



Federation of Indian Airlines

E-166, Upper Ground Floor,

Kalkaji,

New Delhi - 110019.

Website: www.fiaindia.in

MOST URGENT

22 October 2018

To,
The Secretary,
Airports Economic Regulatory Authority of India (AERA),
AERA Building, Administrative Complex,
Safdarjung Airport,
New Delhi-110003.

Kind Attention: Smt. Puja Jindal

Subject: Comments & Submission of the FIA tendered in response to the AERA's Supplementary CP.No.17/2018-19 titled "In the matter of determination of Fair Rate of Return (FRoR) to be provided on Cost of Land incurred by various Airport Operators in India in continuation to AERA CP.No.4/2018-19, dt:08.05.2018"

Dear Madam,

The AERA, pursuant to receipt of various stakeholders comments including that of FIA towards No. AERA/20010/FRoR/2017-18 (CP. No.4/2018-19) in respect of determination of Fair Rate of Return (FRoR) to be provided on Cost of Land incurred by various Airport Operators of India, has issued a Supplementary Consultation Paper No. 17/2018-19 dated 1.10.2018 (**Supplementary CP**) which constitutes Authority's view on the background of the Consultation Paper as revised by the Supplementary CP, category-wise detailed comments of various stakeholders, the Authority's examination and, the Authority's proposal in response to the stakeholder comments received.

By way of this present submission, FIA on behalf of its member airlines submits its preliminary objections to the Supplementary CP without any prejudice and craving to submit any additional submission as and when required. At the outset, FIA reiterates its submission made in response to the Consultation Paper i.e. No return on cost of land incurred by airports operators/government should be provided (**FIA Proposal**) and any demand/request for the same needs to be discouraged/disregarded for the reasons more particularly submitted under FIA's response to the Consultation Paper, and as further listed in our submission (as attached) for kind consideration by AERA.

Thanking You & Your sincerely,

For and on behalf of Federation of Indian Airlines,


Ujjwal Dey
Associate Director

A. BACKGROUND

1. On 8.05.2018, Airports Economic Regulatory Authority of India to be called as "Authority" had issued the File. No. AERA/20010/FRoR/2017-18 (Consultation Paper No.4/2018-19) ("**Consultation Paper or CP**") in respect of determination of Fair Rate of Return (**FRoR**) to be provided on Cost of Land incurred by various Airport Operators of India. The Authority held its stakeholder consultation meeting on 30.05.2018, seeking a detailed written submission from its stakeholder by 05.06.2018 as extended till 11.06.2018.
2. Member airlines of Federation of India Airlines (FIA) were duly present during the meeting and raised objections on various issues pertaining to the Consultation Paper.
3. Thereafter, FIA submitted its response to the Consultation Paper on 11.06.2018, wherein FIA, inter alia, submitted that: "Cost of land should not be included in the RAB either directly or indirectly and any type of return on the cost of land needs to be discouraged/disregarded."
4. The Authority, pursuant to receipt of various stakeholders comments including that of FIA, has issued a Supplementary Consultation Paper No. 17/2018-19 dated 1.10.2018 (**Supplementary CP**) which constitutes Authority's view on the background of the Consultation Paper as revised by the Supplementary CP, category-wise detailed comments of various stakeholders, the Authority's examination and, the Authority's proposal in response to the stakeholder comments received.
5. By way of this present submission, FIA on behalf of its member airlines submits its preliminary objections to the Supplementary CP without any prejudice and craving to submit any additional submission as and when required.
6. At the outset, FIA reiterates its submission made in response to the Consultation Paper i.e. No return on cost of land incurred by airports operators/government should be provided (**FIA Proposal**) and any demand/request for the same needs to be discouraged/disregarded for the reasons more particularly submitted under FIA's response to the Consultation Paper, and as further listed below:

*FIA's submission towards the Authority's Supplementary Consultation Paper No. 17/2018-19 titled
"In the matter of determination of
of Fair Rate of Return (FRoR) to be provided on Cost of Land incurred by various Airport Operators in India (In
continuation to Consultation Paper No. 4/2018-19 dated 8.05.2018) "*

- i. Land is an asset, whose value will always increase exponentially over a period of time. In other words, land is always subject to capital appreciation and is not a depreciating asset.
- ii. Additionally, with the development of an airport, the state government also benefits in the form of increased value of land and increased economic benefit from Airport related activity. Increase in commerce, tourism, trade and tax revenues and increased employment leads to social and economic benefits to the State. Therefore there remains no reason for any further compensation/return to be given for land cost.
- iii. The concept of the State being that of a welfare state under the Constitution of India, should not demand any return or any kind of gain for the provision of land for the purposes of development of an airport (i.e. a project similar to a railway station or a bus stand for the larger public interest and welfare), and the State as a sovereign is duty bound to provide the land for public welfare activities/project without requiring or providing for a return in any manner of a recovery mechanism.
- iv. If the principle of FRoR based on cost of capital is applied on cost of land the aeronautical charges may have to be fixed at exorbitantly high rates, leading to severe stress on the aviation sector. Therefore, the land should always be arranged/acquired by the State and never by the Airport Operator, and no costs should be recovered for the land cost.

Without prejudice to the FIA Proposal, FIA hereby submits its response to the Supplementary CP in the manner appearing herein below.

7. It is noteworthy that the Authority is under a bounden duty to determine the tariff in terms of:-
 - (a) Statutory provisions laid under the of the Airports Economic Regulatory Authority of India, Act, 2008 ("**AERA Act**");
 - (b) AERA (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011 ("**AERA Guidelines**");

(c) 'Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Services Provided for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft) Guidelines 2011' ("**CGF Guidelines**"); and

(d) Regulatory jurisprudence and settled principles of law creating a level playing field to foster competition, plurality and private investments in the civil aviation sector.

B. CONTEXT OF THE CONSULTATION

8. To assist the Authority in appreciating these submissions on the Supplementary CP, FIA would like to state that the present submissions are without prejudice to FIA's rights and contentions, reserving FIA's right to submit additional submissions/objections at later stage. Accordingly, FIA submits as follows:-

(a) The Authority has made the following observations in para 3 of the Supplementary CP:

(i) Previously, land was acquired by Government agencies and transferred to operator free of cost or at nominal value. Accordingly, the Authority did not include the cost of land in the Regulatory Asset Base (RAB) and did not feel any requirement to pay any return on the cost of the land.

(ii) Presently, the land is either acquired by operator themselves (at market price) and the cost of the land are funded by equity contribution of the shareholders, or acquired by the State Government and transferred to the operator as a part of the equity contribution.

(iii) The different types of land transfer/acquisition as stated in Table 1 of the Supplementary CP, is as follows:

Type	Case	Return on Land
Transfer of land from the owner (State Government)	i. Free of Cost	No return on land
	ii. Lease Basis	Lease rental paid is taken as operating expense. Example: Bengaluru International

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		Airport Limited (BIAL), Hyderabad International Airport Limited (HIAL)
Acquired land	iii. Land acquired by Airport Operator against upfront payment.	Return yet to be decided. Example: Cochin International Airport Limited (CIAL)
	iv. Land acquired by the State govt. and provided to the Airport Operator as equity.	Return yet to be decided. Example: Chandigarh International Airport Limited (CHIAL).

