HYDERABAD RAJIV GANDHI INTERNATIONAL AIRPORT
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Date: 2nd May'2017

To,

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

Subject: 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.

Reference: Consultation Paper no. 8/2016-17 dated 31st March'2017

Dear Madam,

We write in reference to the captioned subject and the consultation paper wherein the Authority has proposed to cap "the amount/ percentage of Royalty / Revenue Share payable by the ISP to the Airport Operator at 30% of the Gross Turnover (GTO) of the regulated service which shall be allowed for regulatory purposes as "Pass Through" for determining the tariff of the ISP".

Vide the referred CP, the Authority has proposed to:

a) cap the amount/ percentage of Royalty / Revenue Share payable by the ISP to the Airport Operator;

b) cap the amount/percentage of the Royalty/Revenue Share to be allowed as "Pass Through" for determining the tariff of the ISP.

In this regard, without prejudice to any of our rights and concessions granted by the Central Government under the Concession Agreement dated 20.12.2004, we would like to submit our response to the said CP as under. These submissions are without prejudice to our contentions that as per the Concession Agreement the Cargo, Fuel Farm and Ground Handling facilities at RGI Airport are outside the purview of Regulated Charges and therefore cannot be regulated.

I. Jurisdiction to cap Royalty/Revenue Share

Section 13 of the AERA Act, 2008 has provided power to the Authority to determine the tariff in respect of the aeronautical services, however, the Authority does not have jurisdiction to cap the Royalty/Revenue share agreed between the Airport Operator and the ISP either by way of a mutual agreement or through a competitive bidding process. Even if it is assumed but not admitting that the Authority has the discretion to cap the amount/percentage of Royalty/ Revenue Share to be allowed as "Pass Through" for the determination of tariff for ISPs, the Authority does not have jurisdiction or power to cap the amount/ percentage of Royalty/Revenue Share payable by the ISPs to the Airport Operator under their respective agreements. Hence, the proposal of Authority to cap the revenue share payable by the ISP is clearly outside its jurisdiction.

II. No jurisdiction to unsettle the existing contracts

Rights and liabilities have come into existence under the existing agreements between the ISPs and the Airport Operator. The AERA Act did not confer any jurisdiction to the Authority either to unsettle or interfere with the agreements between ISPs and Airport Operator. The effect of the present proposal of Authority to the extent it directs renegotiation of the existing contracts between the ISPs and the Airport Operators, is to amend the existing contracts entered into between the parties and their subsisting rights and obligations thereunder, is outside the Authority's jurisdiction

III. Proposal of the Authority is contradictory to the Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of tariff for Service Providers for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft) Guidelines, 2011 ("Service Provider Guidelines")

It is submitted that the proposal of the Authority is in conflict with the Service Provider Guidelines issued by it. The said guidelines lay down the procedure for determining the approach to the regulation of Regulated Services. The procedure as set out in the Service Provider Guidelines recognizes the existence of competition as one of the criteria for determination of approach to regulation. Clause 3.1 of the Service Provider Guidelines states as under:

> 3.1 The Authority shall follow a three stage procedure for determining its approach to the regulation of Regulated Service(s) as under:
>
> Stage 1: The Authority shall first assess 'materiality' according to provisions of Clause 4;
>
> Stage 2: The Authority shall then assess 'competition' according to provisions of Clause 5;
>
> Stage 3: The Authority shall then assess the reasonableness of existing User Agreement(s), according to provisions of Clause 6.

3.2 Based on the Authority's review at stage 1, stage 2 and stage 3 where the Regulated Service(s) provided are deemed:

..

(ii) 'material but competitive', the Authority shall determine Tariff(s) for Service Provider(s) based on a light touch approach for the duration of the Control Period, according to the provisions of Chapter V;

Further, Clause 5 of the said guidelines lay down as under:

"Competition Assessment

5.1 Where a Regulated Service is being provided at a major airport by two or more Service Provider(s), it shall be deemed 'competitive' at that airport. If a Regulated Service is provided by less than two Service Provider(s), it shall be deemed 'not competitive':

Provided that the Authority may in its discretion consider such other additional evidence regarding reasonableness of competition, as it may deem fit.

