MIAL/VPR/2017-18/02

1st May, 2017

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

Madam,

Sub: Response to AERA Consultation Paper No.8/2016-17 dated 31st March 2017 in the matter of Capping the percentage of Royalty / Revenue Share payable to Airport Operator as a "Pass Through" Expenditurefor the Independent Service Providers providing Cargo facility, Ground Handling and Supply of Fuel to the Aircraft at Major Airports.

With reference to the above Consultation Paper, please find below our comments:

1. At the outset, it is mentioned that basis/observations on which Authority has arrived at the proposal to put a cap/ceiling on amount/percentage of Royalty/Revenue Share payable by Independent Service Providers (ISPs) to Airport Operators at 30% of the Gross Turnover of the ISPs for regulatory purposes as allowable Pass-Through cost for determining the tariff of ISP is completely flawed, incorrect and untenable as can be clearly noted from the facts given below.

   a. Authority has mentioned in the para 2.1 that some of the airport operators are charging unreasonably high royalty / revenue share from the ISPs – Authority has not shared any basis/analysis of arriving at such conclusion. We believe it will be unjust and inappropriate to arrive at such a conclusion unless full-fledged comparative analysis is carried out by the Authority taking into consideration all the factors which influence Royalty/Revenue Share percentage. We request the Authority to share basis/comparatives analysis of its observation to enable us make meaning full comments on the Consultation Paper.

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b. Authority has mentioned in the para 2.2 that the rates of Royalty/Revenue Share charged for services do not seem to be commensurate with the cost or quality of service provided – It is absolutely wrong observation since quantum of Royalty/Revenue Share has direct correlation with the capital cost incurred /to be incurred by the Airport Operators. Since there are various forms/structures under which concessions are/can be granted by the Airport Operators. Prescribing a uniform percentage of Royalty/Revenue Share for all forms of the concessions without taking into consideration the specific structure of the concession is completely flawed. Authority is fully aware that in cases where investments are made/to be made by ISPs, Royalty/Revenue Share percentages are lower compared to cases where investments are made/to be made by the Airport Operators. This can be clearly seen from the international cargo concession at Mumbai Airport vis-à-vis Delhi Airport. Since at Delhi Airport, cargo concession was for Greenfield facility where entire investment (Hundreds of crores of Rupees) was to be made by ISP, Royalty/Revenue Share was lower vis-à-vis Mumbai Airport, where concession was for a brown field and operating facility without any investment by ISP as entire investment, both for past and future was to be made by the Airport Operator.

   Secondly for every concession, airport operator is required to provide land to ISP, quantum of which vary from concession to concession and again depending upon structure of the concession, land rentals are either separately charged or not charged.

   It is therefore completely wrong to compare different forms and structures of concessions and put a uniform cap for all of them on Royalty/Revenue Share percentage. Such an approach will be arbitrary and does not demonstrate an approach based on concession specific requirements.

c. Authority has mentioned in para 2.3 that Royalty or license fee payable to the Airport Operator by ISPs are made a part of the total operating expenditure which becomes "A Pass Through Cost" resulting in high charges being levied by ISPs – Authority's this observation is also completely wrong and not based on facts. Authority has been doing tariff determination for most of the ISPs under light touch approach, depending upon materiality and competition assessment, where charges are decided by the Authority based upon competitive rates and user agreements etc., hence quantum of Royalty/Revenue Share becomes irrelevant. We have not come across even a single case of tariff determination by the Authority for ISPs where it has determined tariffs under price cap approach and increased charges significantly. Similarly case in point is Mumbai Airport where charges for cargo services were same before and after concession, despite so called high Revenue Share by the Authority, except a nominal increase of 15% that too after a period of 8 years,

