

15/6/11

AGM (Anil Saxena)

Ref: DIAL/2011-12/Fin-Acc/480

**The Airports Economic Regulatory Authority of India**

AERA Building, Administrative Complex,  
Safdarjung Airports,  
New Delhi-110 003

Dated: 14<sup>th</sup> June 2011

**Subject: Levy of Development Fee at IGI Airport, New Delhi**

Ref.: Your letter bearing no. AERA/20011/DIAL-DF/2009-10/Vol.-V/389 dated May 23, 2011

Dear Sir,

We write in response to your above captioned letter wherein comments were sought from DIAL in response to feedback/submissions received from the various stakeholders in response to consultation paper 2/2011-12. Our responses on the comments from stakeholders are as under:

- |   |  |              |
|---|--|--------------|
| 1 | Air India                                      | Annexure 'A' |
| 2 | Air passengers Association of India            | Annexure 'B' |
| 3 | International Air Transport association (IATA) | Annexure 'C' |
| 4 | Federation of Indian Airlines (FIA)            | Annexure 'D' |

Yours sincerely,



**(Sidharath Kapur)**

**Chief Financial Officer( Airports)**



**DIAL Reply to queries by Air India against consultation paper number 2/2011-12 on ADF of Delhi airport.**

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**Comment**

Any airport fee or tax gets transferred to the price of the ticket. The airline industry is in general opposed to aviation taxes which puts extra burden on the passengers. Continuation of high rate of fees leads to an increase of the costs of air travel and imposes a new barrier to the development of the aviation and tourism industries.

**Response**

**In an infrastructure deficit country like India, creation of infrastructure needs to be remunerated and the viability of the PPP concessionaire kept in mind. Airlines have the flexibility of increasing ticket prices, charge varying ticket prices on different days and hours in an unregulated manner and also adjust capacity and business model in Response to demand. Airports do not have such flexibility. Creation of world class infrastructure such as the T3 needs to be encouraged as this is in to the advantage of airlines. Projects like the T3 bring various financial and operational benefits to airlines viz:**

- **Low turnaround time**
- **No hovering of aircraft due to capacity constraints resulting in savings in fuel costs to airlines.**
- **More opportunity to multiply business (HUB etc.) and reduce expenses.**
- **Lower staff cost. (Integrated Terminal for Domestic and International).**

**Hence paying a price for such quality infrastructure, which is a small percentage of their costs, is low compared to the efficiency improvement, cost savings and business growth.**

**Comment**

The audit carried out by Engineers India Ltd. and by KPMG needs to be taken into consideration and the exclusion suggested by them specially in regard to the ATC tower and upfront fee should be adhered to. The ATC tower cost should not form part of the project cost as the air traffic charge i.e. route navigation and terminal navigation revenue accrues to Airports Authority of India and hence any cost towards the ATC tower should be incurred by AAI. In case AAI is getting the tower constructed by DIAL under an agreement then the cost of the same cannot be passed on to the passengers by way of Development Fee.

**Response**

**This issue has already been considered by Authority and we have no comment on this at this stage.**



**Comment**

Air India feels that other alternative economic sources of funds should be explored to bridge the financing gap instead of burdening the passengers through continuation of DF beyond the earlier approved 3 years.

**Response**

**The DF is a funding of the last resort after other sources have been explored. We have suitably clarified this issue to Authority in various submissions prior to release of the consultation paper and same has been addressed in the consultation paper in detail.**

**Comment**

The financing gap envisaged by DIAL needs to be funded by the shareholder and the non-ability by the shareholder to incur such cost does not give the airport right to penalize the passengers with higher taxes and resultantly penalizing the airlines since their passenger traffic gets affected on account of higher outgo of the passengers. The taxes at many airports are the same as the fare being charged by the airlines and this does not augur well for passenger growth.

**Response**

**The DF is a funding of the last resort after other sources have been explored. We have suitably clarified this issue to Authority in various submissions prior to release of the consultation paper.**

**The comment from Air India does not appreciate that DF will lead to a permanent reduction of RAB and lower airline tariffs in the long run. Raising of further debt or equity is not possible. However even if we consider the hypothetical situation that instead of DF, equity or debt is considered, this will lead to a significantly higher return on capital thus resulting in a significant increase in airline tariffs.**

**Comment**

In regard to DF charged by the airports, the airlines face problem with respect to collection of the charges and a lot of effort goes into its collection, accounting, remitting the same to the airports authorities etc. The collection charges provided presently is very low at Rs 5/- per pax and AERA should consider revising the same to a reasonable level at ad-valorem rate of 5%. It is further stated that the incentive for timely payment is only Rs 5/- per pax for UDF. While the penalty for delayed payment is 18%p.a.

