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Secretary,
Airports Economic Regulatory Authority (AERA) of India
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Address
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Dear Ms. Puja Jindal,

Reference: IATA'S RESPONSE TO CONSULTATION PAPER NO. 01/2016-17 ALIGNING CERTAIN ASPECTS OF AERA'S REGULATORY APPROACH WITH THE PROVISION OF NATIONAL CIVIL AVIATION POLICY-2016 (NCAP-2016)

As the global trade association representing the world's leading airlines, the International Air Transport Association (IATA) is pleased to provide a submission on AERA's consultation paper mentioned above. IATA represents some 265 airlines comprising 83% of total air traffic. The major scheduled airlines operating to the international airports of India are members of IATA.

IATA recognizes that developing policy for the air transport sector is complex and requires a considered view for each segment of the value chain. It's not a one size fits all approach. Overall, the NCAP-2016 is a positive development as it provides a clear direction and commitment of the Government for aviation going forward. However, certain policies such as the imposition of a Hybrid Till policy will have a negative bearing on the affordability and sustainability of air travel. This undermines the Mission as set out in NCAP-2016 to "Provide safe, secure, affordable and sustainable air travel for passengers and air transportation of cargo with access to various parts of India and the world".

The present submission presents IATA's views in relation to AERA's proposals as per consultation paper No 01/2016-17, paragraphs 4.3 (i) and (ii):

A) 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 under the Price-cap Model from the second control period. 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.

IATA strongly opposes the proposal made by AERA, and request it to reconsider on the basis of the following:

1) There is no compelling evidence that would justify moving away from AERA's previous decision to regulate under a Single till mechanism

The AERA Order No 13/2010-11 stated AERA's decisions on its regulatory philosophy towards the setting of charges. Such order was the result of a thorough examination of different stakeholder views (including IATA's) via an extensive consultation process of its proposals (the 89-page White Paper No 01/2009-10 and followed by the 279 –page consultation paper No 3/2009-10). This order determined that AERA would apply the Single Till mechanism for setting charges.



In particular we note that in the abovementioned consultation paper (no 3/2009-10), paragraph 2.43, AERA highlighted the most influencing factors in its decision to utilize the Single till:

“2.43 The Authority considers that the balance of the evidence relevant to the Indian situation points towards Single Till being the most appropriate basis in general for the regulatory regime for major airports in India. In taking this view, the Authority has been mainly influenced by the following:

- (a) Non-aeronautical revenue is clearly a function of aeronautical activity at an airport. Therefore, there is a persuasive case for non-aeronautical revenues to be taken into consideration for fixation of aeronautical tariffs.*
- (b) A Single Till approach protects interests of users by ensuring service provision commensurate with the respective tariff / charges.**
- (c) Single till approach takes all airport assets and costs into account thus avoiding complications relating to cost allocations etc. inherent under a dual till approach”*

Since such determination, we do not see any compelling reason on why should now AERA deviate from such well sound regulatory approach.

The only reason provided in the NCAP to adopt a hybrid till approach is *“to ensure uniformity and a level playing field across various operators”*. It should be noted that in this scenario, a “level playing field” by implementing hybrid tills is equal to allow airports to increase their level of charges (since that would be the immediate effect of all airports shifting to hybrid till) while earning excessive returns. We do not see how this can be consistent with AERA’s philosophy to protect the interest of users. Rather, the clause in the NCAP appears to protect the financial interests of airports owners in detriment of users.

We strongly believe that if AERA were to consider shifting from its established Regulatory philosophy it would need to justify why its previous conclusions were wrong. A decision on the regulatory till, which is so fundamental to the duties of a regulator, cannot be solely based on the misguided justifications in the NCAP. So far, no compelling reasons have been provided for such a change.

2) Evidence of Single till being in the public interest

We would like to highlight that there is indeed evidence from the Indian context which now robustly demonstrates how ‘Single Till’ is more beneficial – and in line with the overall thrust of the NCAP of maintaining affordability and in line with specifically clause 12 (a) of the NCAP.

