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Order No.30/2012-13

Airports Economic Regulatory Authority of India

In the matter of Review of levy of Development Fee at Indira Gandhi International Airport, New Delhi

New Delhi: 28th December 2012

AERA Building
Administrative Complex
Safdarjung Airport
New Delhi - 110003

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Airports Economic Regulatory Authority of India

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AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi – 110 003

Dated the 28th December, 2012

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1. Brief facts

1.1. The Ministry of Civil Aviation (MoCA) had determined the rate of Development Fee (DF) leviable at IGI Airport, New Delhi, by Delhi International Airport Private Limited (DIAL), vide letter No.AV.24011/002/2008-AD dated 09.02.2009, @ Rs. 200/- per departing domestic passenger and @ Rs.1300/- per departing international passengers. However, this levy was challenged before various appellate fora including the Hon'ble Supreme Court.

1.2. The levy of DF, per-se, was upheld in the Supreme Court Order dated 26.04.2011, reported as (2011)5 SC 360, who held that after the passing of the Airports Economic Regulatory Authority of India Act 2008 (AERA Act), no DF can be levied or collected from embarking passengers at major airports unless the Airports Economic Regulatory Authority of India (AERA/the Authority) determines the rate of such DF. Subsequently, the levy of DF at IGI Airport, New Delhi was stayed by the Hon'ble High Court of Delhi vide its order and judgment dated 1.06.2011 in the matter of WP No. 3889/2011. However, the Delhi High Court Order also did not hold that levy of DF at Delhi airport was ultra-vires the Airports Authority of India Act, 1994 (AAI Act) or the AERA Act.

1.3. Meanwhile, the Government also notified the "Airports Authority of India (Major Airports) Development Fees Rules, 2011" [DF Rules] on 02.08.2011.

1.4. Thereafter, upon an application by DIAL for determination of DF in respect of IGI Airport, New Delhi and after due consultation process with the stakeholders, the Authority determined the rate of levy of DF @ Rs. 200/- per embarking domestic passenger and Rs. 1300/- per embarking international passenger vide its Order No. 28/2011-12 dated 14.11.2011 (i.e. DF Order).

1.5. The total allowable project cost for the IGI Airport, New Delhi (Refer Table 1) and the corresponding means of funding the project (Refer Table 2) were also noted as under:

Table 1 : Total Project Cost for Delhi Airport

Particulars	Rs.in crores	
Final Project Costs as submitted in DIAL Application(A)		**12,857.00**
Items proposed to be excluded		
Apron	23.82	
R/W 10-28	37-50	
Escalation for reinforcement	35.67	
Upfront Fee	150.00	
Gross Floor Area 8652 sq. mt (proposed to be excluded by EIL)	107-15	
Total Exclusions (B)		**354.14**
Total allowable project cost (A-B)		**12,502.86**

Table 2 : Means of Finance

Means of Finance	Rs.in crores	
Equity capital and Share Application Money less Upfront Amount (Rs.150 crores)	2,300	
Rupee Term Loan	3,650	
Foreign currency loan + ECB advantage	1,616	
Internal Accruals	50	
Refundable Security Deposits	1,471.51	
Total Means of Finance		**9,087.51**
Funding Gap to be bridged through DF		**3415.35**
Less: DF Collected upto 01.06.2011	1484.08	
Balance DF to be collected (Refer DF Order)		**1930.27**

1.6. It was further noted in the DF Order that certain costs (amounting to Rs. 701 crore pertaining to ATC Rs.350 crore, Delhi Jal Board Rs 54 crore and Provisions Rs.297 crore), out of the total cost of Rs. 12,502.86 crore, had not been incurred by DIAL up to the relevant date, i.e. 31.03.2010. Accordingly, the Authority decided to grant the total DF in two stages - for the costs incurred up to 31.03.2010 in Stage 1 and for the costs included in project cost but not incurred up to 31.03.2010 in Stage2.

1.7. Thus, in the DF Order, out of the total funding gap remaining to be bridged – i.e. Rs. 1230.27 crore (as per Stage 1) and additional amount of Rs. 701 crore (as per

Stage 2), the Authority stipulated that Stage 1 would commence w.e.f. 01.12.2011 and was estimated to continue up to May 2013 and Stage 2 would commence thereafter w.e.f. June 2013. The following was ordered:-

> *"In exercise of powers conferred by Section 13(1)(b) of the AERA Act, 2008 read with Section 22A of the AAI Act, 1994, the rate of Development Fee to be levied by DIAL at IGI Airport, New Delhi is determined as Rs.200/- per embarking domestic passenger and Rs. 1300/- per embarking international passenger (exclusive of statutory levies, if any) to bridge the funding gap of Rs.1230.27 crores (NPV as on 1.12.2011). The levy shall commence with effect from 01.12.2011 and at present, is estimated to continue for a period of 18 months up to May, 2013 (Stage -1). In respect of costs not incurred by DIAL as on 31.03.2010, the same shall be included in the project cost for the purposes of levy of DF subject to the condition that the costs as may be actually incurred by the time DF aggregating to the funding gap of Rs. 1230.27 crores (on NPV basis) was collected, the tenure of levy would be further extended to cover these costs as indicated in para 23.2 above. The Authority will review the monthly collections on the basis of audited figures provided by the AAI and DIAL and take appropriate decisions as may be required, based on such review."*

1.8. Subsequently, DIAL vide letter no. DIAL/2011-12/Fin-Acc/1926 dated 27.12.2011 submitted auditor's certificates dated 22.03.2011 and 18.11.2011 regarding incurrence of expenditure of Rs. 31.50 crore on account of payment to DJB and Rs. 297 crore on account of Provisions, respectively, and also submitted a copy of resolution of its Board of Directors regarding the same. DIAL requested the Authority to:

> *" 1 Approve the inclusion of above amount in the project cost and the total DF amount to enable utilization through DF securitization*
>
> *2 Allow pro rata increase in period of collection based in above...."*

1.9. Based on review of DIAL's submissions, the Authority, vide Order No. 12/2012-13 dated 03.08.2012 ("DF Review Order"), noted and ordered as under:

> *15.It was further observed that DIAL has also requested for factoring in the above expenditure on NPV basis. As per the DF order, a comprehensive review of DF is to be undertaken – which would, inter-alia, include present value calculation through discounting, passenger throughput etc. Hence, for the time being, the amount of expenditure incurred and certified so by auditors, i.e. Rs. 328.50 crores (on current value) without considering interest, is considered for approval.......................................*

17. In exercise of powers conferred by Section 13(1)(b) of the Airports Economic Regulatory Authority of India Act, 2008 read with Section 22A of the Airports Authority of India Act, 1994, the Authority orders that:

(i) The tenure of DF – which was ordered to commence w.e.f. 01.12.2011 and estimated to extend up to May, 2013, to bridge the funding gap of Rs.1230.27 crores (in Stage 1), vide Order No. 28/2011-12 dated 14.11.2011, is decided to be extended by 4 months – beyond Stage 1 – i.e, upto September, 2013 – to bridge the funding gap of Rs.328.50 crores (included in project cost for determination of total DF amount and included in Stage 2 of levy of DF) – on current value – on account of expenditure of Rs. 297 crores and Rs.31.50 crores incurred by DIAL towards provisions and payment to Delhi Jal Board, respectively.

(ii) The Authority would review the monthly collections on the basis of audited figures provided by AAI and DIAL and will take appropriate decisions as may be required, based on such review.

1.10. The Authority had also presented, in the DF Review Order, the total project cost and corresponding funding gap to be bridged through DF, as mentioned below:

Table 3 : Total Project Cost and corresponding funding gap

Stage (Rs.in crore)	1 - (Excluding costs not incurred as on 31.03.2010)	2 - (Including costs not incurred as on 31.03.2010)
Project Cost	11801.66	12502.86
Less Means of Finance	9087.51	9087.51
Total Funding Gap	2714.35	**3415.35**
Less Amount Collected up to 01.06.2011	1484.08	1484.08
Balance Funding Gap	1230.27	1931.27
NPV as on	01.12.2011	The difference of Rs. 701 crores between Stage 2 and Stage 1 computed on no NPV basis

1.11. Thereafter, the Authority had noted in para 1.19 of the Consultation Paper No. 32/2012-13 dated 12.12.2012 (CP No. 32/ 2012-13) that the time period of Stage -2 has now overlapped that of Stage-1. Hence, the distinction between Stage-1 and Stage-2, i.e. that Stage-2 should commence after the completion of Stage-1, is now not relevant.

1.12. Meanwhile, MoCA, vide a press release ID 88444 dated 16.10.2012 (MoCA's press release), directed the AAI to infuse more equity in Mumbai International Airport Pvt. Ltd. (MIAL) and Delhi International Airport Ltd. (DIAL) with the objective of abolishing ADF at Mumbai and Delhi Airports and accordingly submit its proposals to this Authority. As per the MoCA's press release this was to make the air travel affordable and to ensure that the passengers are not subjected to any extra burden.

1.13. In order to fill the balance in financing gap, MoCA asked AAI to contribute equity share of approximately Rs. 102 crore. Subsequently, the Authority, accordingly, wrote a letter to AAI on 15th November 2012 to indicate the amount of additional equity that AAI proposed to infuse into DIAL. Parallely, the Authority also asked DIAL, vide letter dated 15th November 2012, to indicate the quantum of infusion of additional equity by other shareholders of DIAL and expected additional resources to fund the project through debt.

1.14. DIAL informed the Authority, vide letter dated 30.11.2012, that after detailed deliberations by the Board of Directors, the DIAL Board is of the opinion that infusion of additional equity is not feasible. DIAL also submitted a letter from ICICI Bank dated 27.11.2012, where the lenders have expressed their reluctance to consider any additional debt to DIAL as it will affect the debt servicing capability of the company adversely. Vide its letter dated 05.12.2012, AAI informed the Authority that " *AAI Board, in principle, approved to infuse equity of Rs. 93 Crore in DIAL, as and when cash call is made by the Company*".

1.15. Against the background of the above mentioned developments, the Authority undertook a review of DF levied at IGI Airport, New Delhi and issued a CP No. 32/2012-13 in respect of Review of levy of Development Fee at Indira Gandhi International Airport, New Delhi.

1.16. The Authority also calculated, in para 1.45 of the CP No. 32/2012-13, the total amount of DF remaining to be available to DIAL for the project as on 01.01.2013 as under:

Table 4 : DF remaining to be available to DIAL for the project as on 01.01.2013

DF remaining to be available to DIAL for the project as on 01.01.2013	In Rs. Crores
Loan Disbursement - Tranche 1	1210.00

Loan Disbursement - Tranche 2	286.50
Total Loan Disbursement - Tranche 1 and Tranche 2	1496.50
Principal Repayment till 30th Nov 2012 as submitted by DIAL	458.25
Estimated Principal Repayment for Dec 2012 as submitted by DIAL	40.00
Remaining Principal to be repaid as on 01.01.2013	998.25
Balance Amount remaining for Stage-1	0.27
Balance Amount remaining for Stage-2	414.50
DF remaining to be available to DIAL for the project as on 01.01.2013	**1413.02**

1.17. The Authority has carefully considered the comments received from various stakeholders,on the CP No. 32/2012-13. These comments as well as Authority's examination and its decisions regarding determination of the amount and rate of DF are given in the following pages.