The credit period for remittance of PSF & DF/UDF to various authorities may kindly be increased to 45 days which at present is 15 days as majority of the sales by airlines is on credit amounting to nearly 80%. For example, the sale of April '11, 80% approximately, is realized by end of May'11. Thus, the DF/UDF for April should be made payable by 15th of June and so on.



### Response

**A Rs. 5 charge converts to approx. 1% on the weighted average DF of Rs. 530 (assuming 30% international and 70% domestic). Given credit period of 15 days, this rate works out to 26% p.a. A penal rate of 18% p.a. is reasonable for delayed payments to act as a deterrent. A longer credit period and collection charges will impose further burden on passengers and is not in line with the contentions of Air India and airlines and not desirable.**

### Comment

DIAL has made an investment in setting up the airport and the lease is for a period of 60 years. The intention appears to be to recover the entire shortfall in a short time. It is opined that the development fee, if approved, should be charged over a period of at least 30 years with lower charge per pax and AERA could even consider having the same charge for both domestic and international passengers. This would also oblivate the difference in charges for the domestic/international passengers as being pointed out by IATA and also not affect the passenger and also the airlines since the charge per pax. Would be lower.

### Response

**The current ADF recovery is not a revenue collection but a capital receipt. Funding for such long periods is not available. Moreover extending the levy to longer periods would mean a higher burden to passenger as the levy is on NPV basis.**

### Comment

✓The handing of the project by DIAL by adopting a Design approach has resulted in huge escalation of the cost, a substantial portion of which is being proposed to be passed on to the passengers. AERA may in fact levy a penalty on DIAL for such increase in project cost rather than accepting most of the cost incurred by DIAL for the purpose of arriving at the total project cost. Such a measure of approving cost incurred much above the budgeted cost at this stage might set a wrong precedent to the other airport developers / other airports which are to be brought under the purview of PPP model and likely to be modernized. It should send out a message loud and clear that unreasonable escalation in the project cost under the umbrella of time constraint in completion of project may not be acceptable.

### Response

**The project cost issue has gone through a detailed review by Authority including through independent audits. Hence we have nothing further to add except that the request for levy of penalty is out of place and reflects lack of understanding of airport construction dynamics and highly comparable benchmark cost of T3.**



### **Comment**

EIL's report highlights the increase in area of Terminal Building from Approximately 4.5 lakh sq.mt worked out by MOTT Macdonald and as approved by MoCA, prior commencement of work in MDP to 5.53 lakh sq.mt actually constructed at site. The disallowance inter alia has been proposed for 8652 sq. mtrs. for the food court and retail area at CIP, office and hotel level. This area need not have been built as the food court and retail areas are already available on departure and arrival levels and the additional area at CIP, Office and Hotel levels and may not be used by the passengers. It is felt that this cost should not be included in the total cost of the project, especially in view of these additions were carried out without taking prior approval from either the Ministry or AAI.

### **Response**

**This issue has been suitably reviewed by the Authority in the pre-consultation phase and by us. The Major Development Plan submitted by DIAL envisages adjustments to areas as the design was developed in coordination with various stake holders during the execution of the project. The additional areas for the food court & retail are part of this design development in line with meeting the passenger facility requirements. OMDA does not envisage any additional approvals. Further the overall retail / F&B area is about 10% while in major airports it is about 20% of the area. We would also like to clarify that non aeronautical assets of above nature do not form part of the regulated asset base for the purpose of tariff calculation and in fact provide a cross subsidy from the revenue earned from such assets thereby lowering the charges for the airlines and passengers.**

### **Comment**

Both KPMG and EIL have suggested exclusion of cost related to provisions amounting to Rs. 297 crores, which were not incurred as on 28.2.2010. The provisions include Rs. 100 crores towards contingencies, Rs. 27 crores for operational requirements and Rs. 170 crores for other pending works. AERA is of the opinion that since pre-dominant portion of the cost had already been incurred and the balance amount of Rs 11.66 crores would in probability have been spent thereafter, the cost of Rs. 297 crores towards provisions may tentatively be included in the project cost subject to the condition that DIAL produces evidence to this effect. The letter dated 31.07.2010 as referred to above is not annexed with the document and therefore, we are unable to comment on the acceptability of the same. It needs to be scrutinized and confirmed that this amount so spent has been utilized towards the project and proof of the same may be verified by AERA prior to allowing this amount of Rs. 297 to be part of total project cost.

### **Response**

**This issue has been suitably addressed in the consultation paper. The Auditors certificate for this has already been submitted to Authority.**



## Comment

AERA should firm up the Total Project Cost only after taking the following into consideration:

- a) As per clause 3.1.1 of State Support Agreement, "... The Upfront Fee and the Annual Fee paid/payable by the JVC to AAI under the OMDA shall not be included as part of costs for provision of Aeronautical Services and no pass-through would be available in relation to the same." Therefore this amount of Rs 150 crore should not be part of the total project cost.
- b) The External Commercial Borrowing value has appreciated from Rs. 1336 crore to Rs. 1616 crore due to exchange fluctuations. It is likely that at the time of repayment of these loans the amount may appreciate / depreciate due to exchange fluctuations. Therefore, prior settlement of this amount user consultation needs to be done.
- c) Since the lease deposit with DIAL is for substantial period, any settlement done in this regard should be with prior user consultation only.

