Complex (Rs.15.00 crores), Fire Station (Rs.15.00 crores) and 2 Nos.-Passenger Boarding Bridge (Rs.5.51 crores). However, it seems no such user consultation has been carried out with regard to expenditure incurred from 2011-12 to 2013-14 (primarily related to Integrated Terminal Building).

14. AAI has not undertaken the User Consultation and has stated that the works of construction of New Integrated Terminal Building at CCSI Airport, have already been completed and the "projected capital expenditure at CCSIA has been approved by the relevant Competent Authority under the appropriate delegated powers". The Authority has failed to condemn such act of violation of AERA Guidelines. To the contrary, in the context of future capital projects, Authority has proposed that AAI shall undertake User Consultation before commencement of execution of projects in terms of AERA Guidelines.

15. It is pertinent to note that Authority has not specified the 'Competent Authority', which has approved the 'Project of construction of New Integrated Terminal Building and

other capital projects'. The Authority must clarify who is the 'Competent Authority' for this purpose? This aspect is relevant since, it seems that AAI has not conducted the User Consultation on the strength of its approval from the 'Competent Authority'.

16. The Authority in its AERA Guidelines has stated that the Airport Operator shall undertake User Consultation with Airport Users Consultative Committee ("AUCC") on major capital projects planned at the airport. As per Clause A1.3.2 of Appendix-I to AERA Guidelines, User Consultation is mandatory for the projects, which are more than 5% of the value of the Regulatory Assets Base at the beginning of the control period or Rs.50 crores, whichever is the lower amount. It is submitted that the project is yet to be completed and AERA Guidelines are in place since 28.02.2011. Therefore, AAI ought to have undertaken a User Consultation process instead of only relying upon prior approval of the 'Competent Authority'.

I.E. True-up exercise should be conducted sparingly by the Authority

17. In the present Consultation Paper, the tariff plan is subject to truing up in next control period with respect to following tariff components:-

- (a) Project Cost
- (b) Depreciation
- (c) Average Regulatory Assets Base
- (d) Traffic Forecast
- (e) Revenue accruing to AAI from aeronautical services of Cargo, Ground Handling and Supply of fuel to aircraft (including FTC)
- (f) Non-aeronautical Revenue
- (g) Operation and Maintenance expenditure
- (h) Taxation
- (i) Shortfall in collection of UDF

18. It is submitted that in the present case not only Authority has not applied its mind but indiscriminately left aforementioned components for future in the garb of truing up exercise during next control period. In the regulatory jurisprudence, it is well settled that while considering the Tariff Petition of the utility the regulator has to reasonably anticipate the revenue required by a particular utility and such assessment should be based on practical considerations. It is submitted that Authority should not leave everything to true

up and attempt to make all the projections and assessments as accurately possible on the basis of available data.

I.F. Consultation Paper does not include detailed tariff model

19. It is to be noted that no detailed tariff model has been provided with the present Consultation Paper to understand the exact computation of tariff proposed by CCSI Airport. Absence of adequate information makes it difficult to justify the decisions proposed by the Authority. Following are some of the critical areas where information is not adequately provided:

- (a) **Linking of Annual Revenue Requirement to Tariff Card:** Basis of determining tariff components (i.e. landing charges, parking charges, UDF, etc.) is not provided in the CP No.1/2014-15 and the link of increase in various charges and Annual Revenue Requirements is missing. It is submitted that the Authority should clearly set out the links between Annual Revenue Requirements and Tariff Card by providing additional details such as revenue driver (e.g. ATMs, no. of passengers, etc.) of each tariff component
- (b) The details of assets included in Initial Regulatory Assets Base have not been made available.
- (c) Asset wise depreciation computation is not available, which can be mapped with depreciation considered for determining Annual Revenue Requirement.
- (d) Authority has proposed to consider corporate income tax at the rate of 32.445% for the remaining control period. However, no computations have been provided for tax amount considered during control period.