- (iv) In the case of airports such as Chandigarh, Cochin, Kannur, land has been provided by the State Government against equity. These State Governments had previously incurred a considerable expense on land acquisition. This has led to a demand of return on land by these State Governments. The Authority acknowledges that refusal to provide such a return could disincentivize acquisition of land which is a primary requirement for airport development.
- (v) In the case of the stakeholders consultation exercise of Chandigarh Airport, it was pointed by the Authority that the development of the land acquired for airport, indirectly benefits the State Government due to economic development of the area around the airport by way of generation of employment, appreciation in land values, higher tax revenues etc. The State Government pointed out that it takes a long gestation period for areas around the airport to develop specially for airports developed at a distance from the city and no immediate benefits are derived by the Government or local population. The State Government felt that in case no return is given on the cost of the land acquired, it might be more beneficial for the State Government to spend the fund on development of other infrastructure which will immediately benefit the Government and local population.
- (vi) The Authority feels that the land is a scarce resource and in future, land might not be available for Airport development unless it is acquired by paying the market price. The

land cost might be a major component of the total project cost and in case no return is given on the land, the stakeholders might not be interested in investment on the land which may hamper airport development in future.

- (vii) The Authority is also of the view that the cost of land for Airports tends to be high as the land in question is located within, or in the vicinity of an urban area. The Authority intends to take the value of land being utilized for aeronautical purpose only providing a return on land cost.
- (viii) Further, the development of Airports brings about economic benefits to the concerned region. Thus, in public interest, the Authority proposes that the return on cost of land should be such that its impact on tariff is minimum.

(b) Basis the review of the stakeholders comments in response to the Consultation Paper, the Authority has summarized the key points that have emerged from stakeholders comments, in para 11 of the Supplementary CP as follows:

- (i) Airport development results in socio-economic benefits to the government. This needs to be factored in while deciding on the returns to be provided on the cost of land acquired by the Govt. for airport development.
- (ii) The methodology of providing rate of return on land as proposed by the Authority in the Consultation Paper does not take time value of money into consideration resulting in negative NPV. The return provided to cost of land should result in a non-negative NPV, so that the Airport Operator recovers the entire cost of acquisition of land in NPV terms.
- (iii) The rate of return to be provided on cost of land should be in line with the cost of financing used to acquire/ procure such land on a case to case basis.
- (iv) The time period for which return is to be provided on cost of land should be in line with the time period of financing used to acquire/ procure such land on a case to case basis.
- (v) While determining the return on land, the Authority on case to case basis may consider proceeds such as, rental revenue (when land leased out by Airport Operator),

dividend (when land infused as equity by Airport Operator) and proceeds from sale of land.

9. Pursuant to the enactment of the AERA Act, the Authority has been established to perform the functions vested under the AERA Act including Section 13 of the Act, which includes determination of tariff for aeronautical services, viz.-

(a) Section 2(a) of the AERA Act defines "aeronautical services".

(b) Section 13 (1)(a) of the AERA Act provides that the tariff for such aeronautical services at a major airport is to be determined by the Authority after taking into consideration various factors as mentioned under the said Section 13.

(c) The Authority is under statutory obligation to consider all relevant statutory provisions including the AERA Guidelines.

10. 'Determination' by the Authority:

(i) Section 13(1)(a) of the AERA Act requires the Authority to 'determine' the tariff for aeronautical services. Any 'determination' by a statutory authority must clearly show the application of mind and analysis carried out by the Authority. It is to be noted that to ensure transparency while exercising its discharge of functions by the Authority under AERA Act it is implied obligation to produce all relevant document and make decision which are fully documented and explained. In this regard judgment of the Hon'ble Supreme Court in the case of Ashok Leyland Ltd. vs. State of Tamil Nadu & Anr. reported as (2004) 3 SCC 1 (FB)(at Paragraph No. 94) is noteworthy. Hon'ble Supreme Court has held that the word 'Determination' must also be given its full effect to, which pre-supposes application of mind and expression of the conclusion. It connotes the official determination and not a mere opinion or finding. The Hon'ble Telecom Dispute Settlement Appellate Tribunal ("TDSAT") has also held that determination requires application of mind in the Judgment dated 16.12.2010 in Appeal No. 3(C) of 2010 titled as ZEE Turner Ltd. vs. TRAI & Ors. (at Paragraph No. 150). In view of the above judgment, it is imperative that the Authority has to apply its mind after considering all relevant information, data, submissions filed by stakeholders in determination of RAB and FRoR.