## Response

- **The issue of upfront fee has been suitably clarified and in-depth reviewed by the Authority and we agree with the stand taken in the consultation paper.**
- **The ECB loan remains denominated in USD though it appears in books as a rupee value. Any fluctuation at time of repayments will correspondingly impact the asset value. Thus the question of user consultation does not arise.**
- **There is no settlement of lease deposits. These deposits are refundable deposits which will be refunded at end of concession term period.**



**DIAL response to queries by APAI against consultation paper number 2/2011-12 on ADF of Delhi airport.**

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**Comment**

We understand the AAI has drawn up a master plan for Delhi Airport way back in 2006 and the details of the then estimated project cost is not available for cross verification. This needs to be looked into in detail.

**Response**

**We do not have any comments on the above as what is referred to in the master plan developed by AAI. DIAL has its obligations under the concession documents and thus do not feel this issue is relevant.**

**Comment**

When the original project cost estimated as initial project cost by DIAL is Rs.8 975 crores, who authorized them to incur an expenditure of Rs. 12,857 crores DIAL has already collected Rs. 1395 crores as DF, which is more than what the original funding gap would have been. When the Govt. & the MOCA decided to charge DF at the rate of Rs.200/- per domestic passenger and Rs.1300/- for international passenger embarking from and through DIAL, we are certain that they would have worked out the same based on a formula and this should have also been shared with us.

**Response**

**This point has been reviewed by Authority and reviewed in detail by the independent auditors. Thus there is nothing new to add on this issue.**

**Comment**

Justifying this kind of expenditure by appointing Engineers India Ltd., and also KPMG does not make any difference. This is because, you are only asking them to verify the expenditure which was incurred at the will of the airport developer and naturally any Agency is going to verify and certify based on facts. This does not mean that the passenger should be penalized.

**Response**

**The Auditors have carries out both Financial and Technical audit and have looked at the efficacy of spent and not just verified the amounts spent.**

**Engineers India Limited is a Govt. of India Undertaking and KPMG a Financial auditors of international repute and they have gone into efficacy of spent of each and every project. The project components have been awarded competitively and the project has been globally benchmarked and found to be highly competitive.**



### **Comment**

One of the reasons for additional built up area is "location of Food Court" and the justification in the note circulated is that this adds to passenger facilities. We have the following questions?

(a) What is the lease rental deposits collected from these occupants of Food court?

(b) What is the rent per sq.ft. per month?

(c) Due to high cost of operating these outlets in food court the cost of a cup of coffee or a sandwich is exorbitant and beyond the means of 80-85% of passengers. Only a passenger who can afford a five star luxury can afford the prices charged in the food court area. One should keep in mind an ordinary passenger who travel in his own cost and who is also a fare paying passenger.

### **Response**

**We do not charge any lease rental from the concessionaire of food courts.**

**We shall also like to inform that in the Terminal, Packaged drinking water is available at a price of Rs. 10 per bottle (500 ml) through automated dispensing machines. In addition, RO processed drinking water is available at 50 locations across the domestic & international terminals at no cost.**

**Tea & Coffee prices starts from Rs. 20 - 25 depending on the brand and the passenger has options to choose the brand suitable to his/her needs. These prices are comparable with any other place in any town having similar ambience and comfort of air conditioning. The current prevalent prices for tea and coffee are:**

- **At International food court: 20 Rupees for tea & coffee (Noodle wok)**
- **At Domestic food court: 25 Rupees (Delhi Chaat)**

**It is important to understand that the non-aero revenue earned thereof will be used to cross subsidize the AERO charges. This means earnings in food court lowers the AERO charges at airport.**

### **Comment**

Due to inability of AAI not being able to bring in their share of the equity capital to meet with the revised total capital of the company-DIAL. AAI has no authority to ask for the continuance of DF. This is because on one side they have not brought in their share of capital on the other hand they are justifying the funding Gap should be bridged by continuing to levy DF. AERA should look into the possibility of AAI contributing towards the funding gap based on equity held by them, to maintain their equity share at 26% on increased capital.