II. Material issues for tariff determination

20. It is submitted that the present Consultation Paper raises *inter alia* the following important and critical questions for consideration of the Authority:-

- (a) Whether the claim of AAI for increase in Aeronautical Tariff is justifiable on financial/economic basis?
- (b) Can the late submission of relevant information for determination of aeronautical tariff by AAI be ignored which has essentially diminished the effective control period to 22 months from 60 months (5 years)?
- (c) Is the computation of Depreciation contrary to AERA Guidelines is justifiable?
- (d) Is Authority's reliance only on AAI's data for determining following is justifiable:-

- (i) Initial Regulatory Assets Base and project cost which has been capitalized or are to be capitalized during the current control period.
 - (ii) Operating Expenditure as it is one of the major components for determining Annual Revenue Requirement.
 - (iii) Non-aeronautical revenue i.e. revenue generated from services other than aeronautical services.
- (e) Is levy of UDF permissible under the relevant law? If so, for what purposes can levy of UDF be termed justifiable?
- (f) Can the proposed Aeronautical tariff be considered as a fair, just or reasonable claim of AAI in a prudent, regulated, price cap mechanism as envisaged under the Act read with the AERA Guidelines of the Authority?

III. ISSUE-WISE SUBMISSIONS IN RESPONSE

III.A. Regulatory Period and Recovery of Annual Revenue Requirement ought to be aligned so that recovery is spread over

21. In the CP No.1/2014-15, the Authority has tentatively decided the tariff for the 5 years control period starting from 01.04.2011 which is likely to come into effect from 01.06.2014.

22. The Authority is overlooking that though AAI had submitted its Multi Year Tariff Proposal on 30.09.2011 but has submitted the requisite information vide its submissions dated 18.06.2012, 13.09.2013, 18.11.2013 and 14.02.2014. In determining the tariff in the year 2014 for the control period of 01.04.2011 to 31.03.2016, the Authority will be compressing the recoverable period of legitimate 60 months to merely 22 months.

23. This approach is unacceptable as it would increase the operational expenditure of the airlines and render its operations economically unviable. It is noteworthy that airlines cannot recover such past-cost from its passengers who have travelled in the period gone by.

24. It is settled position of law that future consumers cannot be burdened with additional costs as there is no reason as why they should bear the brunt. Such quick-fix attitude is not acceptable. As such, the approach in the present Consultation Paper does not appear to deal with the present economic realities and interests of consumers while proposing the tariff in its present form. Authority being a creature of statute is under a duty to balance the interest of all the Stakeholders and consumers, which it is mandated to do under the AERA Act. Authority's proposal for tariff determination for the period of 5 years

and compressing the recovery for less than 2 years is imprudent and detrimental to the interests of Stakeholders including the airlines and the passengers.

III.B. All claims w.r.t Project Cost should be independently assessed by Authority

25. Authority has proposed to accept AAI's submissions with respect to the project cost which has been capitalized or is to be capitalized during control period (2011-12 to 2015-16) without any evaluation. The following table depicts project cost and allied capital works at CCSI Airport that are proposed to be capitalized by the Authority during control period:

Table 1: Cost of the Project and allied Capital works at CCSIA as proposed by AAI²

Particulars (Rs. in crores)	2011-12	2012-13	2013-14	2014-15	2015-16	Total
Runways, Apron and Other Air Side Associated Works	1.06	0.21	0.66	-	7.90	9.83
Fire Station and Other Allied Works	-	0.06	0.30	-	15.00	15.36
Construction of integrated cargo complex	-	-	-	-	15.00	15.00
Integrated Terminal Building and Other Allied Works	1.30	121.02	1.08	-	-	123.40
Refurbishing and installation of Passenger Boarding Bridge (PBB)	-	-	-	5.51	-	5.51
Security and Other Operational Works	0.53	2.41	-	-	-	2.94
Augmentation of water supply in Residential colony	-	-	0.20	-	-	0.20
Total	2.89	123.70	2.24	5.51	37.90	172.24

26. As noted hereinabove, Authority has proposed User Consultation as per AERA Guidelines by involving all the stakeholders for all the major capital expenditures³ which is likely to be incurred during Financial Years 2014-15 and 2015-16. However, no such User Consultation has been carried out with regard to expenditure incurred from 2011-12 to 2013-14 (primarily related to Integrated Terminal Building).