2. Comments from Air France, Austrian, KLM Royal Dutch Airline, Lufthansa German Airline and Swiss International Airlines

2.1. The Authority has received identical comments from the following airlines (collectively referred to as M/s. Air France et al):

a) Air France,
b) Austrian,
c) KLM Royal Dutch Airline,
d) Lufthansa German Airlines (Lufthansa) and
e) Swiss International Airlines.

2.2. One of the points made by M/s Air France et al. is that they had, vide their email dated 17.12.2012, requested the Authority for additional time but the Authority did not agree to do so. The Authority notes that it has not received the referred e-mail from the above airlines (except Lufthansa) seeking extension of time. However, the Authority received an e-mail dated 17.12.2012 from Lufthansa requesting for extension of time. The Authority had replied to Lufthansa in this matter as to why it is unable to grant extension of time for the consultation. Its reply is appended as Annexure I. The other points made by these airlines are commented below, in seriatim, as under:

2.3. **Direction by the Central Government**

2.3.1. M/s Air France et al have referred to Press Release ID 88444 dated 16.10.2012 of MoCA regarding discontinuance of DF at IGI Airport, New

Delhi from 1.1.2013. The comments of M/s Air France et al referred to this press release as a direction under Section 42 of the AERA Act and that it should, accordingly, have been followed by AERA.

2.3.2. Going through the MoCA's Press Release, it does not appear to the Authority that the said Press Release was in the nature of a direction under Section 42 of AERA Act. The Authority had examined the issue of funding the balance gap in the DF, as has been given in detail in the CP No. 32/2012-13 to see if it can be met through other means of finance like equity, debt, additional refundable security deposits etc. If such other means of finance could be obtained by the JVC, namely, DIAL, continuance of DF beyond 1.1.2013 would not have been necessary or required. However, the Authority found that this was not possible. However, in order that the burden on the passengers on account of DF is reduced, the Authority proposed reduction of the rate of DF in the CP No. 32/2012-13 from Rs. 200/- per embarking domestic passenger and Rs. 1300/- per embarking international passenger to Rs. 100/- per embarking domestic passenger and Rs. 600/- per embarking international passenger w.e.f. 1.1.2013. As has been indicated in the C P No. 32/2012-13, the Authority apprised MoCA regarding these proposals. MoCA was in agreement with the approach of the Authority.

2.3.3. The Authority also notes that M/s Air France et al. have supported the decision of AERA to spread the burden of DF over a longer period of time (from 1.1.2013 till April, 2016).

2.4. **Equity Infusion by other stakeholders**

2.4.1. M/s Air France et al. have referred to clause 3.3 of the Shareholders' Agreement dated 4.4.2006. It has also referred to letter from AERA to DIAL, dated 5.11.2012, that DF is a means of finance as a last resort.

2.4.2. The Authority observes that clause 3.3 of Shareholders' Agreement in case of DIAL indicates that AAI shall have the right, but not the obligation to subscribe to such number of equity shares in proportion to its shareholding in DIAL and also provide for the contingency if AAI fails to subscribe to such number of equity shares. The Authority understands that this situation would arise when the call for equity is made by the JVC, namely, DIAL. In the instant case, as has been mentioned in the CP No. 32/2012-13, the Authority would continue to review the position in this regard. The Authority notes that such a call has not been made so far by the JVC. The Authority, therefore, does not feel that the particular provision of clause 3.3 of the Shareholders' Agreement, referred to by M/s Air France et al, is applicable in the instant case.

2.4.3. As regards DF being a measure of last resort, the Authority has reviewed the alternative of infusion of additional funds for the project through additional equity, additional debt, additional RSDs, etc. It has gone through, inter-alia, the letter from the ICICI Bank (also annexed to the CP No. 32/2012-13 as Annexure V). M/s Air France et al. have stated that the Authority has relied on the letter from ICICI for assessment of additional debt. However, they have not stated any reasons as to why, according to M/s Air France et al, this letter of ICICI Bank should not be relied upon. The Authority does not find any reasons not to accept the letter from ICICI Bank that the bank is not able to consider any additional debt.

2.5. **Additional capital from AAI:**

2.5.1. M/s Air France et al. have referred to Section 23 and 25 of AAI Act, stating that "AAI is nothing but extended arm of the Government for the purposes of its financial viability". M/s Air France et al. have stated that AAI/Central Government should have made additional capital available to JVC.

2.5.2. The Authority notes that AAI (which is a board managed company), in its letter dated 5.12.2012, had stated that "AAI Board has, in principle, approved to infuse equity of Rs. 93 crores in DIAL as and when cash call is made by the Company". It also notes that AAI has senior level members of the Central Government on its Board. It also notes that JVC (DIAL) which is also a board managed company has three senior level representations – two from AAI and one from the Government. After reviewing the fund position, the respective boards have informed the Authority accordingly. The Authority had also apprised MoCA of these developments and MoCA was in agreement with the proposed approach of the Authority.

3. Comments from IATA

3.1. Additional equity infusion by AAI

3.1.1. IATA, in its comments, has stated that once AAI had confirmed to AERA its preparedness to infuse equity of Rs. 93 crores, the private sector equity partners should have brought in additional Rs. 358 crores, thus narrowing the financing gap, even if efforts to secure more debt in financing proved to be unsuccessful later.

3.1.2. The Authority has given its detailed review of infusion of additional funds for the project. However, when it became clear that this would not be feasible, it came to the tentative decision to continue DF beyond 1.1.2013, albeit at a lower rate to lessen the burden on the passengers. However, since the rate of DF was proposed to be lower, the extension of time period allowed for its levy was a consequential requirement (upto April, 2016).