C. ISSUEWISE SUBMISSIONS

I. Basis the receipt of stakeholders comments to the Consultation Paper, the Authority has proposed certain proposal mentioned in para 12 (**Authority's Proposal**) of the Supplementary CP. In response to the Authority's Proposal, FIA submits its response below, without prejudice to FIA Proposal:

(a) **Proposal 12.1.1: In case land is provided free of cost, then no return shall be given on land.**

FIA response: FIA agrees with Authority's proposal and it is submitted that no return should be provided in cases where no cost has been incurred by airport operator in acquiring land from Government, Airports Authority of India etc.

(b) **Proposal 12.1.2: The return will be given only on land used for aeronautical activities marked and approved by the Leasing Authority. The Authority may also assess the requirement of land for aero purpose.**

FIA response: FIA submits that the Concessions Authority should mention the area of land to be earmarked for aeronautical purposes in the Concession Agreement itself.

Further, FIA submits that the Authority intends to take the value of land being utilized for aeronautical purpose only providing a return on land cost. In response to the same, FIA humbly submits that if such practice is implemented, value of return on non-aeronautical land should be used for while determining tariff, along with other non-aeronautical revenues. FIA submits that the same is premised on the principle that FIA has been requesting the Authority to adopt i.e. "Single Till" approach wherein revenues from non-aeronautical activities are also considered while determining tariff at major airports. In this regard, reference may be made to FIA's detailed submission to retain Single Till Model at all major airports for tariff determination as mentioned under **Annexure – A**.

- (c) **Proposed 12.1.3: In the case of privately acquired land by Airport Operators the return shall be in the form of Equated Yearly Installment at par with interest on debt, for a period equivalent to original lease period or 30 years, whichever is lower. The EMI on cost of land attributable to aeronautical activities can be computed using the below mentioned formula:**

$$\text{EMI} = [P \times R \times (1+R)^N] / [(1+R)^N - 1]$$

where,

P is the principal amount equivalent to cost of land under aeronautical activities,

R is the interest rate per year, and

N is the number of yearly instalments

FIA response:

- (i) FIA understands that the proposal no. 12.1.3 above, corresponds to case 3 (Land acquired by airport operator against upfront payment) under Table 1 of the Supplementary CP dealing with the example of CIAL. In this regard, FIA submits that as per Para 2.7 of Consultation Paper No. 03/2014-15 with respect to determination of tariff for CIAL, it is observed that the Government of Kerala (GoK) has paid INR 124 crore for acquiring land from landowners at market rates and CIAL paid such market cost to GoK towards purchasing the said acquired land. FIA further understands that GoK is a shareholders (32.24%) of CIAL. FIA submits that, from the above facts it appears that there has been a case of an indirect transfer of land by GoK to CIAL, for a consequent equity shareholding in CIAL.

In such case, the Authority proposes to apply the return of Equated yearly Installment or Equated Monthly Installment, at par with interest on debt. However, as per Proposal 12.1.5 of the Supplementary CP, in the case of direct infusion of land as equity by the Government, the cost of land will be amortised over 30 years, wherein no interest will be paid. Hence, the return on land to be calculated as per Proposal 12.1.5 will be much lower.

Hence, State Government may opt to infuse cash received from selling land to the Airport Operator Company (**AOC**) as equity in the Company, rather than direct infusion of land as equity, wherein such State Government exercising the former option will stand to gain higher returns due to interest component reimbursement in form of Equated Yearly Installment. Accordingly, FIA submits that using the Equated Yearly Installment will lead to an increase in aeronautical tariff.