MUMBAI INTERNATIONAL AIRPORT PVT. LTD. * MUMBAI which had no linkages with the revenue share .This clearly establishes that the Authority has not allowed increase in charges corresponding to increase in revenue share %. Royalty/Revenue Share has not been allowed as a pass through by the Authority even in a single case since it has determined tariffs under light touch approach. It can also be clearly noted from the attached comparison (Annexure 1) that cargo service charges at Mumbai Airport are still lower than Delhi Airport and other airports inspite the fact that Royalty/Revenue Share at those airports are significantly lower than the Mumbai Airport. If Authority's contentions were to be correct than cargo charges at Delhi Airport and other airports should have been far lower than Mumbai Airport where as in fact cargo charges at Delhi and other airports are higher than Mumbai Airport.

d. Authority has mentioned in para 2.4 that profitability of the ISPs are low due to high rates of Royalty/Revenue Share to the Airport Operators and that limits the capability of the ISPs to upgrade facilities and quality of service –This observation of the Authority is also totally wrong and without any basis. ISPs for provision of various services are selected by the Airport Operators through fully transparent and open competitive bidding process where-in prospective bidders carry out due diligence, financial analysis after taking into consideration all other aspects such as quantum of investments to be made, tenure of the concession, cost of the capital, operating cost, future business potential etc. arrive at the percentage of Royalty/Revenue Share to submit their bids. Bidder quoting highest revenue share is selected, other things being equal for all other bidders.

   Therefore while quoting for the Revenue Share percentages, bidders certainly know before-hand that tariffs would be determined by the Authority under light touch approach, off course subject to meeting certain materiality and competition assessment criteria and user agreements and consequently expected returns to be made from the concession and therefore cannot question low profitability having quoted high revenue share in the competitive bidding process after having got the concession.

   Authority has not quoted a single case of any ISP where they have complained either about high Revenue Share or inability to invest or meet service quality standards. In the absence of any specific instances or even an indication about the specific airports where such concerns have arisen, it is not possible for MIAL as an Airport Operator to respond to such contentions in the CP. The Authority is requested to point out the specific instances based on which, it has arrived at its conclusion about the capability of the ISP to upgrade facilities and quality of service.

Also it is important to note that as far as further investments are to be made or quality of services to be provided, concession agreements clearly provide for quality / level of services to be maintained by the ISPs and consequent investment to be made either by ISPs or Airport Operators. Therefore arriving at the conclusion, without any concrete basis, that ISPs are not investing in the required infrastructure or not meeting required service quality level because of high revenue share is fully flawed. There could be various other reasons for lack of investments such as lack of conviction of ISPs to get reasonable and timely increase in charges from the regulator after making investment or uncertainty about regulatory philosophy and methodology.

Further, the Authority is empowered u/s 13(1)(d) of the AERA Act to monitor the set performance standards relating to the quality, continuity and reliability of services as specified by the central government from time to time. The Authority can take adequate measures in relation to specific ISP/Airport Operator where it observes non-compliance with the prescribed service parameters.

Without prejudice to the submissions made herein above, MIAL would like to state that during the competitive bidding process, only ISPs with prior experience are considered. Thus, only experienced and reputed ISPs are selected, ensuring quality service. Further, Concession documents also lay down performance parameters which also include Objective Service Quality Requirements under Schedule 3 of OMDA. MIAL reserves its right to provide response to the service quality issues in detail once relevant inputs have been provided by the Authority in this regard.

e. Authority has mentioned in para 2.5 that these charges are paid to acquire the right to do business in the airport, they do not have any relevance to cost incurred by airport operator and are therefore not consistent with the policies of ICAO relating to tariff determination – This observation of the Authority is also completely wrong and without any basis. As explained in paragraph 1.b above, these concessions are given in different forms/structures where investments may or may not be made by ISPs and therefore fixing, without looking into facts of each case separately, uniform cap/ ceiling on Royalty/Revenue Share is flawed and wrong. In some concessions, like international cargo concession at Mumbai, entire investment in cargo facility is made by the Airport Operator (Hundreds of crores of Rupees) and not ISP and where lease rentals for land are also not charged separately, Royalty/Revenue Share percentage are bound to be higher vis-à-vis other cases where investments are to be made by ISPs or where land rentals are charged separately.