3.2. Differential Rates for Domestic and International Passengers:

3.2.1. IATA has stated that AERA should address the huge disparity in DF between domestic departing passengers and international departing passengers. IATA has further submitted that it would support a further lowering of DF for international passengers from AERA's proposed Rs. 600 per passenger (e.g. to between Rs. 100 and Rs. 200 per passenger) and the consequent extension of the DF collection period beyond April 2016. As per IATA, such an adjustment would be fairer for international passengers and provide a more conducive market environment for international airlines to grow traffic.

3.2.2. The Authority has reviewed the position regarding the differential rates for domestic and international passengers in the context of practice elsewhere. The Authority notes that similar/ varying differential in passenger charges, for domestic and international passengers, are prevalent in many parts of the world. IATA in its response, also seems to support such discrimination except that it has asked for narrowing the range of DF between domestic and international passengers. IATA has asked for ratio of DF between domestic and international passengers to be 1:2 and in that eventuality has supported the extension of DF collection period even beyond 2016. The Authority notes that in this regard (extension of DF tenure beyond April, 2016) IATA's views are different from some of its constituent members like M/s Air France et al.

3.2.3. The Authority also notes that the extant DF rates (Rs. 200 per embarking domestic passenger and Rs. 1300 per embarking international passenger) have been in place since March 2009. The Authority therefore, considers the proposed rates of DF, for domestic and international passengers, as broadly reasonable in the Indian context.

4. Comments from Federation of Indian Airlines (FIA)

4.1. FIA has given its comments on the tentative decision regarding lowering of DF. It has stated that the charging of DF is an illegality. The Authority notes the challenge by FIA, before AERA Appellate Tribunal, regarding the legality of levy of DF. The instant Order of the Authority is, therefore, subject to the final outcome of the said appeals.

4.2. FIA has also questioned the interest rate of 11.5% taken by the Authority for the purposes of its calculations. The Authority has reviewed the documents in this behalf during its calculations. It had also proposed to limit the interest component to the actual interest that DIAL would be required to pay to the lenders on account of DF securitization loan. FIA has referred to OMDA regarding the responsibility of DIAL to bear the financial, technical and other risks in relation to the project. The Authority has given its detailed reasoning about the provisions of OMDA, the provisions of section 13(1)(b) of the AERA Act read with section 22A of the AAI Act, the judgment dated 26.4.2011 of the Hon'ble Supreme Court [(2011)5 SC 360], the observations of Comptroller & Auditor General in its Report No. 5 of 2012-13

(Performance Audit of the Ministry of Civil Aviation) for the year ended March, 2012 and the responses of MoCA on this report, in the Order No. 29/ 2012-13 dated 21.12.2012 in the matter of determination of DF in respect of CSI Airport, Mumbai (para 3.28 to 3.35 of the Order).

4.3. FIA has referred to Chapter 3, Schedules 1 and 6 of the State Support Agreement (SSA) and has stated that DIAL is entitled to impose only those charges which are consistent with the pricing principles set out in the SSA. The Authority has calculated the aeronautical tariffs in respect of DIAL in accordance with the Schedule 1 of SSA as well as the provisions of the AERA Act. Its decision to determine the DF is in accordance with Section 13(1)(b) of the AERA Act read with Section 22A of the AAI Act.

4.4. FIA has referred to the earlier project cost of Rs. 5270 crores in July, 2006 (para 2.1 of the report of the Task Force: Financing Plans for Airports). AERA has taken, as a starting point, the project cost of Rs. 8975 crores which was accepted by MoCA in February, 2009. The Authority also notes that final project cost of Rs. 12,857 crores was reviewed internally by the Board of Directors of DIAL through appointment of a project cost auditor. The report of the project cost auditor was submitted to a Sub Committee of the Board chaired by independent director Shri RSSLN Bhaskarudu. This Sub Committee approved the report from the project cost auditor and recommended the same to the Board of DIAL. The Authority has noted that DIAL is a board managed company having senior level representations from AAI (2 Members) and MoCA (1 Member). After approval by its Board, DIAL submitted the project cost to the Authority. The escalation of project cost to Rs. 12,857 crores was also extensively reviewed by the Authority by appointing two independent auditors - one technical and other financial.

4.5. Based on the reports of the two independent auditors, the Authority in DF Order, finally arrived at a figure of Rs 12,502.66 crores as allowable project cost for the purposes of determination of DF in respect of IGI Airport, New Delhi. This allowable project cost was considered while determining the aeronautical tariffs for the IGI Airport, New Delhi.

4.6. **DF as a measure of last resort:**

4.6.1. FIA has argued that the Authority has treated DF as a first measure by virtue of the fact that DF order was issued about 6 months prior to its Order No. 3/2012-13 in the matter of determination of aeronautical tariffs in respect of IGI Airport, New Delhi. The Authority notes that the IGI Airport, New Delhi project was completed on 31.3.2010. It also notes that it's Guidelines (Direction No. 5/2010-11) regarding terms and conditions of determination of tariffs, were issued on 28.02.2011.

4.6.2. Once the project was completed, the Authority proceeded to quantify the financing gap that, as a last resort, would need to be bridged through levy of DF. The Authority had also asked DIAL to submit its tariff proposals, including Multi Year Tariff Proposal (MYTP) and Annual Tariff Proposals (ATPs). While determining the MYTP and ATPs, it is necessary to have clear idea about the aeronautical asset base on which weighted average cost of capital is to be given. The aeronautical regulatory asset base is a result of subtraction of the DF from the allowable aeronautical project cost. Unless the quantum of DF is, therefore, known it would not be possible to arrive at aeronautical regulatory asset base. While determining the quantum of DF, the Authority reviewed all other possible means of finance and when their total was found to be short of the allowable project cost, the difference was permitted to be bridged through levy of DF. The Authority has, thus, regarded DF as a measure of last resort while determining the aeronautical regulatory asset base.

