

Dated: 28<sup>th</sup> April 2017

Ref: AERA/Finance/2017-18/02

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

**Subject: BIAL submission to AERA Consultation Paper 08/2016-17 dated 31.03.2017**

Dear Sir

AERA issued a Consultation Paper No.08/2016-17 dated 31<sup>st</sup> March 2017 in the matter of Capping the percentage of Royalty / Revenue Share payable to Airport Operator as a "Pass Through" Expenditure for the Independent Service Providers providing Cargo facility, Ground Handling and Supply of Fuel to the Aircraft at Major Airports. The AERA has invited comments from the stakeholders in relation to the points in Para 3.1 of the Consultation Paper.

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**

  
**Anand Kumar P**  
Vice President - Controlling & Regulatory Affairs

*Encl: a/a*

BANGALORE INTERNATIONAL AIRPORT  
LIMITED

SUBMISSIONS REGARDING

CONSULTATION PAPER NO.8/2016-17 DATED  
MARCH 31, 2017

1. Bangalore International Airport Limited (“**BIAL**”) welcomes this opportunity to submit its views and concerns to the Airports Economic Regulatory Authority of India (“**Authority**”) in relation to Consultation Paper No.8/2016-17 dated March 31, 2017 (“**Consultation Paper**”). We submit our response to the Addendum below.
2. It has been the consistent position of BIAL that the Airports Economic Regulatory Authority of India Act, 2008 has to be considered by the Authority holistically. Section 13(1)(a)(vi) of the Act mandates that the Authority shall, for the purpose of determination of tariff, take into consideration the concessions offered by the Central Government in any agreement or memorandum of understanding or otherwise. BIAL has also canvassed this position inter alia in Appeal No.7/2011 which is pending consideration before the Hon’ble Airports Economic Regulatory Authority Appellate Tribunal.
3. The Concession Agreement executed between BIAL and Ministry of Civil Aviation, Government of India and in particular clause 10.2.2 read with Schedule 6 provides a list of charges that are to be regulated. Cargo, ground handling and fuel farm services are excluded from the ambit of regulation under Schedule 6.
4. Since the Concession Agreement provides for certain specific concessions and exemptions to BIAL, BIAL cannot be subject to a regulatory exercise contrary to the Concession Agreement

and thus BIAL should be excluded from the applicability of the present consultation paper.

5. In light of the above, BIAL requests that the proposals contained in the consultation paper should not be applied to BIAL & its ISPs. Without prejudice to the aforesaid, BIAL states as follows.

- This Authority had, after multiple rounds of consultation, passed Direction No.4 of 2010-11 titled Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff or Services Provided for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft) Guidelines, 2011 laying down the regulatory philosophy for tariff determination in respect of services of cargo facility, ground handling and supply of fuel. In terms of the said guidelines, tariff has been determined by light touch approach for a multitude of service providers also known as Independent Service Providers or “ISPs” The Consultation Paper indisputably provides for intrusive regulation i.e. Price Cap approach which is quite the opposite of regulation by light touch approach. We propose to the Authority to consider Light touch in its entirety and not propose a cap for Fees/Revenue share/Royalty payable by ISP to airport operator.

6. While the Authority has asked for evidence based feedback, the Authority has not disclosed as to why this consultation paper is being proposed at this stage. BIAL requests the Authority to denote specific instances where:

- (i) The rates charged are not commensurate with cost or quality of service provided as indicated in clause 2.2;
- (ii) Profitability of ISPs is low because of high rate of royalty, which limits the capability of ISPs to upgrade facilities and consequent lack of incentive to invest in

modernization and expansion of facilities as indicated in clause 2.3;

7. BIAL requests the Authority to consider that a one size fits all approach is not apt. There may be situations where the airport has created the infrastructure and likewise, there may be other instances where the ISPs have created the infrastructure. Indisputably, if the ISPs have not created the infrastructure and move into practically plug and play infrastructure, the cost incurred by ISPs will be far lesser than a situation where the ISPs have sunk costs incurred for creation of infrastructure. Hence, the revenue share will differ depending on various factors such as, capital costs incurred, competition in the sector, etc. In this backdrop, fixation of a ceiling will be unworkable and will affect the airport operator's freedom to determine its business model which is an unreasonable intrusion into the business freedom guaranteed under the Concession Agreement as well as the AERA Act.
8. The observations in clause 2.5 that charges do not have any relevance to the costs incurred by the airport operators is contrary to the basic premise of an airport being operated as a commercially prudent enterprise. There will be costs associated, either in terms of revenues share or otherwise, for accessing the market by the ISPs. Therefore the airport is well within its ambit to expect revenue share for enabling access to the market.
9. Additionally, even if there is a ceiling/cap on the revenue share, there is no certainty that the ceiling or cap will

necessarily result in either reduction of charges and/or provision of better facilities. The Authority's jurisdiction is restricted to determination of tariffs and therefore, the Authority is not in a position to ensure that its stated objectives are achieved especially when proportionate reduction in Airline charges are not within its ambit.

10. In the case of fuel farm activity, BIAL has an Operating Agreement with the fuel farm operator and the throughput fee is determined as per the Agreement. This represents the airport operator fee which is collected by the fuel farm operator as part of the total charges that are collected by the fuel farm operator from its customers. Hence, the airport operator fees needs to be considered as a separate component collected by the Fuel farm operator on behalf of BIAL and not consider this as a revenue share.

Further as emphasized earlier, BIAL requests that the proposals contained in the consultation paper should not be applied to BIAL & its ISPs.

11. In view of the aforesaid, BIAL requests the Authority to reconsider the proposal in the consultation paper and in any event requests that the proposed cap should not be made applicable to BIAL.

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