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2. It is also necessary to point out that Authority's proposal to cap the Royalty/Revenue Share is not consistent with the principles enumerated under Section 13(1)(a) of the Act for tariff determination. The Authority is required to take into consideration any expenditure reasonably incurred by an ISP for determination of tariff. In order to do this, the Authority may be required to examine:

   (i) whether the expenses incurred /proposed by the ISP is excessive inasmuch as it does not represent the actual expenses incurred; or

   (ii) whether the ISP is paying amount higher than the normal acceptable market price.

   It is clear from the reading of section 13(1)(a) that Authority cannot put such a blanket restriction and uniform ceiling on the allowable concession fees for all ISPs while determining tariffs for each of them separately without taking into consideration factors enumerated there in.

   Similarly under the present proposal, it appears that the Authority seeks to achieve indirectly though expressly, a regulation of the amount of concession fee receivable by Major Airport Operators which are in the nature of non-aeronautical charges and therefore outside the scope of section 13(1)(a). There is no provision in AERA Act which authorizes the Authority to fix/ cap the concession fee receivable by the Airport Operators.

3. Capping the Royalty/Revenue Share payable by ISPs, has the effect of interfering directly with the exclusive rights of MIAL under the SSA and OMDA over the airport premises, and its discretion to let out / allow use of the same on non-discriminatory basis by a third party on such terms and conditions as it deems proper. Such rights have been vested in MIAL as part of the terms of bidding for the purposes of privatization. Therefore, as far as the CSI Airport is concerned, such proposal of the Authority has the effect of undoing the rights vested in MIAL as part of the considerations to work out the Annual Fee to be paid to AAI, which was the basis on which MIAL was awarded the CSI Airport.

   It appears that the Authority has proposed such capping, equating the royalty / concession fee paid by ISPs to the Airport Operator with the Annual Fees in case of MIAL and DIAL which is not allowed as a pass through as per their respective concession agreements. No such limitation/restriction has been imposed on the pass through for determination of tariff in respect of concessionaires by the Airport Operators, as per their respective concession agreements, nor has any restriction been imposed by the concession agreements entered in case of MIAL / DIAL. Authority has not allowed pass through of Annual Fee/ concession fee payable by

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MIAL/ DIAL to AAI due to specific provisions in their respective concession agreements (SSA). Authority should therefore adopt similar approach for concession agreement signed between Airport Operator and ISPs, Concession fees emanates from the Concession documents entered into between the Airport Operator(s) and ISPs and follow the terms of their respective concession agreements where there are no restriction on pass through of revenue share. Restricting / limiting the pass through of Royalty/Revenue Share payable by ISPs would be contrary to the concession agreements entered between the Airport Operators and ISPs and shall be arbitrary.

4. Limiting the royalty/ concession fee at a specified % shall limit the availability of cross subsidy and lead to increased aeronautical charges which shall be detrimental to the interest of airlines as well as passengers and will benefit users of these services at the cost of passengers.

5. Any reduction in charges by ISPs / concessionaires does not mean that it would benefit the ultimate users, since the tariffs charged by airlines, freight forwarders, etc. are not regulated by any Authority and certainly such benefits shall not get passed on to the passengers and the ultimate users.

6 a. Any change in regulatory regime post signing of concession agreements creates lot of uncertainty and discourages further investments in the sector and hence need to be avoided at any cost.