4.6.3. FIA (para 7c of its submissions) stated that AERA has violated 'its own guidelines 6.8.7 and 6.8.8 which mandate that DF shall be a measure of last resort and should be considered at the time of MYTP'. For sake of clarity, the Authority reproduces clauses 6.8.7 and 6.8.8 as under:

> *"Clause 6.8.7 – The Authority shall consider pre-funding such as levy of Development Fee to be a measure of last resort and the Airport Operator shall submit justifications, after consultation with Users, that the pre-funding is the most appropriate*

funding option for the project in terms of size of the project, its importance, inability to finance the project through other options and impact on end user charges of the levy vis-a-vis if the project were to be financed through other sources/options. Such justifications shall include inter alia:

(a) Consultation/ Agreements with Users for undertaking the project through pre-funding
(b) Compelling reason for 'not undertaking such large-scale investment in multiple phases.
(c) Justification that all available financing options have been explored and exhausted including inter alia,
(i)equity contribution
(ii)borrowings

Clause 6.8.8. – The Authority understands that the project of a nature where pre-funding may be required would be planned sufficiently well in advance *and the need, if any, for pre-funding should be projected at the time of Multi Year Tariff Proposal. Accordingly, such a proposal for new pre-funding levy or an increase in an existing pre-funding levy during a Control Period shall not be entertained by the Authority in normal circumstances. However, in exceptional circumstances, where the Authority agrees to consider a new pre-funding levy or an increase in an existing pre-funding levy during a Control Period, it may require a re-determination of the Aggregate Revenue Requirement i.e. a full reopening of the determination of the Aggregate Revenue Requirement."*

4.6.4. The exact wordings of the Authority, with respect to MYTP, occurring in Guidelines para 6.8.8, make it clear that the prefunding should be projected at the time of MYTP. DIAL submitted its tariff proposal in June 2011. In this proposal, DIAL had taken into account the DF amount of Rs.1827 crores sanctioned by the Government vide its letter dated 09.02.2009 (at the rate of Rs. 200 per embarking domestic passenger and Rs. 1300 per embarking international passenger) as well as an additional projected DF amount of Rs. 1696 crores (NPV), hence totalling to Rs. 3523 crores and had accordingly reduced RAB upfront.

4.6.5. The Authority, after deliberating on DF as a measure of last resort and taking into account the report of the two independent auditors, finalized the quantum of DF (Rs. 3415 crores) as well as the rates thereof (Rs. 200 per embarking domestic passenger and Rs. 1300 per embarking international passenger) in November, 2011. Additionally, after analyzing the tariff proposal submitted by DIAL in June 2011 (which included the projected DF requirement), the Authority, after due stakeholder consultations, issued Order No. 3/2012-13 on 24.04.2012 determining the tariffs for aeronautical services in respect of IGI Airport, New Delhi (Tariff Order). It would thus be clear that the above sequence of determining DF and aeronautical tariffs is logical.

4.6.6. The Authority, therefore, notes that the Tariff Order was based on the aeronautical RAB after considering DF as a means of last resort and subtracting the quantum of DF determined by it in November, 2011 from the allowable project cost. The understanding of FIA, that the Authority has treated DF as a first measure on account of the DF Order having been issued about six months prior to its tariff determination order is, therefore, not based on correct assessment of the facts.

4.7. FIA has also stated that 'past burden of utility should not be passed on to future passengers, since the same passenger may not travel by air again'. FIA has also referred to the Supreme Court judgment dated 26.4.2011 reported as (2011) 5 SCC 360 and has stated that grant of DF to DIAL is illegal.

4.8. The Authority notes that the amount of DF was determined by the Authority in accordance with Section 13(1)(b) of the AERA Act read with section 22A of the AAI Act. The Authority also noted that the Hon'ble Supreme Court in its said order and judgement dated 26.04.2011 had not found any illegality in the levy of DF, per-se,at Delhi and Mumbai airports. The apex court had ordered that :-

> *"We declare that with effect from 01.01.2009, no development fee could be levied or collected from the embarking passengers at major airports under Section 22A of the 1994 Act, unless the Airports Economic Regulatory Authority determines the rates of such development fee.*
>
> ...
>
> *We further direct that henceforth, any development fees that may be levied and collected by DIAL and MIAL under the authority of*

the orders passed by the Airports Economic Regulatory Authority under Section 22A of the 1994 Act as amended by the 2008 Act shall be credited to the Airports Authority and will be utilized for the purposes mentioned in clauses (a), (b) or (c) of Section 22A of the 1994 Act in the manner to be prescribed by the rules which may be made as early as possible."

4.9. AERA has thus acted within the mandate of law while discharging its functions. The Authority further notes that the powers under Chapter 3 (which included the power to determine DF) were notified by the Government on 1.9.2009.

4.10. FIA has further commented that there is no document to suggest that DIAL has sought to market the land parcels but there is lack of interest in the market towards the airport land.

4.11. The Authority notes that the above comment is almost similar in wordings to its comment on Consultation Paper No. 22/ 2012-13 dated 11.10.2012 in respect of land monetisation by MIAL. It appears that FIA may not have fully appreciated the differences in the case of MIAL and DIAL with regard to land monetisation. In respect of FIA's comment regarding the land monetization by DIAL, the Authority notes that an amount of Rs. 1471.51 crores has been obtained by DIAL as non-interest bearing RSDs (repayable after 57 years). This amount was reckoned in the allowable project cost as a means of finance. It was only after consideration of the amounts of RSDs, that the amount of DF was determined as a means of last resort.

4.12. FIA has also commented that "as a result of increased tenure not only the passengers shall have to shell out the DF for a longer period but also the airlines will be burdened with the additional increase in the aeronautical tariffs".

