

Dated: 15th November 2016

Ref: AERA/Finance/2016-17/02

To
The Secretary
Airports Economic Regulatory Authority of India
AERA Building,
Administrative Complex,
Safdarjung Airport, New Delhi -110 003.

भारतीय विमानपत्तन आर्थिक विनिमायक प्राधिकरण
साफदरजंग एयरपोर्ट, नई दिल्ली-110003

प्राप्त

डायरी नं: 55/6
तारीख : 15/11/16

Subject: BIAL submission to AERA Consultation Paper 01/2016-17 dated 5.10.2016

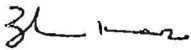
Dear Madam,

The AERA has issued a Consultation Paper 01/2016-17(CP 01/2016-17) dated 5th October 2016 in the matter of aligning certain aspects of AERA's Regulatory Approach with the provisions of the National Civil Aviation Policy-2016 (NCAP-2016) approved by the Government of India. The AERA has invited comments from the stakeholders in relation to the points in Para 4.3 of the Consultation Paper by 15th November 2016.

Please find herewith BIAL's response to AERA on the specific points for the needful consideration at your end.

Thanking You.
Yours faithfully,

For Bangalore International Airport Limited



Bhaskar B
Senior Director - Finance & Support Services

Encl:a/a

The AERA has issued a Consultation Paper 01/2016-17(CP 01/2016-17) dated 5th October 2016 in the matter of aligning certain aspects of AERA's Regulatory Approach with the provisions of the National Civil Aviation Policy-2016 (NCAP-2016) approved by the Government of India. The AERA has invited comments from the stakeholders in relation to the points in Para 4.3 of the CP 01/2016-17).

We thank AERA for providing this opportunity to submit our views which are as discussed below:

- 1. Para 4.3(i): *In line with the provision under Para 12(c) of the NCAP-2016, AERA may adopt "Hybrid Till" for determination of tariffs for Airport Operators/Independent Service Providers under the Price-cap Model from the second control period.***

The National Civil Aviation Policy 2016 ("NCAP 2016") was published after extensive consultations from stakeholders and public including participation from AERA. The NCAP 2016 requires that future tariffs at all airports be calculated on a 'hybrid till' basis by considering 30% of non-aeronautical revenue for cross-subsidizing aeronautical charges. There is a clear policy directive and leaves little room for discussion or doubt. AERA is obliged to comply with the policy directives contained in the 2016 Policy. It is our considered view that Policy matters are in the domain of the Government of India (GoI) in terms of AERA Act, 2013. As the NCAP 2016 covers an entire gamut of subjects pertaining to aviation sector as a whole, there is no need for consultation with regard to future tariffs as AERA is bound to comply with the NCAP 2016 and employ 30% hybrid till mechanism. We are further of the view that no separate direction under Sec.42 (2) of the Act is required to be issued to AERA to give effect to the above policy decision of NCAP 2016.

However, aligning to the fact that a consultation process has been initiated by AERA, BIAL wishes to submit that NCAP 2016 has determined future tariffs at Hybrid till to ensure uniformity and level playing field for all airport operators. This is a positive move as the regulatory certainty will bring sharper focus on the development of airport infrastructure and investor interest in privatization of airports.

- 2. Para 4.3(i)- *The true up for the first control period shall be done on "Single Till" basis unless there is any direction from the Govt. of India to the contrary.***

BIAL wishes to make the following submissions:

a. Tariff Determination Process for 1st Control Period

AERA had initially issued Order No.13/2010-11, Order No.14/2010-11 and Direction No.5 to propose the regulatory framework under which tariff proposals of each of the airports would be evaluated and separate tariff orders issued. Under the said orders and direction, AERA proposed to determine BIAL's tariff under 'Single Till' mechanism. Aggrieved by this proposed regulatory approach, BIAL had preferred Appeal No.2/2011 and Appeal No.7/2011 before the Hon'ble Airports Economic Regulatory Authority Appellate Tribunal. Appeal no 2/2011 was disposed of by the Tribunal on the grounds that Order 13 was only the philosophy of AERA and it did not have any binding force. Further, during the hearing of Appeal No.7, AERA made a submission that Order No.14 and Direction No.5 are only indicative of the mind of AERA, prima facie and that BIAL can canvass its views regarding tariff determination. Accordingly, Appeal No.7 and connected appeals were disposed of with a direction to AERA to provide opportunities to all stakeholders to raise all pleas including those against Order 13/2010-11 and to consider the same.