## Response

**This matter has already been deliberated in great detail in the AERA consultation paper. However we shall like to reiterate that the promoters have already doubled their share of equity from the level contemplated in initial plan. We shall also like to add that DF as a means of finance is a worldwide accepted practice as this ends up lowering the charges to passengers in long run.**

## Comment

It is a fact that DIAL and its management have taken a decision to go ahead with the expenditure on the project and it is not justified by any other explanation. Simply by stating that the passengers are required to pay the Development Fee to bridge the funding Gap is highly unjustified and does not convince us that the passengers should be penalized for the 41% increase in the project cost. If the ministry has approved/authorized it the ministry should arrange for funds to bridge the funding Gap and not Tax the air passengers with an additional burden of DF. In all practical purposes DF must stop immediately and notification to that effect should be issued. We appeal to AERA to look at all other alternatives, including increase in capital by promoters, additional capital by AAI and other means of funding and not through DF.

## Response

- **There has not been any increase in project cost as this was not an EPC contract where costs are crystallized at the award of contract. It was a cost plus contract where progressive finalization of Project Cost has been there. The change in numbers is final estimation of Project cost based on detailed designing.**
- **The DF as a source of financing is a norm world over and not an exception in Indian Scenario.**
- **The issue of infusion of additional equity has already been responded in detail and it is not possible to raise further equity.**

## Comment

DF is collected only when a project is under development. It is also important to note that the air passengers should not have been penalized for no role that he has played in building an airport catering to 60 million passengers. We also believe that there should be no distinction between Domestic and International passenger, as both of them enjoy the same facilities.

## Response

- **DF is a concept that is permitted statutorily in India and pre-funding as a concept is permitted as per ICAO. DF does not penalizes passengers rather alleviates the tariff burden.**
- **As regards to distinction between Domestic and International passengers, we do not have any comments to make.**



**Annexure 'C'**

**DIAL response to queries by IATA against consultation paper number 2/2011-12 on ADF of Delhi airport.**

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**Comment**

Where facilities have already been built and are being used by passengers and airlines, IATA, in principle, has no objection to the levying of a Development Fee (DF). However, the current difference in DF between domestic and international departing passengers should be reviewed and full transparency provided as to the basis for the difference. The current ratio of 6.5 times of the DF for international passengers to the DF for domestic passengers is very high by international norms and should be moderated. The typical ratios observed internationally vary between parity and four times.

**Response**

**We do not have any comments on this issue as the current split was as mandated by Ministry of Civil Aviation.**

**Comment**

IATA is against the inclusion of any future development costs (i.e. cost not already incurred) in the total project cost used for determination of airport charges or Development Fee. The ATC Tower Cost (Rs 350 crores) is one item that should be excluded notwithstanding the comments made by Airports Authority of India (AAI) that it is needed for this current phase of the airport development project. IATA cannot support the unfair practice of getting existing users to pay for facilities that they do not use (because it has not been built) and may not use in future.

**Response**

**As ATC is a mandated project and included in the project cost, this should be included for purpose of DF. Moreover the Authority is progressively allowing the amount not incurred. As such this issue already stands addressed.**

**Comment**

Clause 3.1.1 of the State Support Agreement between DIAL and the Government of India is clear on the treatment of the Upfront Fee and the Annual Fee paid by DIAL to AAI. These fees are the key components of DIAL's bid for the contract to develop Indira Gandhi international (IGI) Airport and should be solely borne by the bidder. Allowing this cost to be passed through to the industry sets an unhealthy precedent for future airport privatization initiatives that encourages bidders to put in high payouts to AAI knowing that the cost would be absorbed by the industry. IATA believes that AERA has a third option in dealing with the Upfront Fee (and the Annual Fee) which is in consonance with Clause 3.1.1 of the SSA and that is to exclude these fees from both the project cost as well as the Regulatory Asset Base. AERA should not allow any of these fees to be shouldered by the industry.



**Response**

**The issue of upfront fee has been suitably clarified and in-depth reviewed by the Authority and we agree with the stand taken in the consultation paper**

**Comment**

IATA is most concerned about the huge escalation in project cost for the development of IGI Airport. From the auditors' report, it would seem that there was a serious lack of attentiveness to project budget or the need to contract works at the most cost-efficient price. IATA believes that the airport needs to be held accountable for cost over-run. AERA should not relent to the huge cost increases in the development of 131 Airport by simply allowing the adverse cost impact of a glaring short-coming in project cost management to flow through entirely to the users. AERA should stand firm on admitting only the original project cost and place the onus on the airport to justify any additional cost that it seeks to be included.

**Response**

**The project cost issue has gone through a detailed review by AERA including through independent audits. Hence we have nothing further to add at this stage.**

**Comment**

IATA fully agrees with AERA's position outlined in Clause 13 (n) of the Consultation Paper that the costs mentioned at Clauses 13 (k), (I) and (m) "should be capped at the presently estimated levels and in no case any escalation should be allowed in these cases".

**Response**

**We do not have any comments on the aforesaid issue.**



**Annexure 'D'**

**Response to queries raised by FIA against consultation paper number 2 of 2011-12 in matter of ADF of Delhi International Airport Private Limited.**

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**Comment**

Para 10 (a). The request for grant of additional airport development fees as claimed by DIAL has to be evaluated in context of the following legal framework:- (a)Section 13(l)(b), (2) and (4) of the AERA Act.