4.13. It appears that on the limited issue of the tenure of collection of DF, FIA supports shorter tenure (with correspondingly higher DF rates). The Authority, however, notes that some of the airlines like M/s Air France et al have supported longer tenure since it "spreads the burden of DF over the longer period of time". IATA also has supported much longer period (even beyond April, 2016) and have requested for further reduction of rate of DF on international passengers. The Authority also notes that by reduction of the rate of DF (as proposed in the CP No.

32/2012-13) the burden on the passengers would reduce, though passengers will have to bear the reduced burden for a correspondingly longer period of time.

5. Comments from Air India:

5.1. Air India commented on escalation in project cost on account of cost overruns as well as funding of such overruns by the promoters instead of through levy of DF. Air India has recognized that increase in the tenure of levy of DF would mean that passengers have to pay DF for a longer time period.

5.2. The Authority has adequately commented on both these issues in its responses to comments from stakeholders like M/s Air France et al, FIA and IATA. Air India has supported discontinuance of the levy of DF. The Authority has gone into this issue also in detail before arriving at its tentative decisions mentioned in the CP No. 32/2012-13.

6. Comments from Mumbai International Airport Limited (MIAL)

6.1. MIAL has supported calculation of DF on NVP basis. Its other comments are with respect to following similar approaches for DIAL as well as MIAL regarding rate of interest and funding gap.

6.2. The Authority has already issued its order for determination of DF with respect to CSI Airport, Mumbai wherein it has appropriately taken into account, the circumstances prevailing in the case of CSI Airport, Mumbai.

7. Comments from DIAL:

7.1. Interest Rate on DF Securitisation Loan

7.1.1. DIAL, in its comments, has submitted that as per the agreed terms with the lenders, monthly interest is being charged @ 11.50% on the DF outstanding balance, based on simple interest method as against the compounded monthly method considered by the Authority. DIAL has also commented on the structure of the DF securitization loan with respect to interest and has submitted that the interest rate is dependent upon the credit rating accorded by rating agencies and the Authority should allow full true-up of any variation due to change in interest rate.

7.1.2. The Authority has reviewed the loan documents submitted by DIAL. The documents submitted mention a range of all in fixed interest rates that the lender would charge DIAL based on its credit rating. The Authority's reading of the document does not indicate any reset (upward) of interest rate once DIAL has obtained its credit rating as required by the documents. DIAL, in its submission, has mentioned interest rate of 11.50% as being applicable. DIAL has also obtained its first drawdown. The Authority, based on its reading of the documents, therefore does not find any reason for any likely upward revision in the interest cost of 11.50% (post first drawdown) which it has taken for the purposes of calculations.

7.1.3. As regards the issue of simple interest, the documents submitted provide the all in fixed annual interest rate as well as the repayment schedule for the loan. The Authority has made its calculations based on a compounded annual interest rate of 11.50%. The provision for repayment (both principal and interest) of DF securitisation loan has been proposed to be made from the receipts of DF billed. Hence, the Authority expects that the lenders would find adequate and additional comfort regarding the security of its DF securitisation loan, including for possible renegotiations, if any. The Authority had however proposed to continue to review the actual position in these matters and make appropriate decisions.

7.1.4. The Authority had indicated its tentative decision with respect to the reduction of the rate of DF as well as calculation of the allowed DF billing based on NPV value (meaning thereby if the DF is securitized, the interest component would form part of the allowable DF billing). The actual calculation of the likely tenure of DF levy is based on a certain rate of interest as well as the structure of the DF loan. The Authority recognizes that DF is a capital receipt that should be available for the project. The Authority would, reckon in its periodic review the interest as may be required to be paid by DIAL to the lenders appropriately.

7.2. Traffic Projection for determination of DF

7.2.1. DIAL has also commented on fluctuations in traffic and its impact on the collection of DF.

7.2.2. The Authority had indicated in the CP No. 32/2012-13 that actual passenger traffic may be different from the projected traffic being considered for the purpose of the proposed review and that the Authority would review DF as well as its tenure based on the traffic and pass appropriate orders regarding extension or contraction of the tenure of DF.

7.3. Implementation Period for revised DF

7.3.1. DIAL has further submitted that the Authority should allow one month for the implementation of revised rates and pass necessary direction to the airlines to pay the DF collected at the old rates along with an auditor statement certifying the same.

7.3.2. The Authority emphasises the fact that any amount collected as DF by the airlines cannot be retained by them. For passengers travelling after 31.12.2012, any surplus billed/ collected in the tickets will need to be accounted for in accordance with the DF Rules in consultation with DGCA/ AAI.

7.3.3. The Authority does not accept DIAL's request for a one month period for implementation of the revised (reduced) rates. Revised rates would apply w.e.f. 01.01.2013 in the interest of passengers. It appears to the Authority, however, that DIAL's request of implementing reduced tariffs after one month is reflective of this being sufficient time for what DIAL regards as a smooth transition from the earlier (higher) DF rate to what is proposed after 01.01.2013. It also notes that in the earlier case of revision of tariffs, and especially that of User Development Fee (UDF), DIAL felt that considerably more time (3 to 6 months) was necessary for smooth transition.

8. Comments from APAO:

8.1. Association of Private Airport Operators (APAO) has supported the proposal contained in the CP No. 32/2012-13 (namely, reduction in the rate of Development Fee (DF) and consequential extension in the time period for its collection). However, APAO has been apprehensive of whether such a reduction in DF would translate into reduction in air fares to the passengers.

8.2. The Authority notes that the passenger related charges, like DF or the Airport Development Fee (ADF), are recovered directly from the passengers and are shown separately in the airline ticket. The Authority does not have the mandate of regulating the air fares, per se, charged by the airlines. As far as the component of DF is concerned, the airlines can bill only the rate of DF as determined by the Authority. The Authority infers that APAO's concern is that a reduction in DF may result in corresponding increase in the airline fares so that the total of airline fares plus DF is the same - prior to 01.01.2013 and thereafter. As mentioned above, the air fares are not monitored by the Authority and according to its understanding are done so by DGCA.The Authority also believes that given the competitive nature of airline business, as well as the emergence of low cost carriers, the market forces would operate in such a manner as to keep the air fares competitive.