²Table No.3 @ Page No.13 of CP No. 01/2014-15

³Related to Integrated Cargo Complex (Rs. 15.00 crore), Fire Station (Rs. 15.00 crore) and 2 nos. Passenger Boarding Bridge (PBB) (Rs. 5.51 crore)

27. Further, Authority has considered Initial Regulatory Asset Base (Rs 69.30 crores towards the Initial Regulatory Assets Base for Financial Year 2011-12) as per AAI's submissions which is contrary to the principles of AERA Guidelines. In terms of Clause 5.2.4 of AERA Guidelines, original cost of asset for Initial Regulatory Assets Base shall be included in the Regulatory Assets Base based on following principles:

- (a) Evidence of competitive procurement for major capital investments of value more than 5% of the opening Regulatory Assets Base of the first Tariff Year;
- (b) Evidence that investment was made in accordance with the capital investment plan duly approved by the competent authority; and
- (c) Evidence that investment, if any, over and above as provided for in (b) above was necessary for providing better service at airport(s) or on account of a specific request from Users or Stakeholders.

In this regard, it seems Authority has failed to carry out the evidentiary assessment of its own.

28. It is submitted that rather than relying on project cost proposed by AAI, the Authority should conduct an independent technical evaluation and an in-depth scrutiny of project cost proposed by AAI. Capital expenditure is the most critical factor in determination of aeronautical tariff. Hence, it is critical that a good industry benchmark with respect to optimal capital expenditure per square meter is established by the Authority. Any spend over and above should be absorbed by the airport operator as part of its business risk.

29. Without prejudice to the above, it is respectfully submitted that even if the claim be treated as valid and admissible, the Authority must consider and decide as to:-

- (a) Whether any capital investment so made must not go into the Regulatory Asset Base and be secured through return on equity/return on capital employed?
- (b) Prudence check on each claim of capital expenditure must be done along the lines of the established accounting standards and practices which would disallow unreasonable, unfair or extravagant expenditure.

30. Being a creature of statute, the Authority is mandated to analyze the documents and conduct prudence check to ensure balance between reasonable recovery of efficient and prudent costs while preventing usurious windfalls, viz.-

- (a) Section 13 (1)(a)(i) of the AERA Act envisages that the Authority shall consider the

actual expenditure incurred and timely investment in improvement of airport facilities.

- (b) Prudence check is an intrinsic and essential part of the process of tariff determination as is also evident from Section 13 of the AERA Act. Any expenditure incurred by AAI cannot be accepted by the Authority on the face of it and passed on to the consumers directly or indirectly. The Authority is required to evaluate the claims made by AAI and only after satisfying itself through a rigorous prudence check which involves:-
- (i) Scrutiny of the expenditure made by AAI and assessment of whether the same has been reasonably and properly incurred.
 - (ii) Examining the resultant benefit from the said expenditure in terms of enhanced efficiency.
 - (iii) Appraising the working parameters of the utility with the prevalent norms, benchmarks and standards.

It is submitted that for any cost, the Authority is mandated to conduct prudence check in terms of established regulatory jurisprudence as it is vital to scrutinize each and every claim made by AAI.

31. As per the settled position of law, a sectoral Regulator is empowered to scrutinize the prudent expenditure. It may disallow the expenditure incurred by any utility if the same is imprudent and the direct burden of such imprudent expenditure falls on consumers/passengers.

III.C. Authority ought to compute Depreciation in terms of AERA Guidelines

32. In the present Consultation Paper, Authority has proposed to compute depreciation up to 100% of the value of assets. It has been stated that AAI is following the straight line method for depreciation and the depreciation rate applied to various assets is as per AAI's approved accounting policy considering the useful life of the assets. The Authority has listed out the salient aspects of AAI's depreciation policy as under:

- (a) Method of Depreciation –Straight Line Method.
- (b) Charging of depreciation at 100% in case assets are used in a financial year for 180 days or more. If the assets are used for less than 180 days in a year the depreciation will be charged at 50%. This policy is effective from the Financial Year 2012-13. Up to Financial Year 2011-12, for addition to fixed assets, depreciation was provided for

full year irrespective of month of capitalisation and no depreciation was provided in the year, the asset is disposed of.

- (c) Residual value for each asset to be taken as Re.1, balance to be provided by way of depreciation as per prescribed rates.