As per the order disposing off the appeal, BIAL submitted its detailed responses to AERA elaborating inter alia as to why 'Single Till' mechanism cannot be applied in the case of BIAL. Without prejudice to its rights, BIAL wrote to the Ministry of Civil Aviation suggesting that, as a workable solution, 30% hybrid till mechanism may be adopted for BIAL. In response, the Ministry of Civil Aviation, by its letter dated September 24, 2013 indicated that 40% hybrid till mechanism may be adopted for BIAL.

BIAL Tariff Order for 1st Control Period:

AERA passed BIAL Tariff Order No.08/2014-15 dated June 10, 2014 determining Tariff on 40% shared till basis for the first control period and further directing that the excess revenue share in the hands of BIAL attributable to non-aeronautical revenue is to be clawed back at the time of computation during the second control period by means of reduction from the Regulated Asset Base, and thus, effectively regulating BIAL under 'Single Till' approach.

Aggrieved by the said tariff order, BIAL preferred Appeal No.3/2014 before the Hon'ble Appellate Tribunal and the said appeal is pending consideration. AERA has entered appearance in the said appeal and thus, the issue of appropriate till mechanism for BIAL for the first control period and truing up mechanism prescribed in the said order is sub judice before the Hon'ble Appellate Tribunal. BIAL therefore suggests that it would be inappropriate for AERA to once again consider or

hold consultations with regard to the issue of appropriate till mechanism for BIAL for the first control period as this issue is sub judice.

b. Till Mechanism for 1st Control Period - Hyderabad airport

BIAL wishes to submit that the Ministry of Civil Aviation (MoCA), in a letter to AERA dated 11 June 2015 (Ref: F. No. AV. 20036/778/2015-AD), has approved 30% Shared Revenue Till in respect of Hyderabad Airport(HIAL), with retrospective effect from Control Period 1 starting FY 2011.

Both BIAL and HIAL Airport are Greenfield airports having similar Concession Agreements signed by the Government of India. Both the projects are identical and started at the same time with Public-Private Partnership (PPP) approach. Further, structuring of the projects in terms of land lease, viability gap funding, etc. from tender stage to awarding of the project is similar in nature. Since MoCA has taken a policy measure that tariff determination in respect of HIAL shall be on 30% SRT basis, by implication for the tariff determination of BIAL, the same methodology has to be applied, i.e. on 30% SRT basis with effect from the 1st Control Period for the reasons that both the airports are similarly placed airports and cannot be treated differently.

3. Para 4.3(ii) - The criteria for competition assessment for ground handling service providers may be considered as minimum 3 competitors instead of 2 as envisaged in Para 19(a) of the NCAP-2016.

The NCAP also stated in Clause (d) of point relating to Ground Handling of the NCAP-2016 that:

“d) All domestic scheduled airline operators including helicopter operators will be free to carry out self-handling at all airports.”

Specialised ground handling business is capital intensive and requires certain volume of traffic (critical mass) to generate revenues to run viable operations. The minimum number of designated ground handling agencies required to operate at an airport should be linked to traffic handled at the airport and certain traffic threshold should be defined only beyond which another ground handling agency is allowed to operate at the airport.

In addition, the NCAP-2016 has allowed self-ground handling by domestic airlines which further reduce the ground handling business for existing ground handlers. The major airlines which operate in

Bangalore airport have partial or full self- ground handling. Some airlines are considering the option to go for self-handling.

For the purpose of competition, even the existence of two ground handlers acts as a competitive barrier and is an adequate measure for competitive assessment and fair enough to be given a light touch approach.

However, we wish to inform that the earlier policy of the Government of India interalia denying self-handling to airlines is pending before the Hon'ble Supreme Court in SLP No. (C)No. 7764 of 2011 between FIA & Ors vs. UOI & Ors.