8.3. The Authority also notes that the air fares have been fluctuating in the past even without any change in the rates of DF.

9. Details of DF loan repayment and interest calculation

9.1. The Authority had calculated the loan repayment details in para 1.49 of its CP No. 32/ 2012-13, taking the balance of DF, remaining as of 01.01.2013, as Rs.1413.02 crores as under:

Table 5 : Loan Parameter

Interest rate	% p.a.	11.50%
Interest rate (monthly)	% p.m.	0.91%

Table 6 : DF Balance as on 01.01.2013

	Rs. In Crore	Rs. In Crore
Loan Disbursement - Tranche 1		1,210.00
Loan Disbursement - Tranche 2		286.50
Total Loan Disbursement - Tranche 1 and Tranche 2		1,496.50
Principal Repayment till 30th Nov 2012	458.25	
Estimated Principal Repayment for Dec 2012	40.00	
Total Principal Repayment till Dec 2012		498.25
Remaining Principal to be repaid as on 01.01.2013		998.25
Balance Amount remaining for Stage-1		0.27
Balance Amount remaining for Stage-2		414.50
Total Amount remaining as on 01.01.2013		1,413.02

Table 7 : DF Rate as applicable from 01.01.2013

	Per Domestic embarking Passenger	Per International embarking Passenger
Rate of Development Fee (in Rs.)	100	600

Table 8 : DF Repayment Schedule

Year	Month	Traffic (in millions)		Opening Balance	DF Billing (In Rs. Crore)	Principal Repayment (In Rs. Crore)	Interest (In Rs. Crore)	Closing Balance (In Rs. Crore)
		Domestic	International	(In Rs. Crore)				
2013	Jan	2.18	0.87	1,413.02	36.96	24.08	12.88	1,388.94
	Feb	2.21	0.87	1,388.94	37.25	24.60	12.66	1,364.34
	Mar	2.23	0.88	1,364.34	37.56	25.12	12.43	1,339.22
	Apr	2.26	0.89	1,339.22	37.86	25.65	12.20	1,313.56
	May	2.28	0.89	1,313.56	38.16	26.19	11.97	1,287.37
	Jun	2.31	0.90	1,287.37	38.47	26.74	11.73	1,260.63
	Jul	2.34	0.90	1,260.63	38.78	27.30	11.49	1,233.33
	Aug	2.36	0.91	1,233.33	39.10	27.86	11.24	1,205.48
	Sep	2.39	0.92	1,205.48	39.41	28.43	10.98	1,177.05
	Oct	2.42	0.92	1,177.05	39.73	29.01	10.73	1,148.04
	Nov	2.45	0.93	1,148.04	40.05	29.59	10.46	1,118.45
	Dec	2.47	0.93	1,118.45	40.38	30.19	10.19	1,088.26
2014	Jan	2.50	0.94	1,088.26	40.71	30.79	9.92	1,057.47
	Feb	2.53	0.95	1,057.47	41.04	31.40	9.64	1,026.07
	Mar	2.56	0.95	1,026.07	41.37	32.02	9.35	994.05
	Apr	2.59	0.96	994.05	41.71	32.65	9.06	961.41
	May	2.62	0.97	961.41	42.04	33.28	8.76	928.12
	Jun	2.65	0.97	928.12	42.39	33.93	8.46	894.19
	Jul	2.68	0.98	894.19	42.73	34.58	8.15	859.61
	Aug	2.71	0.98	859.61	43.08	35.25	7.83	824.36
	Sep	2.74	0.99	824.36	43.43	35.92	7.51	788.44
	Oct	2.77	1.00	788.44	43.79	36.60	7.18	751.84
	Nov	2.80	1.00	751.84	44.14	37.29	6.85	714.55
	Dec	2.83	1.01	714.55	44.50	37.99	6.51	676.56
2015	Jan	2.87	1.02	676.56	44.87	38.70	6.17	637.86
	Feb	2.90	1.02	637.86	45.23	39.42	5.81	598.44
	Mar	2.93	1.03	598.44	45.60	40.15	5.45	558.29
	Apr	2.97	1.04	558.29	45.98	40.89	5.09	517.40
	May	3.00	1.05	517.40	46.35	41.64	4.71	475.76
	Jun	3.03	1.05	475.76	46.73	42.40	4.34	433.37
	Jul	3.07	1.06	433.37	47.12	43.17	3.95	390.20
	Aug	3.10	1.07	390.20	47.50	43.95	3.56	346.25
	Sep	3.14	1.07	346.25	47.89	44.74	3.16	301.52
	Oct	3.18	1.08	301.52	48.29	45.54	2.75	255.98
	Nov	3.21	1.09	255.98	48.68	46.35	2.33	209.63
	Dec	3.25	1.09	209.63	49.08	47.17	1.91	162.46
2016	Jan	3.29	1.10	162.46	49.49	48.01	1.48	114.45
	Feb	3.32	1.11	114.45	49.89	48.85	1.04	65.60
	Mar	3.36	1.12	65.60	50.30	49.71	0.60	15.89
	Apr	3.40	1.12	15.89	50.72	15.89	0.14	-
	Total				1,703.68	1,413.02	290.66	