Explanation: For avoidance of any doubt, the determination of number of Service Providers) at a major airport shall include the Airport Operator, if the Airport Operator is also providing Regulated Service(s) at that major airport."

Therefore, the said Guidelines clearly mandate that where a service is being provided by two or more service providers, the said service would be regulated according to a light touch approach. However, as per the current proposal, ISPs who are operating in a competitive manner would also be subjected to determination of tariff under building block approach. The Authority vide above captioned consultation paper proposes to cap the amount/ percentage of Royalty / Revenue Share payable by ISPs to Airport Operators which is contrary to the Service Provider Guidelines.

IV. Violation of the existing Concessions with ISPs

Without prejudice to the above, it is submitted that the proposal of the Authority to cap the allowable Royalty/ Revenue Share as "Pass Through" by capping the Royalty/ Revenue Share payable by ISPs to the Airport Operator, will lead to a situation where the additional license fee/royalty over and above 30% will not be allowed to be passed-through and would be borne by the ISPs which will make their business model unviable and restrict overall growth of aviation in India. When the concessionaire for Regulated Services had bid and obtained the contracts there were no such criteria. The concessionaire had bid for and agreed to pay the current revenue share based on the fact that the same will be allowed as an operating expenditure. Now by changing the ground rules, the ISP will be required to pay the actual revenue share whereas the operating cost thereof, being restricted by the Authority. This proposal if implemented would alter the contractual arrangement based on which the concessionaires bid for these concessions. This will mean that the ISP will get into losses and business will become unviable. This proposal would also prejudicially impact the concessionaires financial projections based on which concessionaires would have obtained loans from lenders and would lead to poor infrastructure being provided and no funds being available for expansion. This will also lead to litigations by such concessionaires against the Airport Operator, likely result in the fall of revenue Airport Operator, affecting their already precarious financial position and ultimately the fall in revenue share to the Central Government by PPP airports. Thus, this proposal if implemented would be against a healthy development of aviation sector in India.

This will also be against the very objective of recent civil aviation policy related to enhancing ease of doing business through deregulation as well as promotion of entire aviation sector chain.

V. Competition leads to lower charges:

It is worth noting that there is significant market competition in the airport services which controls revenues of ISP. Authority has also considered the competition as criteria to allow light touch approach for various ISPs across India only as the prices are market driven. As such there should be a soft touch approach followed for regulating ISPs.

Capping Royalty or licence Fee at 30% of Gross Turnover of ISPs is an inefficient price discovery mechanism from the perspective of the Airport Operator as ISPs would not be inclined to bid above the specified cap. Also, as mentioned above, no authority has been conferred by the AERA Act on the Authority to cap such royalty payable by ISPs to Airport operator.

VI. Risk of Regulatory uncertainty

We would also like to bring to your kind notice that the majority of concessions for various airport services have been awarded following a competitive tendering process. Any change in Regulatory Policy impacting the viability post the investors investing into the venture will add to the regulatory uncertainty prevailing in the Indian economy. This will discourage private as well as global investment in Indian airports infrastructure. This will also add to the cost of borrowing and return on equity being expected from the sector leading to higher charges.

VII. Impact on Airport Charges:

Further, it is worth noting that the Revenue share from ISPs are a key source of revenue for any Airport Operator and these revenues ultimately subsidize airport user charges given that it impacts the ability of an airport operator to maximize non-aero revenues in a hybrid till framework. Thus, in the event of any reduction in overall revenue of an Airport Operator due to the implementation of the Authority's proposal, it will lead to higher airport user charges. Also important is the fact that the revenue from these sources have been forecasted by airports based on existing concession terms. Any change in terms with ISP will lead to actual revenue being lower than revenue forecasted in the tariff proposals submitted by the airport operator and will lead to worsening of financial position of airport operators.

For the above said reasons the proposals as mentioned above, by the Authority are not in consonance with the provisions of AERA Act as well as the concessions granted by the Central Government to the airport operator under the Concession Agreement, hence, the same may kindly be withdrawn.

Yours faithfully,

For GMR Hyderabad International Airport Ltd.

Sidharath Kapur

President (Finance & Business Development)