In this regard, Authority has also observed that the AAI's accounts are maintained as per the provisions of the Section 28 (1) of the Airports Authority of India Act, 1994 ("AAI Act").

33. As per Clause 5.3.3 of the AERA Guidelines, the minimum residual value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the original cost of the asset on straight line method.

34. Authority has noted that AAI's Depreciation Policy is not in accordance with its Airport Order and AERA Guidelines. However, Authority has ignored its own AERA Guidelines and proposed to follow AAI's Depreciation Policy and the depreciation calculated in accordance thereof for the purpose of determination of tariffs for aeronautical services at CCSI Airport since:-

- (a) AAI is a statutory body established under the AAI Act.
- (b) The Board of AAI has approved the depreciation policy that has been adopted by AAI.
- (c) AAI's format of accounts has been formulated in consultation with the Comptroller and Auditor General of India ("C&AG"), who also audits the books of accounts of AAI as mandated under the AAI Act. The C&AG have not commented adversely on the depreciation methodology adopted by AAI
- (d) Accounts of the AAI, certified by the C&AG, together with the audit report are laid before the Parliament.

35. It is submitted that Authority should determine the depreciation as per Airport Order and Airport Guidelines for the purpose of computing Annual Revenue Requirement as it is settled position of law that the statutory authority is bound by its own Regulations/Guidelines. FIA has computed the sensitivity if as per the AERA Guidelines, the depreciation is computed at the rate of 90% instead of 100% as under:

Table 2: Sensitivity analysis - Depreciation rate - 90% of RAB and to consider 10% salvage value

S.No.	Particulars	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	Total (Rs.Crores)
A	Depreciation	10	20	20	21	23	94.6
B	Average Regulatory Assets Base	66	114	157	140	140	616.8
C	Average rate of depreciation (A/B)						15.3%
E	Average useful life of assets (100%/C)						6.52
D	Rate of depreciation based on 90% of asset value as per airport guidelines						13.8%
E	Opening RAB	69	63	166	148	133	
F	Additions during the year	3	124	2	6	38	
G	Depreciation [(E+F/2)/D]	10	17	23	21	21	91.6
H	Closing RAB (E+F-G)	62	169	145	132	150	
I	Net decline in depreciation (A-G)	(0.1)	3.2	(2.6)	(0.1)	2.5	2.9
J	Increase in RAB due to accelerated depreciation (I*14%)	(0.0)	0.4	(0.4)	(0.0)	0.4	0.4
K	Net decline in Aggregate Revenue Requirement due to accelerated depreciation (I-J)	(0.1)	2.7	(2.2)	(0.1)	2.2	2.5

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

Therefore, as per the aforesaid computation, the Aggregate Revenue Requirement will decline by Rs.2.5 crores, if the depreciation is computed in terms of the AERA Guidelines.

36. In this regard it is submitted that depreciation-methodology (of using accounting life of assets) being presently considered by Authority is erroneous and ignores the reality that such an approach will have an unjust inflationary impact on passengers/airlines by front loading of tariff. Presently, the Authority is considering only the accounting life of assets instead of considering the useful life of assets (at least 30 years). Such reduced accounting

life of assets compared to useful life would result in artificial increase in the depreciation charge and would have an adverse impact of increasing the tariff in the initial years.

III.D. Authority has erred in allowing WACC at 14% on account of AAI's Inefficient Means of Financing

37. In the present Consultation Paper, Authority has proposed to consider WACC for CCSI Airport at 14% which is at par with the WACC considered for tariff determination at Chennai and Kolkata Airport. However, WACC at other airports namely Delhi, Mumbai, Hyderabad and Bangalore is in the range of 10.3% to 11.7%.

38. It is pertinent to note that higher WACC at CCSI Airport (and other AAI owned airports) is primarily due to low gearing ratio of 9% (approximately) of AAI. Though Authority has recognized that AAI's current means of financing is not efficient and accordingly advised AAI to take steps to move towards efficient means of financing (viz. 60:40) over time, but it may not be appropriate to pass the burden of AAI's inefficient means of financing on the users of the airport. Accordingly, the Authority is requested to revisit the WACC computation of CCSI Airport as airport users should not be penalized for the inefficiencies of the utility.