- (ii) FIA submits that instead of the Proposal 12.1.3, the State Government should acquire land and handover to the airport operator as part of equity infusion and treatment to be done in accordance with Para 12.1.5.
- (d) Proposal 12.1.4: In the case of leased land, the yearly rental charged will be allowed subject to rationale of lease rental being paid. The lease amount shall be a pass through expenditure.**

FIA response:

- (i) FIA submits that the Concessioneing Authority should regularize lease rental agreements keeping in mind that interest of consumers/passengers is paramount. However, no mechanism has been suggested by the Authority in fixation of yearly lease rentals. The Authority is requested to clarify the mechanism of fixation of such lease rentals.
- (ii) FIA further submits that an airport is for development of public at large. Hence, any lease rent that is charged for land, should be nominal and should not be linked to market rate. Further, the land lease should be balancing approach of amortisation of cost of land acquisition over the concession period including extended concession period where first right of refusal is with AOC.
- (e) Proposal 12.1.5: In the case of Government acquired land handed over to the airport- as part of equity infusion, the land cost shall be amortized over a period of 30 years. The amortized amount will be a pass through in case the amount is paid to**

the Govt. However, any dividend paid by the operator to the Govt. during the year will be deducted from the amortized amount.

FIA response:

- (i) In the Proposal 12.1.5, i.e. where the Government hands over the land to the airport operator as part of equity infusion, it is proposed the land cost shall be amortized over a period of 30 years. In this regard, it is to be noted that apart from aeronautical land, land for commercial exploitation is also given to AOC to make project commercially viable. In certain airports, land is provided in excess of airport requirements to improve the commercial viability of the project. Substantial delays have been done by such airports in developing these areas. This has led to a burden on aeronautical tariff and in turn Government is getting lower revenues from nearby areas/economic development, also lower share of profits in AOC due to low non-aero revenues. Hence, the Authority should fix appropriate time, preferably 10 years, for commercial exploitation of land.
- (ii) FIA submits that the land cost (less terminal value) should be amortised over concession period including extended concession period and not only over 30 years (for eg. 30+30 years or 40 years). The annual amortised amount will be pass through each year till the period for commercial exploitation of land decided by Authority, has expired. However, return will be reduced from dividend paid to the Government; in this way Government can earn return on land immediately. Therefore, AOC will be incentivised to complete the commercial exploitation within pre-decided timeframe. Further, if excess land is not developed by AOC as per pre-decided time frame, then penalty clauses should be introduced/applied and Government being a shareholder to AOC will also be impacted.
- (f) Proposal 12.1.6: The cost of land will be subject to due diligence. The Authority will allow compensation only on fair value of the land.**

FIA response: No specific definition has been given for fair value of land in the Supplementary Consultation Paper. Hence, FIA requests AERA to clarify the meaning of "fair value of land".

II. Miscellaneous

(a) FIA submits that the Concession agreements for Chandigarh, Cochin and Kannur are neither available in public domain nor provided by the Authority in the present matter. FIA submits that the Terminal value at the end of Concession period plays a vital role in determining the return on cost of land. It is observed that no comment has been given by the Authority on treatment of Terminal value of land on FRoR.

It is not denied that FIA is not the stakeholder for determination of tariff of KIA. FIA submits that as per a catena of judicial pronouncements, it is a well settled principal of doctrine of natural justice - '**audi alteram partem**' (meaning, hear the other side), that before taking any decision/action affecting the rights and liabilities of an individual/entity, an opportunity of showing cause and to submit response thereto has to be afforded to the person whose rights and/or liabilities may be affected. This principal is further enshrined under section 13 (4) of the AERA Act, which provides that the Authority shall ensure transparency while exercising its powers and discharging its functions, inter alia:

- i. by holding due consultations with all stakeholders with the airport;
- ii. by allowing all stake-holders to make their submissions to the authority; and
- iii. by making all decisions of the authority fully documented and explained.