**Response**

**The current determination of DF is in compliance of section 13 of AERA Act which mandates AERA to determine amount of Development Fee (Section 13(1)(b) ) and in manner laid therein (section 13(4)).**

**Comment**

Para 10 (b) Decision of the Authority to adopt the Single Till Approach with Price Cap Incentive Regulation.

**Response**

**The Authority has not finalized Single Till approach for Delhi Airport. Further, the issue of Till is not relevant for determination of the Development Fee. Additionally, DIAL is bound by the terms of the SSA and OMDA which mandates a Hybrid Till approach with 30% cross subsidy.**

**Comment**

Para 10 (c) Relevant provisions of the OMDA dated 04.04.2006, Pr. 8.3.2, 8.3.5, 8.3.6, 8.3.7, 8.5.7,12.1 to 12.4.

**Response : DIAL is in compliance of the provisions of OMDA.**

**Comment**

Para 10 (d) Relevant provisions of the SSA dated 26.04.2006, Pr 3.1.1 to 3.1.3, 3.5.1 & Schedule I

**Response DIAL is in compliance of various provisions of SSA**



## Comment

Par 12. In this context, it is respectfully submitted that:-

(a) Airlines and passengers must not be burdened with any airport development fee to be collected to fund the capital investments of a private operator.

(b) Airport Development Fee should be levied uniformly across all metro and non-metro airports in India. It should not be airport specific since people travel to destinations, not airports.

## Response

**Section 22A states that the Development Fee collected from the embarking passengers at an airport shall be utilized, inter alia, for the purposes of funding or financing the costs of up gradation expansion or development of the airport at which the fee is collected.**

## Comment

Para 13. It is submitted that for the purposes of levy of any airport charges, the Authority is obliged to follow the provisions of SSA and increase the Airport Charges in line with the terms stipulated therein. It is noteworthy that the airlines have been going through difficult times with high crude oil prices. Levy of Airport Development Fee will erode airlines capabilities to increase fares to sustain its operational capabilities. It is respectfully prayed that the Authority keeps in mind the interests/implications of/on the airlines before initializing any decisions regarding airport development fee and other charges.

## Response

**In an infrastructure deficit country like India, creation of infrastructure needs to be remunerated and the viability of the PPP concessionaire kept in mind. Airlines have the flexibility of increasing ticket prices, charge varying ticket prices on different days and hours in an unregulated manner and also adjust capacity and business model in response to demand. Airports do not have such flexibility. Creation of world class infrastructure such as the T3 needs to be encouraged as this is in to the advantage of airlines. Projects like the T3 bring various financial and operational benefits to airlines vis:**

- **Low turnaround time**
- **No hovering of aircraft due to capacity constraints resulting in savings in fuel costs.**
- **More opportunity to multiply business (HUB etc.) and reduce expenses.**
- **Lower staff cost. (Integrated Terminal for Domestic and International).**



Hence paying a price for such quality infrastructure, which is a small percentage of their costs, is low compared to the efficiency improvement, cost savings and business growth.

The current capex has been done as per the master plan prepared in accordance with concession agreement signed with Government of India. The DF collected is neither a revenue for DIAL nor will DIAL be allowed to get any return or depreciation on capex funded from DF. The DF can only be used for aero assets which are transfer assets as per the concession agreement.

#### Comment

Para 14. It is submitted that in effect Airport Development Fee is a capital subsidy/contribution levied and collected from airlines who in turn partly/fully pass it on to the passengers which is beyond the scope of these Agreements (OMDA and SSA). The private airport operators cannot seek re-negotiation of the tariff beyond those prescribed in OMDA and SSA. Hence it is submitted that the private operators are barred from levying the development fee forthwith and the sum collected till date be returned to the Government/Airport Authority of India, to enable it utilize the same for the development of other airports, which are under its control. Moreover, the Government cannot give viability gap funding to the private airport operators especially after the privatization has taken place. An upfront capital grant will be unfair and the additional funding gap of Rs. 1,793 crores should be bridged through debt financing, subsidy by Government, or additional equity. It seems that grant of Airport Development Fee will reduce the funding to AAI, therefore Airport Development Fee is a means to increase tariff at all other airports. Airport Development Fee is a capital receipt which if not subjected to revenue share to AAI will also be exempted from income tax on such collection.