10. Impact of DF on the Regulatory Asset Base (RAB)

10.1. The Authority had also considered the issue of adjustment of RAB on account of DF in the CP No. 32/2012-13. The Authority has not received any comments from the stakeholders in this regard in response to CP No. 32/2012-13. However, as was noted in the CP No. 32/2012-13, the Authority has received considered comments on this issue in response to CP No. 22/2012-13 dated 11.10.2012 (in the matter of determination of DF and aeronautical tariffs in respect of CSI Airport, Mumbai). The Authority had also mentioned in CP No. 32/ 2012-13 that it will consider these comments and based on further analysis take a decision. The Authority has received comments from AAI (forwarded by MoCA vide its letter dated 21.12.2012) on CP No. 22/ 2012-13 in respect of determination of DF and aeronautical tariffs at CSI Airport, Mumbai. AAI has given its comments on the issue of DF adjustment to RAB. The Authority has noted these comments. These comments of AAI have also been put up in public domain. The current decision of the Authority is limited to the determination of DF and its tenure in respect of IGI Airport, New Delhi. The issue of taking into account AAI's comments regarding adjustment of RAB on account of DF would arise at the time of determination of tariff for IGI Airport, New Delhi in the next Control Period (commencing w.e.f. 01.04.2014). The Authority, therefore, decides to consider the issue of DF adjustment to RAB in case of DIAL, as may be required, at the time of the next Control Period.

11. ORDER

Having perused the records, comments of the stakeholders and upon consideration of all facts and circumstances, in exercise of powers conferred by Section 13(1)(b) of the Airports Economic Regulatory Authority of India Act, 2008 read with Section 22A of the Airports Authority of India Act, 1994, the Authority orders that:

(i) The rate of Development Fee in respect of IGI Airport, New Delhi is determined as Rs 100/- per embarking domestic passenger and Rs 600/- per embarking international passenger w.e.f. 01.01.2013, so as to permit billing of total remaining amount of DF of Rs.1413.02 crore (on NPV basis as on 01.01.2013). This levy will commence w.e.f 01.01.2013 and, at present, is estimated to continue upto April 2016 based on the traffic forecast considered at the time of DF Order dated 14.11.2011. The total amount of Development Fee billing allowed is therefore estimated at Rs.1703.68 crore - of which Rs. 1413.02 crore will represent the balance DF as of 01.01.2013 and the remaining amount of Rs. 290.66 crore represents the interest component.

(ii) The Authority will review, inter alia, monthly billing of Development Fee on the basis of audited figures provided by AAI and DIAL, its securitization, consequent interest charge, domestic and international passenger traffic and any additional means of finance during the above mentioned tenure and make appropriate decisions as may be required based on such review so that the balance amount of Development Fee of Rs. 1413.02 crore (on NPV basis as on 01.01.2013) is available for the project.

(iii) The Authority decides to consider the issue of adjustment to Regulatory Asset Base on account of Development Fee, as may be required, at the time of determination of tariffs for aeronautical services in respect of IGI Airport, New Delhi, for the next Control Period (commencing w.e.f. 01.04.2014).

By the Order of and in the
Name of the Authority

(Capt. Kapil Chaudhary (Retd.))
Secretary

To,

Delhi International Airport Private Limited,
Udaan Bhawan, IGI Airport,
New Delhi – 110 037
(Through: Shri. Srinivas Bommidala, Managing Director)

12. List of Tables

13. List of Annexures

13.1. Annexure I – Authority's Letter to Lufthansa German Airline.

ANNEXURE - I

F. No. T-11011(12)/1/2012-Tariff-Vol-VI/2172
Airports Economic Regulatory Authority of India
*****

AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi-110 003.

Dated the 19th December, 2012

To

Ms. Sarika Gandhi,
Manager (Legal),
Lufthansa German Airlines,
12th Floor, Building No. 10, Tower B,
DLF Cyber city, Phase – II
Gurgaon.

Subject: Request of Lufthansa German Airlines for extension of timeline for submission of comments in respect of Consultation Paper No. 32/2012-13 dated 12.12.2012 – reg.

Madam,

I am directed to refer to your email dated 18.12.2012 on the abovementioned subject and to say that the Authority has observed as under:

(i) The Consultation Paper No. 32/2012-13 was issued by the Authority on the limited issue of review of levy of Development Fee (DF) at IGI Airport, New Delhi (Delhi airport) proposing reduction in the rates of DF from Rs. 200/- per embarking domestic passenger and Rs. 1300/- per embarking international passenger to Rs. 100/- per embarking domestic passenger and Rs. 600/- per embarking international passenger w.e.f 1.1.2013. The proposed extension in the tenure of the levy was purely as a result of this reduction. In respect of determination of DF per-se, the Authority had, vide its order No. 28/2011-12 dated 14.11.2011, already discussed, examined and decided all the other issues related with the determination of DF in respect of Delhi airport. Some of these issues have been appealed against by various parties before various appellate fora which are pending. Hence, at this stage, pending final decision by the judicial bodies, the Authority would not like to dwell upon any other issue related with the determination of DF in respect of Delhi airport. It had proposed only a reduction in the rate of DF.

(ii) It has been one of the demands of the various domestic as well as international airlines to reduce the passenger charges and that reduction in the rate of DF will effectively reduce the burden on passengers. The Authority's proposal is in line with this request of the airlines. The Authority further observed as the proposal contained in Consultation Paper No. 32/2012-13 relates only to reduction in rate of DF with consequent extension of tenure and hence the time period given (i.e., upto 19.12.2012) is sufficient for stakeholders to consider and comment on the proposals.

Cont...

(iii) Further, it is also stated that the Consultation Paper No. 32/2012-13 was issued on 12.12.2012 and the last date for furnishing comments on the same is 19.12.2012. However, this request for extension of consultation period has been received on 18.12.2012. The Authority has given its careful consideration to this request immediately.

2. In view of the above, the Authority has decided not to accept your request for extension of timeline for submitting comments and suggestions on Consultation Paper No. 32/2012-13.

Yours faithfully,

C.V. Deepak

(C. V. Deepak)
OSD-II
Tel: 24695043

o/c