And this evidence relates to the recent case of Hyderabad airport, where AERA in 2014 determined tariff on the basis of single till; and determined that by making the UDF charge ‘0’, it still allowed the airport operator to achieve its targeted Annual Revenue Requirement (ARR). (And this position was also robustly defended on behalf of MoCA/AERA by the Additional Solicitor General of India in the High Court where the private airport operator had filed a Writ petition. In 2015 however, MoCA and AERA seem to have chosen not to defend the relevant AERA Order in this regard). Since the MoCA Order under Section 42(2) of the AERA Act on 11 June 2015 instructed that hybrid till be used for tariff determination for Hyderabad, it resulted in the UDF charges to increase from ‘0’ under Single Till, to Rs 1,938 for international departing passengers & Rs. 491 for domestic passengers.



The Hyderabad Airport determination thus firmly establishes and provides evidence that Single Till is in the best interest of the Indian passenger; and any movement away from the Single Till principle outlined by AERA, only adds to charges that the passenger has to bear.

3) AERA's independence will be undermined if its regulatory philosophy is overridden by Government decisions

IATA believes that AERA's independence will be undermined if its regulatory philosophy is overridden by Government decisions.

IATA was in fact surprised to read the statement in 2.2 of the consultation paper that "On the advice of Govt. of India, AERA adopted a Shared till mechanism for the Bangalore airport".

- The Government may have given comments but that, we hope was received like comments received from any of the other stakeholders of AERA – unless the government gave an Order under Clause 42 of the Act.
- After taking into consideration all the comments received, AERA has to take a considered view and deliver a well-Reasoned decision.
- If AERA goes by the advise of government then there is no need for AERA, government can simply act on its own advise.
- If AERA goes by the advise of government, then the independent regulator is acknowledging that government advise is superior to AERA's own independently determined regulatory philosophy.
- In the specific case of Bangalore:
 - AERA had in its consultation paper, planned to determine tariff for BLR on the basis of Single Till. As like other stakeholders, MoCA also provided AERA with its comments.
 - AERA analysed that & then arrived at a reasoned decision allowing a 40%, and not 30% shared revenue till.
 - There was a very specific Public purpose for AERA's decision – which was to allow the airport with additional resources to fund its terminal expansion.
 - AERA also mentioned that this facility was given only for the 1st Control Period, while also stating clearly that this will be clawed back in the next control period, and how it will be clawed back.
 - It would thus be incorrect to say that AERA adopted a shared till mechanism for Bangalore "on the advise of government".
 - The Bangalore example also highlights that the figure of 30% shared till is also not sacrosanct, it is 40% shared till in the case of Bangalore. The NCAP position on hybrid till for non-AAI airports will leave the airport operator in Bangalore benefiting due to the transition from 40% hybrid to 30% hybrid (instead of Single till), at the expense of the users.

We state this to make the point that an independent regulator in AERA is much needed in India due to the monopolistic environment that airports operate in. The possibility of an airport operator abusing its dominant position to extract high and unreasonable return is very likely in the absence of AERA's continued oversight.



We are not outlining the benefits of Single-Till in this submission since that is well documented through our various submissions to AERA in the past.

However we would just like to remind the Authority that AERA's position on Single Till principle for regulation of airports was also supported by the Ministry of Finance in its letters to MoCA & AERA in 2014 – AERA was not alone in arriving at its decision. We would like to encourage AERA to uphold & defend public interest and act as an Independent Regulator – rather than simply function on the advise of government.

Finally, AERA needs to give a chance to its own Regulatory Philosophy to mature and then analyse the results and determine if the decided course was in the best interest of users. It cannot change only after the first regulatory period.

4) Shifting to hybrid till would contradict AERA's interpretation of the AERA Act

In its Order No. 13/2010-11 AERA explicitly analyses the consistency of Dual and hybrid tills with its functions as per AERA act and determined the following: (para 5.136):

"...Further, in the absence of an explicit provision that even part of the revenue received from services other than aeronautical services could be considered, as is the case under a hybrid till, the Authority believes that the legislature did not contemplate regulation under a hybrid till"

In this regard, and unless AERA provides a reasoned opinion on why the above is not the case anymore, and subject that opinion for consultation, we believe essential that AERA maintains its previous defined stance towards Single till.