#### Response

**The current levy of DF is under provisions of AAI Act. The concession documents does not prohibit levy of DF. The Supreme Court judgment dated 26.04.2010 permits levy of DF as determined by Authority.**

#### Comment

Para 15. It is noteworthy that at the time when Airport Development Fee was sanctioned for DIAL, one of the primary reasons cited was the crashing real estate scenario then, resulting in Airport operator's inability to raise funds by unlocking real estate value, for the development of Airport. As the real estate scenario has improved considerably and with DIAL being in a position to unlock value, as reported in the newspapers, there is no justification for continuing with the levy of Airport Development Fee. It is not clearly stated not evaluated anywhere as to:-



- (a) What is the level of exploitation of real estate commercially at the IG1 Airport including how much such space is lying unutilized?
- (b) What is the reason for such commercial real estate not being put to use?
- (c) Is the level of security deposit received commensurate with the market realities for the value of the real estate put to use?
- (d) What is the potential of utilization of the surplus real estate and its cash flow implications?
- (e) What is the treatment of real estate deposit? It needs to be ascertained whether the security deposits of Rs. 1,471 crores have been used to reduce the project cost or they are being treated just as a deposit. The sum of Rs 1,471 crores collected by DIAL for having leased 45 acres of land for commercial development represents advance deposits collected from the lessees, which in normal circumstances would have been routed through profit and loss account and reduced the airport charges going forward.

#### Response

- **Details related to level of exploitation of real estate have already been submitted to the Authority.**
- **Submissions have been made to the Authority on the level of exploitation in Phase I keeping in view number of hospitality plots coming up, land use restrictions and limited ability of market absorption.**
- **Submissions have been made to the Authority on this issue vide our letter dated March 25, 2011 which is reproduced as under:**  
"The round I of the bidding process was constrained by the 26/11 terrorist attack and also the global financial meltdown. Despite these constrains, given the extensive pre-bid marketing, a healthy number of 58 bids were received. Multiple rounds of negotiations were undertaken with all the serious bidders. The bidders were asked to improve their offer beyond the highest quoted annual License Fee for each particular Asset Area. Using this process, DIAL succeeded in getting increases in the Annual License Fee of 19% to 115% of the one previously highest quoted figure with an average increase of 46.68% Further, the Board also noted that even though major Indian players did not participate in the process, the quality of development in the Hospitality District was unlikely to suffer as the selected bidders were likely to bring in reputed brands for operating the Assets from the stable of reputed national and international hospitality players like Hyatt, Accor, Dusit, Lemon Tree etc. It will also not be out of place to mention that given the aggressive marketing approach of DIAL, the aggregate amount of refundable deposits was significantly higher at Rs. 1471.51 crores against the envisaged figure of Rs. 912 crores considered while



- approving the original DF by MoCA.”
- **Non transfer assets have use restrictions. DIAL has leased out nine hospitality plots which will bring over 5000 hotel rooms to the market to compete against existing hotel rooms in the vicinity. There is a restriction on DIAL to further monetize hotel plots till 2013 as part of Phase I monetization. The Phase I monetization has released significant real estate of 45 acres into the market and current demand supply with rising interest rates and slowing growth scenario does not auger well for release of further real estate. These factors hamper the ability to accelerate further monetization till demand grows over the next 5-8 years. Further, we also need to factor in using these assets for future expansion and up gradation of Delhi Airport over the concession term. Therefore it is not possible to further monetize real estate for funding the current project.**
  - **The real estate deposits are treated as deposits and the accounting treatment has passed the test of scrutiny of the statutory auditors. The security deposits are forming means of financing of the modernization and up gradation project of Delhi Airport and used to determine the funding gap. The issue of its relation to airport charges is irrelevant for the present determination of DF.**
  - **As per the concession terms these deposits were not mandated to be used for Airport development. However DIAL on its' own has come forward and used these funds for the development of airport.**

#### **Comment**

Para 16. From a broad comparison of Capital outlay sanctioned for Mumbai vis-a-vis Delhi, (about US \$ 2.50 Billion), the Capacity expansion is a mere 30% i.e. from 650 Aircraft movements to 840 Aircraft movements. For a similar spend at Delhi and with marginal additional expenditure, considerable scope exists to triple the capacity in later years. In these circumstances, the cost of Airport operations at Mumbai will be disproportionately high compared to Delhi, which in itself require introspection and justification for high cost incurrence, as ultimately cost to the passengers will increase substantially. Therefore any increase in cost to the already sanctioned high cost at Delhi Airport needs comprehensive review before granting approval for the incremental cost. Cost overruns in any project of this nature cannot be allowed to be funded through increase in cost to consumers and in fact such costs must be borne by the Airport operators through their internal funding mechanism. It is pertinent to note that the Authority must also take into account the difficulties being faced by the airlines before granting levies to the airport operators. A lot of expenditure has been undertaken to rectify the infrastructure which was handed over to DIAL by the AAI. Therefore, AAI should pay such costs or it should agree to reduce the revenue share so that the burden on the passengers could be reduced.