39. FIA has undertaken the computation of impact on Annual Revenue Requirement, if WACC is allowed at 10.5% percent, which has been followed at other privatized airports as under:

Table-3:

Impact on Annual Revenue Requirement if WACC is computed at the rate of 10.5%

Particulars	2011-12 to 2015-16 (Rs. Crores)
Total ARR as per Authority	464.80
Total ARR considering WACC @ 10.5%	443.21
Overall reduction	21.59
Overall reduction%	5%

It is noteworthy that, if Authority follows the WACC at the rate of 10.5% instead of 14.5%, Annual Revenue Requirement will reduce by Rs.21.59 crores i.e. 5% (approximately).

III.E. Authority ought to scrutinize AAI's claim of Operation and Maintenance Expenditure

40. Authority has accepted the Operating Expenditure as forecasted by AAI without considering past trends, productivity improvements and cost drivers. It is noteworthy that Operating Expenditure is one of the major components for determining Annual Revenue Requirement i.e. 73%.

41. 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.

42. It is submitted that in order to assess efficient Operating Expenditure, the Authority should conduct independent study and evaluate the claimed expenses in detail rather than broadly relying on projections and basis provided by AAI.

43. Further, the Authority has accepted to true up the Operating Expenditure based on the actual costs. It is submitted that instead of leaving Operating Expenditure for truing up, price cap should be mandated by the Authority otherwise the airport operator would not make palpable efforts to contain the costs. It is submitted that Authority should establish some optimal operating benchmarks be laid down for the airports to keep operations efficient e.g. Operating Expenditure per passenger or per landing. The same can be based on some model efficient airports. In absence of such a benchmark, there is no check and balance mechanism to ensure that users of the airport are not bearing extra cost on account of non- efficient operations.

44. It is submitted that Operating Expenditure is one of the major component for determining Annual Revenue Requirement (73% in the present case). Hence, the Authority should evaluate these expenses in detail rather than only relying on projections provided by AAI.

III.F. Authority ought to have independently assessed Non-aeronautical Revenue

45. In CP No.1/2014-15, the Authority has proposed that for the first control period it may consider the forecast of Non-aeronautical Revenue provided by AAI for determination of tariffs and true up the actual receipts from Non-aeronautical revenue while determining tariffs for the next control period. Review of the present Consultation Paper indicates that

for the purpose of determining forecasted Non-aeronautical revenue, Authority, has not dealt with the commercial and financial details and placed its absolute reliance on assumptions provided by AAI.

46. It is pertinent to note that Non-aeronautical revenue is also one of the major components for determining Annual Revenue Requirement, which off-sets the same by 18% reduction in the context of CCSI Airport for the current control period.

47. It is noteworthy that as per Clause 5.6.1 of the AERA Guidelines, the Authority's review of forecast of revenues from services other than aeronautical services may include scrutiny of bottom-up projections of such revenues prepared by the Airport Operator, benchmarking of revenue levels, commissioning experts to consider where opportunities for such revenues are under-exploited, together with the review of other forecasts for Operation and Maintenance Expenditure, traffic and capital investment plans that have implications for such activities, etc.

48. However, review of the present Consultation Paper indicates that for the purpose of determining Non-aeronautical Revenue, Authority, rather than evaluating the same in detail as per AERA Guidelines, has relied on projections and basis provided by AAI. Considering there has been terminal expansion during review period, it is submitted that Authority should reasonably estimate or appoint a Consultant to determine revenue from new premises as it may not be appropriate to burden the airlines and passengers with higher tariff in this control period and provide relief for the same in subsequent period.