FIA would also like to mention that in the recent Order dated 23rd April, 2018 passed by the Hon'ble Telecom Disputes Settlement & Appellate Tribunal, New Delhi in the case of Federation of Indian Airlines vs. Airport Economic Regulatory Authority of India & Ors. - AERA Appeal No. 6 of 2012 and Delhi International Airport Ltd. (DIAL) vs. Airport Economic Regulatory Authority of India & Ors. - Appeal No. 10 of 2012 (DIAL Order), it has been inter alia held that

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*"...request for supply of documents by a stakeholder should ordinarily be accepted"
and "...There is no doubt that the principles of fairness and transparency are very
valuable and must be scrupulously followed by the Regulator in the exercise of
fixation of tariffs.."*

FIA submits that it has not been provided with the Concession Agreements of Chandigarh, Cochin and Kannur to evaluate the area/cost of land and terminal value of land, etc. Accordingly, in the absence of the receipt of such documents, FIA unable to appreciate, assess and comprehend the facts and figures (and any comparison thereto) of the Consultation Paper in its entirety and actuality. Thus, FIA hereby request that the Authority provides Concession Agreements for Chandigarh, Cochin & Kannur airports for suitable stakeholders review.

10. FIA therefore submits as under:

(a) Cost of land should not be included in the RAB either directly or indirectly and any type of return on the cost of land needs to be discouraged/disregarded.

11. FIA understands that the object of the present Supplementary Consultation Paper is only for the purpose of seeking comments on the airports where:

(a) Airport operator is required to bear the cost of acquisition of land;

(b) Land has been provided to the airport operator by way of equity, and relevant agreements are silent as to the treatment on the cost of land.

Accordingly, FIA reserves its right to submit any detailed objections in regard to the cost of land in case of Delhi, Mumbai and any other airport not covered within the above-mentioned scenarios.

12. In addition to the above submissions, it is respectfully submitted that airlines and consequently, passengers will have to bear the burden of increase in Aeronautical Tariffs if any return on the cost of land is proposed to be given by the Authority.

It is noteworthy that Airlines and passengers must not be burdened with any tariff to be collected to fund the capital investments of a private concessionaire.

13. The Authority is aware that airlines have been going through difficult times with high prices of crude oil. Increase in aeronautical tariff as proposed by the Authority will erode airlines capabilities to increase fares to sustain its operational capabilities.

14. FIA reiterates its submission that there is a critical relationship between passenger traffic and growth of the civil aviation sector. What would benefit both the airport operator as well as the airlines is a reasonable and transparent passenger tariff, both direct and indirect – since then the airlines will be able to attract more passengers and the airports would benefit both through higher collection of aeronautical charges as also enhanced non-aeronautical revenue at the airports. In FIA's view, the airport should be regarded as a single business as its aeronautical and non-aeronautical revenues are intertwined.

15. Single Till Model ought to be applied to all the airports regulated and operated by the Authority regardless of whether it is a public or private airport or works under the PPP model and in spite of the concession agreements as the same is mandated by the statute.

16. Single Till is in the public interest and will not hurt the investor's interest and given the economic and aviation growth that is projected for India, Fair Rate of Return (FRoR) alone will be enough to ensure continued investor's interest.

17. It is submitted that order passed by an administrative authority, affecting the rights of parties, must be a speaking order supported with reasons. It is well settled position of law that:

- (a)** Reasons ought to be recorded even by a quasi-judicial authority.
- (b)** Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (c)** Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

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- (d)** Insistence on reason is a requirement for both accountability and transparency.
- (e)** Reasons in support of decisions must be cogent, clear and succinct.
- (f)** A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- (g)** Requirement of giving reasons is virtually a part of 'Due Process'.

19. In view of the above, it is respectfully prayed that the Authority keeps in mind the interests of the airlines and civil aviation sector before finalizing any decisions regarding any returns to be provided on the cost of land. Authority's proposal to provide any form of return on the cost of land, if accepted, will have cascading impact on the airlines and consequently, on the civil aviation industry.