**Response**

**We do not have any comment on the issues related to other airports/other agencies.**

**Comment**

Para 17. In the above context, it is submitted that the present consultation process raises the following important and critical questions for consideration of the Authority:-

(a) Whether the levy of Airport Development Fee is justifiable on financial/economic basis?

(b) Whether there has been any change in the circumstances from February, 2009 (when the Government permitted levy of Airport Development Fee) to the situation in March, 2010?

(c) What was the financial model of DIAL:

(i) At the time of the execution of State Support Agreement and OMDA;

(ii) In February 2009 when Airport Development Fee was levied;

(iii) In March, 2010.

(d) What is the justification for continuation of levy of Airport Development Fee?

**Response**

**Through various submissions and independent audits, Authority has been fully briefed on these issues.**

**Comment**

Re. Single Till Approach

18. It is submitted that the Single Till Approach adopted by the Authority warrants a comprehensive evaluation of the economic model and realities of the airport – both capital and revenue elements. The Airport Development Fee petition of DIAL must not be separately taken up but taken up as part of the overall tariff determination under Section 13(I)(a) and (b) of the AERA Act.



**Response**

**Single till approach has not been adopted by the Authority for DIAL. The Concession documents of DIAL mandate a Hybrid Till Model.**

**Comment**

Re. Capital Structure of the Operator

Para 19. The submission of the Operator, DIAL, contradicts its representation contained in the letter dated 14.01.2011 to the Authority asserting that in terms of its Shareholders' Agreement, DIAL is required to maintain a debt to equity ratio of at least 2:1 and it cannot raise further equity if this ratio is breached below this level. In this context, it is noteworthy that:-

(a) The initial master plan (as approved) was for an outlay of Rs.8,975 crores (please refer to Para 5.3 at page 4 of Consultation Paper). Here the minimum Debt : Equity should have been 2:1 = 5,983.34 crores (debt 2,991.67 crores (equity)).

(b) The claims of the Operator is that due to various factors the project outlay has increased by Rs. 3,882 crores, i.e., around 44% to Rs. 12,857 crores. Since Airport Development Fee does not constitute debt or equity but is being sought, the emergent capital structure would be:-

Equity	Rs. 2,450 crores	19.056%
Development Fees (Claimed)	Rs. 3,743 crores	29.113%
Debt	Rs. 6,664 crores	51.832%

This cannot be possibly permitted without breaching the Shareholders Agreement with serious consequences, as claimed by DIAL. As such, the present proceedings need to be held in abeyance till the capital outlay and structure is duly audited by an independent agency like the Comptroller & Auditor General of India.

**Response**

**This issue has been responded by DIAL in detail in various submissions including in our reply dated May 13, 2011. AERA has also considered this issue in its consultation paper 2 of 2011-12. The numbers and percentages given in (b) of the comment are incorrect as total debt is Rs. 5266 crores and DF claimed is Rs. 3620 crores. It appears that FIA submission has not got its facts right nor understood the terms of the Shareholders agreement.**



## Comment

Para 20. In addition, several other crucial questions arise for consideration of the Authority, including:-

- (a) What is the legal efficacy and values of the initial master plan approved by Ministry of Civil Aviation?
- (b) Under what circumstances, when and to what extent can such outlay be permitted to be revised without complying with the requirements of prudence check?
- (c) Can the objections and recommendations of the financial and technical audit reports of EIL and KPMG recommending disallowances of capital expenditure to the tune of Rs. 1,006 crores and Rs. 834 crores respectively be brushed aside contrary to principles under Section 13 of the AERA Act?
- (d) Can an international benchmarking study (which has not been shared with stakeholders) form the basis of rejecting a project specific audit report?
- (e) For a claimed capital/project outlay of Rs. 12,857 crores if the airlines and indirectly/partly the passengers are to contribute Rs. 3,743 crores as capital infusion while the operator along with AAI brings in only Rs. 2,450 crores, why must the operator not be reduced to a minority shareholder with a representative body of the airlines/passengers being issued the relevant equity? Was such an eventuality contemplated in the competitive bidding process for PPP and airport development by the Government of India?
- (f) Can such a claim for Airport Development Fee which exceeds equity within 4 years of award of the OMDA concession be considered as a fair, just or reasonable claim in a prudent, regulated, price cap mechanism as envisaged under the AERA Act read with the Tariff Guidelines of the Authority?

## Response

**The process of implementation of the project has been in compliance with the provisions of the OMDA and SSA including that relating to master planning. The Authority had appointed two independent auditors to undertake technical and financial audit of the project including prudency checks. The Authority has applied its mind and taken a considered view in the consultation paper No 2 on the disallowances. The point made on equity to be allotted to a representative body of airlines/passengers is out of context and reflects lack of understanding of the privatization approach of the major airports. The response from FIA is blind sighted by the request for DF and does appreciate that DF will lead to a permanent reduction**



**of RAB and lower airline tariffs in the long run. Raising of further debt or equity is not possible. However even if we consider the hypothetical situation that instead of DF, equity or debt is considered, this will lead to a significantly higher return on capital thus resulting in a significant increase in airline tariffs.**

### **Comment**

21. Without prejudice to the above, it is respectfully submitted that even if the additional capital outlay claim be treated as valid and admissible, the Authority must consider and decide as to:-

(a) Whether any capital investment so made must not go into the Regulatory Asset Base and be secured through return on equity/return on capital employed over the 60 year tenure of the Concession?