III.G. Re. Exemption from Landing Charges for aircraft with maximum certified capacity of less than 80 seats

49. In the present Consultation Paper, there is no discussion on the exemption from landing charges for aircraft with a maximum certified capacity of less than 80 seats which are operated by domestic scheduled airline operators. It is noteworthy that at present, AAI exempts the aircrafts with a maximum certified capacity of less than 80 seats, being operated by domestic scheduled operators from landing charges at the CCSI Airport. It is submitted that absence of such exemption affects the scale of operations and financial feasibility for operator who operate less than 80 seater aircraft. It is one of the major factors in deciding fleet mix and operations at a particular airport. Therefore, it is submitted that the exemption of landing charges for the aircraft with a maximum certified capacity of less than 80 seats, should be continued. Copy of a AAI's 'Charges for Airport & Air Navigation Services' as updated on 01.07.2013 evidencing the current exemption is annexed hereto as **Annexure – I.**

III.H. Re: Levy of User Development Fee ("UDF")

50. In the present Consultation Paper, Authority has proposed to levy UDF on the basis of AAI's Annual Tariff Proposal ("ATP"). It is noteworthy that UDF is being introduced on the embarking passengers in the following manner⁴:

(a) UDF at Rs.480/- per domestic departing passenger and Rs.1,000/- per international departing passenger (with an increase @ 5.9% per year up to 2015-16)

Or alternatively:

(b) UDF at Rs.350 per domestic departing passenger and Rs.1,000/- per international departing passenger (with an increase @ 5.9% per year up to 2015-16).

51. In this context, it is submitted that Authority has introduced absolutely new stream of revenue in favour of AAI, which is not envisaged under the Airports Authority of India Act, 1994 ("AAI Act") or AERA Act.

52. It is a settled position of law that any levy or compulsory exaction which is in the nature of tax/cess cannot be levied without a statutory foundation/charging section, as laid down in a catena of judgements by the Hon'ble Supreme Court. It is well settled principle of law that no tax, fee or any compulsory charge can be imposed by any bye-law, rule or regulation unless the statute under which the subordinate legislation is made specifically authorises the imposition as in such cases there is no room for intendment.

III.I. Re: 'Doctrine of Infrastructural Essential Facilities'

53. It is submitted that under the competition law, an enterprise is under an obligation to extend its essential infrastructural facility at a reasonable cost. AAI's control over CCSI Airport renders it a monopolist having control over 'essential infrastructural facility' of the airport in the city of Lucknow and the eastern region of the country.

54. It is submitted that AAI assumes the position of a monopolist since it exercises control over CCSI Airport, Lucknow which is a crucial infrastructural facility for a city like Lucknow and State of Uttar Pradesh due to its political and economic significance at both national and international levels. Airport is an essential facility, and thus, per this doctrine, the monopolist should not be allowed to charge an exorbitant price for accessing its facility. Authority is under a bounden duty to check any opportunity which may lead to the abuse of monopolistic power by the airports and that stand in the way of effective economic regulation.

⁴Para 14.5.6 @ Pg. 39 of CP No. 17/2012-13

IV. CONCLUSION

55. It is submitted that since the determination of aeronautical tariff of various major airports is evolving, it would be relevant if a standard benchmarking with respect to optimal Capital Expenditure per square meter and Operating Expenditure per passenger/landing is established by the Authority. This would be useful for all the Stakeholders while examining various tariff proposals.

56. There is a need for guidance by the Authority being the sectoral regulator to the industry so that norms for operation are determined for the industry based on the technology, industry performance and in order to ensure optimum utilisation of assets with efficient and economic operation. Normative level can be determined by the Authority on the basis of Benchmarking.

57. The purpose behind using a benchmarking approach is that to the extent that a utility is more efficient than the industry or is able to achieve higher rates of productivity changes, it will retain these benefits forever. Thus, the advantage of using a benchmark is that it creates an incentive for an enterprise to be more efficient. The purpose behind using a benchmarking approach is that to the extent that a utility is more efficient than the industry or is able to achieve higher rates of productivity changes, it will retain these benefits forever. Thus, the advantage of using a benchmark is that it creates an incentive for an enterprise to be more efficient. Further, it is emphasised that the Authority is bound by its AERA Guidelines and Airport Order.

58. It is noteworthy that there is a critical relationship between passenger traffic and growth of the civil aviation sector. What would benefit both the airport 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. It is submitted that the Authority must balance the interest of airlines and the passengers which is of paramount importance for the aviation industry.

59. In view of the above, it is respectfully prayed that the Authority must perform its functions for determining Aeronautical Tariff after following the principles of prudence check and appointing its own independent auditor. The Authority must keep in mind the interests/implications of/on the airlines before finalizing any decisions regarding increase in Aeronautical Tariff and other charges.