

Order no. 30/2018-19



Airports Economic Regulatory Authority of India

**In the matter of Determination of Aeronautical Tariffs in
respect of Indira Gandhi International Airport, Delhi with
respect to Base Airport Charges,
For the Second Control Period (01.04.2014 to 31.03.2019)**

Date of Issue: 19th November, 2018

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



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1. Brief Facts

- 1.1 The Airport economic regulatory Authority of India issued the tariff order for I G I Airport, Delhi for the first control period (2009-2014) on 24.04.2012 vide order no.3/2012-13. DIAL, the airport operator then took up some of the contentious issues in the tariff order on appeal with the appellate tribunal (AERAAT). The appeal was pending when AERA started the process of tariff determination for the second control period. DIAL then moved the Delhi High Court and obtained an order to the effect that tariff for the second control period should not be given effect to unless the issues on appeal for the first control period are settled by the Appellate Tribunal. The Hon'ble High Court had also indicated a time frame for the constitution of the appellate tribunal and the disposal of the issues taken on appeal by DIAL by the appellate tribunal.
- 1.2 Since the process of tariff determination was not stayed by the Hon'ble High Court, the Authority in exercise of its powers under section 13(1)(a) of the AERA Act, 2008 decided on the tariff proposal for the second control period and issued Order No. 40/2015-16 dated 8th December 2015 for Determination of Aeronautical Tariff in respect of the Indira Gandhi International Airport, Delhi for the Period (01.04.2014 – 31.03.2019). However, the Authority had noted that the Hon'ble High Court had permitted DIAL to charge the applicable tariff for the first control period till AERAAT decides on the appeal filed by DIAL and therefore did not implement the order no 40/2015-16 as the matter was sub-judice.
- 1.3 Subsequently, the Hon'ble Supreme Court of India in its order dated 3rd July 2017 directed the implementation of AERA's order no 40/2015-16 dated 8th December 2015 with immediate effect. The Authority's order was implemented by DIAL vide AIC No.13/2017 dated 07.07.2017.



2. DIAL's Proposal

2.1 DIAL vide its letter no. DIAL/2017-18/Regulatory/1263 dated 14th December, 2017 then approached the Authority with the contention that the aeronautical charges fixed by the Authority for the second control period have fallen below the "Base Airport Charges" stipulated in the SSA and proposed that as per Clause 2 of Schedule 6 of the SSA read with Schedule 8, DIAL is entitled to collect Base Airport Charges (BAC) plus permitted nominal increase of 10% of BAC thereon (**BAC+10% of BAC**) in case the aeronautical charges determined by AERA pursuant to Schedule 1 of SSA falls below BAC plus 10% of BAC in any year during the entire period of concession. Accordingly, DIAL has requested to maintain the aeronautical charges equivalent to BAC +10% of BAC for the remaining period of second control period and at any time during the remaining concession period. DIAL also has produced a copy of the letter dated 02.02.2009 from MoCA permitting DIAL to charge 10% over and above BAC in accordance with Schedule 6 of the SSA.

2.2 DIAL vide its letter dated 25th April 2018 has also requested that the implementation of the Base Airport Charges has to be given effect to from 7th July 2017, When the tariff order for the second control period was given effect to as per the orders of the Hon'ble Supreme Court.



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3. Consultation Process

3.1 The Authority had examined the proposal of DIAL regarding the applicability of the Base Airport Charges at the Delhi Airport. In terms of the section 13(1)(a) of the AERA Act, 2008, the authority is required to determine the tariff for aeronautical services, inter-alia taking into account the concession awarded by the Central Government.

3.2 The Authority while determining the tariff for DIAL has recognized the importance of the SSA signed by the Central Government which accordingly has to be considered under section 13(1)(a) (vi) of the AERA Act, 2008. The Hon'ble Appellate Tribunal, TDSAT has also emphasized that the contractual obligations of the parties should be honoured, unless there is a clear conflict between the agreement and the statute.