Once the Royalty/Revenue Share has been discovered through competitive bidding process, it is not open to the Authority to re-write the terms of the contract for the purposes of determination of tariff. It is pertinent to point out in this regard that Section 13(1)(a) of the AERA Act provides for "determination" and not "regulation" where the scope of regulatory interference may be wider.

b. Authority's Proposal would make many ISPs unviable since they may run into losses. Such restriction cannot be made applicable to existing concessions with unexpired concession period beyond 31st May, 2019.

c. Further Authority's proposal is against its own Order wherein it has clearly laid out the criteria for ISPs for determination of tariff on light touch basis, subject to meeting certain materiality and competition criteria and user agreements while through the proposed regulation it is seeking to achieve tariff determination through price cap approach. Since the Authority

MUMBAI INTERNATIONAL AIRPORT PVT. LTD. MUMBAI is determining tariffs for ISPs under light touch approach only after satisfying itself with the materiality and competition assessment along with the user agreements, we believe the market itself will take care of the user charges. If charges of one service provider are higher due to so called high revenue share, users will always have an option to avail services from the other service provider where charges as contended by the Authority would be lower. Therefore, the Authority should leave discovery of user charges to the competitive market itself rather than getting into intrusive price cap approach for tariff determination of ISPs.

d. Presently concessions are awarded to ISPs based on their technical experience coupled with competitive bidding for highest % of Revenue Share quoted by them. In case a cap is introduced by the Authority on Revenue Share, fee quoted by such ISP shall be limited to the % cap fixed which will hinder competition and it will not be possible for Airport Operators to award the concession in case all prospective bidders quote the highest % allowed by the Authority.

Further, MIAL understands from reading of the Consultation Paper and clarity given by Authority in the Stakeholder's Consultation meeting held on 21st April, 2017, that lease rentals charged by the airport operator will not be considered part of cap of 30% proposed by the Authority.
In view of the above, an across the board stand adopted by the Authority, considering all categories in the same manner is totally flawed and unjustified. In view of aforesaid and unique nature of each of such concession, it is necessary that each case is dealt by the authority individually.

In view of the issues raised above, the Authority is requested to not to proceed with proposed capping of Royalty/Revenue Share at 30% of Gross turnover as pass through expenditure of ISPs, specially where tariffs are being determined by the Authority under the light touch approach after considering materiality, competition and user agreements.

Thanking You,
Yours Sincerely,
For Mumbai International Airport Private Ltd.

(Sanjiv Bhargava)
Vice President (Regulatory)

Comparison of International Cargo Revenue Share and Cargo Handling rates for FY 17

Annexure - I

Revenue Share comparison :

ISP	Mumbai - Concor	Delhi - Celebi	Delhi - CSC	Bengaluru - Menzies	Bengaluru - Air India	Hyderabad - Menzies
Revenue share	69%	36%	27%	18%	18%	18%

Cargo handling rates comparison :

Export TSP

Rs per Kg

Category	Mumbai	Delhi		Bengaluru		Hyderabad	Comparison of Mumbai Concor rates with other airports (higher or lower)				
	Concor - Proposed for 2016-17	Celebi order no.16 of 14.2.2017	CSC CP no.05/ 2016-17	Menzies Bobba CP no 6/2016-17	Air India - Order no 31/2015-16	Menzies Order no. 32/2015-16	Delhi Celebi	Delhi CSC	Bengaluru Menzies	Bengaluru Air India	Hyderabad Menzies
General Cargo	1.00	1.12	1.12	1.16	1.05	1.00	-11%	-11%	-14%	-5%	0%
Cold Storage	2.00	2.23					-10%				
DGR	1.77	3.33	2.25	3.01	2.73	2.43	-47%	-21%	-41%	-35%	-27%
VAL	1.77	2.23	2.25	3.01	2.73	2.43	-21%	-21%	-41%	-35%	-27%
Special / AVI	1.77	2.23	2.25	1.74	1.58	1.40	-21%	-21%	2%	12%	26%
Perishable :	2.67	3.33	2.89	3.01	2.73	2.43	-20%	-8%	-11%	-2%	10%