5) Inconsistencies in the NCAP itself

We see that AERA is elaborating its proposals to shift to hybrid till on the basis of paragraph 12c of the NCAP. However, such paragraph is at odds with paragraph 12a of the same policy, which indicates:

*"MoCA will coordinate with AERA, AAI, airlines, airport operators and stakeholders like cargo, MRO, ground handling, etc **to identify ways to bring down airport charges**, while abiding by the provisions of existing concession agreements and contracts."*

So, while 12 (a) proposes to find ways to bring down charges, paragraph 12 (c) proposes to increase them by implementing hybrid till.

If AERA intends to use the NCAP as the basis for adjusting its regulatory framework (which it shouldn't in the first place, as it should solely base its decisions in the interest of users), AERA should at least analyse the policy in its entirety (and not just para 12 c), and challenge the fact that the Government Policy is in itself inconsistent.



6) NCAP-2016 Section 12: Airports developed by State Governments, Private sector or in PPP mode

Section 12 of the NCAP specifically addresses “Airports developed by State Governments, Private sector or in PPP mode”. Thus, it clearly excludes the AAI airports, which is addressed independently in the following Section 13.

AERA’s Consultation document No. 01/2016-17 in para 4.3 however states that “In line with the provision under para 12(c), AERA may adopt “Hybrid Till for determination of tariffs for Airport operators”.

It should be noted that “Airport operators” in the above can only include the operators as defined under Section 12 of the NCAP 2016, viz. “Airports developed by State Governments, Private sector or in PPP mode” – which specifically omits AAI airports, (which are covered under Section 13 of the NCAP 2016).

Notwithstanding the above – and for reasons as outlined in our submission – IATA would urge the Authority that it should continue to adopt the Single Till philosophy as has been in place since the AERA Order No 13/2010-11. However, if AERA decides to deviate from its regulatory philosophy solely with the objective of bringing alignment with the NCAP, then such deviation could of course only be applied to those airports specifically covered under Section 12 of the NCAP viz. “Airports developed by State Governments, Private sector or in PPP mode”.

7) No Policy Direction has been provided

The NCAP is guiding document in relation to Governments future decisions, and therefore it is not law in itself. We see that AERA already acknowledges in its consultation document that no Direction has been provided to AERA (under para 42 of the Act), so we do not see why AERA is already proposing to depart from its well justified principles.

8) Hybrid Till is not necessary to attract investments

The point relates to the entire campaign by the private airports for going to the government and getting MoCA to mandate Hybrid Till, since they had not been able to convince AERA. The argument of the private airports was based predominantly on the plea that investment in airports will suffer and that private operators will not be interested in investments in airport infrastructure. IATA would like to request AERA to look at the evidence of the past 6 years available within India, which points to the contrary:

- In 2009, when the AERA white paper and the consultation paper on regulatory philosophy had already been published, GVK bought L&T’s 17% stake and Zurich Airport’s 12% stake in Bangalore Airport.
- In 2001, after the Single Till Order of AERA had been published, GVK bought a further 14% stake of Bangalore Airport from Siemens.
- In March 2016, much before the Civil Aviation Policy with its Hybrid Till Position was approved, Fairfax bought 33% of Bangalore Airport from GVK.
- In April 2016, Zurich Airport too was able to find a buyer for offloading a 5% stake in Bangalore Airport.
- News reports point out that there are various sovereign funds and other prominent private investors expressing significant interest in acquiring a major stake at Mumbai Airport.
- Thus we would expect AERA to take a finer look at the evidence and determine independently if there is indeed a case for lack of investor interest in the airport infrastructure – or is it a case of fearmongering tactic employed by irresponsible parties.



B) 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.

IATA supports the need for a competitive market for the provision of ground handling services. However, stipulating a minimum of three providers might not be a reasonable business proposition at some airports. This topic ought to be deliberated further to better understand the assessment completed to support this decision and to allow IATA to comment meaningfully. Similar to our comments on the hybrid till proposals, AERA should not make changes to its regulatory philosophy solely on the basis of the NCAP, but only on the basis of sound principles that would be in the best interest of India airport users.

We remain available to discuss any of the items raised in this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Amitabh Khosla", written over a light blue horizontal line.

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