Re. Authority ought to follow Single Till Model for determination of Aeronautical Tariff

1. In para 2.1 it is stated that the Authority vide its Order No. 13/2010-11 dated 12.01.2011 (Airport Order) and Direction No. 5/2010/11 dated 28.02.2011 (Airport Guidelines) had issued guidelines to determine tariffs at major airports based on Single Till mechanism. Subsequently, after the issuance of NCAP, the Authority has amended guidelines vide its Order No. 14, 2016-17 dated 12.01.2017 to determine future tariffs using Hybrid Till. It is to be noted that issuance of the policy that is NCAP cannot be used to override the statutory provision i.e. Section 13 (1) (v) of the AERA Act. Hybrid till is followed, which is in contravention to AERA tariff guidelines. In this context, the following facts are noteworthy:
2. It is noteworthy that in a matter pending adjudication before the Hon'ble Airports Economic Regulatory Authority Appellate Tribunal ("**AERAAT**"), MoCA had submitted by way of its Counter-Affidavit that the Authority is an independent regulator and suggestions of Government of India/ MoCA are not legally binding on it. Further, it has submitted that MoCA has no role to play with respect to determination of aeronautical tariff. The Authority being a party to the said matter is aware of the contents of MoCA's Counter Affidavit in the said matter.
3. It is submitted that Single Till is premised on the following legal framework being:
 - (a) Section 13(1)(a)(v) of AERA Act envisages that while determining tariff for aeronautical services, the Authority shall take into consideration revenue received from services other than the aeronautical services.
 - (b) Clause 4.2 of AERA Guidelines recognizes Single Till approach which sets out the following components on the basis of which ARR will be calculated:-
 - (i) Fair Rate of Return applied to the Regulatory Asset Base
 - (ii) Operation & Maintenance Expenditure
 - (iii) Depreciation

(iv) Taxation

(v) Revenues from services other than aeronautical services

(C) AERA in its Single Till Order has held that "*Single Till is most appropriate for the economic regulation of major airports in India*".

- 4.** It is submitted that determination of aeronautical tariff warrants a comprehensive evaluation of the economic model and realities of the airport – both capital and revenue elements.
- 5.** In the Single Till Order, Authority has strongly made a case in favor of the determination of tariff on the basis of 'Single Till'. It is noteworthy that the Authority in its *inter alia* Single Till Order has:
- (a)** Comprehensively evaluated the economic model and realities of the airport – both capital and revenue elements.
 - (b)** Taken into account the legislative intent behind Section 13(1)(a)(v) of the AERA Act.
 - (c)** Concluded that the Single Till is the most appropriate for the economic regulation of major airports in India.
 - (d)** The criteria for determining tariff after taking into account standards followed by several international airports (United Kingdom, Australia, Ireland and South Africa) and prescribed by ICAO.
- 6.** The Authority in its AERA Guidelines (Clause 4.3) has followed the Single Till approach while laying down the procedure for determination of ARR for Regulated Services. In this respect, the matter must be dealt with by the Authority considering the ratio pronounced by the Constitutional Bench in the Hon'ble Supreme Court Judgment in PTC vs. CERC reported as (2010) 4 SCC 603 (*please ref: Paragraph Nos. 58 to 64 at Page Nos. 639 to 641*) wherein it is specifically stated that regulation under an enactment/statute, as a part of regulatory framework, intervenes and even overrides

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the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations.

7. The fundamental reasoning behind 'Single Till' approach is that if the consumers/passengers are offered cheaper air-fares on account of lower airport charges, the volume of passengers is bound to increase leading to more foot-fall and probability of higher non-aeronautical revenue. The benefit of such non aeronautical revenue should be passed on to consumers/passengers and that can be assured only by way of lower aeronautical charges. It is a productive chain reaction which needs to be taken into account by the Authority.