Export demmurage

Category	Mumbai	Delhi		Bengaluru		Hyderabad - Menzies	Comparison of Mumbai Concor rates with other airports (higher or lower)				
	Concor - Proposed for 2016-17	Delhi Celebi order no.16 of 14.2.2017	Delhi CSC CP no.05/ 2016-17	Menzies Bobba CP no 6/2016-17	Air India - Order no 31/2015-16	Menzies Order no. 32/2015-16	Delhi Celebi	Delhi CSC	Bengaluru Menzies	Bengaluru Air India	Hyderabad Menzies
General Cargo	0.91	1.36	1.40	0.93	0.84	1	-33%	-35%	-2%	8%	-9%
Cold Storage	2	2.31					-13%				
DGR	1.8	2.31	3.62	3.01	2.73	2.43	-22%	-50%	-40%	-34%	-26%
VAL	1.8	3.86	3.62	3.01	2.73	2.43	-53%	-50%	-40%	-34%	-26%
Special / AVI	1.8	2.31	3.62	1.74	2.58	1.40	-22%	-50%	3%	-30%	29%
Perishable :	2.67	2.31	3.62	3.01	2.73	2.43	16%	-26%	-11%	-2%	10%

Import TSP

Category	Mumbai	Delhi - Celebi and CSC		Bengaluru		Hyderabad - Menzies	Comparison of Mumbai Concor rates with other airports (higher or lower)				
	Concor - Proposed for 2016-17	Delhi Celebi order no.16 of 14.2.2017	Delhi CSC CP no. 05/ 2016-17	Menzies Bobba CP no 6/2016-17	Air India - Order no 31/2015-16	Menzies Order no. 32/2015-16	Delhi Celebi	Delhi CSC	Bengaluru Menzies	Bengaluru Air India	Hyderabad Menzies
General Cargo	5.63	6.78	6.05	5.67	5.4	4.75	-17%	-7%	-1%	4%	19%
Cold Storage	10.89	12.2					-11%				
DGR	10.89	12.2	10.43	11.34	10.8	9.50	-11%	4%	-4%	1%	15%
VAL	10.89	12.2	10.43	11.34	10.8	9.50	-11%	4%	-4%	1%	15%
Special / AVI	10.89	12.2	10.43	11.34	10.8	8.89	-11%	4%	-4%	1%	22%
Perishable	10.89	12.2	10.43	11.34	10.8	9.50	-11%	4%	-4%	1%	15%

Import Demmurage

Category	Mumbai	Delhi - Celebi and CSC		Bengaluru		Hyderabad - Menzies	Comparison of Mumbai Concor rates with other airports (higher or lower) (for rates upto 120 hours excluding free 72 hours)				
	Concor - Proposed for 2016-17	Delhi Celebi order no.16 of 14.2.2017	Delhi CSC CP no.05/ 2016-17	Menzies Bobba CP no 6/2016-17	Air India - Order no 31/2015-16	Menzies Order no. 32/2015-16	Delhi Celebi	Delhi CSC	Bengaluru Menzies	Bengaluru Air India	Hyderabad Menzies
General Cargo	1.70/3.29/4.94	2.09/4.2/6.24	1.87/3.53/5.62	1.74/3.24/4.86	1.65/3.09/4.63	1.30/2.60/3.90	-19%	-9%	-2%	3%	31%
Cold Storage	3.95/6.58/9.87	4.2/8.33/12.47					-6%				
DGR	3.95/6.58/9.87	4.2/8.33/12.47	3.75/7.49/11.24	6.48/ 13.02 / 19.51	6.17/12.4/18.58	5.20/10.40/15.60	-6%	5%	-39%	-36%	-24%
VAL	6.58/13.16/19.73	8.33/16.65/25	7.49/13.91/20.33	6.48/ 13.02 / 19.51	6.17/12.4/18.58	5.20/10.40/15.60	-21%	-12%	2%	7%	27%
Special / AVI	3.29/6.58/9.87	4.2/8.33/12.47	3.75/7.49/11.24	3.24/ 6.48/ 9.72	3.09/6.17/9.26	2.60/5.20/7.80	-22%	-12%	2%	6%	27%
Perishable	3.95/6.58/9.87	8.33/16.69/25	3.75/7.49/11.24	6.48/ 13.02 / 19.51	6.17/12.4/18.58	5.20/10.40/15.60	-53%	5%	-39%	-36%	-24%

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