(b) Alternate means of financing including divesting equity, loans from IIFCL and other financial institutions be explored.

(c) Prudence check on each claim of capex must be done along the lines of the established accounting standards and practices which would disallow unreasonable, unfair or extravagant expenditure.

(d) There has been about 41% escalation in project cost, which seriously undermines the sanctity of the planning process of DIAL and Master Development Plan.

### **Response**

- a. Amount collected as DF does not form part of Regulatory Asset Base of DIAL.**
- b. Alternate means of finance has been explored for the above purpose and details thereof already submitted to Authority and are part of the consultation paper.**
- c. Detailed prudency checks have already been undertaken by Authority.**
- d. This issue has already been addressed in the review process of Authority.**

### **Comment**

Re. Upfront Fees paid to AAI- Rs. 150 crores.

Para 22. The claim of such upfront fees by the Operator as a part of Airport Development Fee is wrongful and contrary to Clause 3.1.1 of the State Support Agreement, viz –

"3.1.1 GOI's intention is to establish an independent airport economic regulatory



authority (the "Economic Regulatory Authority"), which will be responsible for certain aspects of regulation (including regulation of Aeronautical Charges) of certain airports in India. GOI agrees to use reasonable efforts to have the Economic Regulatory Authority established and operating within two (2) years from the Effective Date. GOI further confirms that, subject to Applicable Law, it shall make reasonable endeavours to procure that the Economic Regulatory Authority shall regulate and set/ re-set Aeronautical Charges, in accordance with the broad principles set out in Schedule 1 appended hereto. Provided however, the Upfront Fee and the Annual Fee paid / payable by the JVC to AAI under the OMDA shall not be included as part of costs for provision of Aeronautical Services and no pass-through would be available in relation to the same."

In this context, it is respectfully prayed that this claim deserves to be disallowed.

### **Response**

**This issue has been considered in detail by Authority and has been addressed in the consultation paper 2 of 2011-12.**

### **Comment**

Para 23. In addition to the above submissions, it is submitted that the Authority in paragraph 14.1 of the present Consultation Paper has taken note of various process related issues that have led to increase in the project cost being:-

- (a) Uncapped design and build approach followed for project implementation – no sharing of risk with EPC Contractor;
- (b) No check kept on cost overrun either by DIAL or PMC – risk mitigation steps not entirely compliant with the international best practices;
- (c) No detailed cost estimation of CWP by DIAL;
- (d) No detailed estimation of SCP either by DIAL or L&T;
- (e) EPC Contractor had no incentive or penalties to enable cost control;
- (f) Important stakeholders such as the MoCA and the AAI were not regularly updated on cost overrun – DIAL Board was apprised of the cost variation by way of the Project Cost Report in March, 2010. Prior approval of the Board was not taken for increase in GFA by nearly 84000 sq. Mts (from that finalized at the Master Plan Stage).

### **Response**

**Aforesaid issues have already been reviewed in detail before finalizing the current consultation on ADF.**



### **Comment**

It is noteworthy that such increase warrants disallowance since the Authority is mandated to conduct prudence check and it is vital to scrutinize the lack of diligent contracting, supervision and reporting undertaken by DIAL. In this context, it is noteworthy that the Appellate Tribunal for Electricity in its judgement dated 29.08.2006 in the matter of 'KPTCL vs. KERC & Ors.' reported as 2007 APTBL 223 has clearly held that utilities are free to decide their plans of investment for improvement of system or expansion to meet the demand including up gradation and maintenance for a better and quality supply. It is the commercial decision of the utility and its source to raise funds which falls within the domain of the utility. It is at a later stage that the Commission/Regulator shall undertake a prudent check and if deem it allow the claim. In appropriate cases, the Regulator may disallow such cases of utility and it is for the utility to bear the brunt of such investment and it cannot pass it on to consumers. A copy of the ATE judgement is placed as Attachment 2 hereto.

### **Response**

**There have been multi-level prudence checks on the project cost by**

- 1. Project Cost Committee appointed by Board which comprises representative of Ministry of Civil aviation and airports authority of India.**
- 2. Statutory Auditors.**
- 3. Technical auditors appointed by Authority.**
- 4. Financial Auditors appointed by Authority.**

**AERA has gone through a rigorous process of prudency check and the current Project Cost is finalized after considering all the above audit recommendations.**