3.3 The relevant provisions of the schedule 6 of the SSA are reproduced below:

3.3.1. "Aeronautical Charges, for the purpose of this Agreement, shall be determined in the manner as set out hereunder:

- a) The existing AAI airport charges (as set out in Schedule 8 appended hereto) ("Base Airport Charges") will continue for a period of two (2) years from the Effective Date and in the event the JVC duly completes and commissions the Mandatory Capital Projects required to be completed during the first two (2) years from the Effective Date, a nominal increase of ten (10) percent over the Base Airport Charges shall be allowed for the purposes of calculating Aeronautical Charges for the duration of the third (3rd) Year after the Effective Date ("Incentive"). It is hereby expressly clarified that in the event JVC does not complete and commission, by the end of the second (2nd) year from the Effective Date, the Mandatory Capital Projects required to be completed and commissioned, the Incentive shall not be available to the JVC for purposes of calculating Aeronautical Charges for the third (3rd) year after the Effective Date.
- b) From the commencement of the fourth (4th) year after the Effective Date and for every year thereafter for the remainder of the Term, Economic Regulatory Authority / GOI (as the case may be) will set the Aeronautical Charges in accordance with Clause 3.1.1 read with Schedule 1 appended to this Agreement, subject always to the condition that, at the least, a permitted nominal increase of ten (10) percent of the Base Airport Charges will be available to the JVC for the purposes of calculating Aeronautical Charges in any year after the commencement of the fourth year and for the remainder of the Term."



3.4 Schedule 1 of the SSA contains the principles to be followed in tariff determination and the methodology for calculating the tariff for a control period. Clause 3.1.2 of the agreement stipulates that aeronautical charges for any year during the term shall be calculated in accordance with Schedule 6. It is DIAL's contention that Clause 2 in Schedule 6 suggests that at any time during the concession period, aeronautical charges calculated as per Schedule 1 of the SSA should not fall below the Base Airport Charges +10% of BAC.

3.5 DIAL had all along contended that the 10% increase over BAC should be made every year. In the first control period order, there was a discussion on this issue and the Authority had rejected this contention. However, no definite finding on the applicability of the provision in Schedule 6 was made since AERA considered it to be only of academic interest at that point of time when the aeronautical charges were being increased way above the base airport charges in the first control period. This was also a matter which DIAL had taken on appeal to the Tribunal.

3.6 DIAL had not asked for fixing the tariff at BAC+10% since the appeal was pending and therefore AERA did not consider it while issuing the tariff order for the second control period. In the recent order the Hon'ble Tribunal has upheld the manner in which AERA had dealt with the claim of DIAL in the first control period order.

3.7 The Hon'ble TDSAT in its order dated 23rd April 2018 in the matter of "AERA Appeal No.10 of 2012" has ruled as follows:

"Similarly, the reasons for not accepting the request for yearly 10% increase on Air Base Charges do not suffer from any error so as to require interference. The provisions in the SSA have been carefully kept under consideration for turning down such demand after elaborate discussion in paragraph 25 and its various sub-paragraphs leading to Decision No.28."

3.8 The Authority has issued the consultation paper no 06/2018-19 dated 29th May 2018 with the following proposal:

"The Authority has taken note of the submission of DIAL. The Concession granted to DIAL and more specifically Schedule 6 of the SSA has granted a contractual right of maintaining a permitted 10% increase of the BAC during any year of the concession term. In terms of Section 13(1)(a) of the AERA act the Authority has to consider the concession offered in determination of tariff.

3.8.1 Accordingly the Authority proposes the following:

- (i) DIAL is entitled to maintain minimum aeronautical charges equivalent to BAC+10% of BAC in any year during the term of the concession in terms of its concession. It is proposed that DIAL be allowed to consider the charges as provided in the Schedule 8 of the



SSA plus a one-time increase of 10% as the minimum aeronautical charges.

- (ii) The date on which minimum charges of BAC+10% of BAC shall be made available to DIAL will be worked out later while truing up the figures. For the present the Authority proposes to allow DIAL the aeronautical charges equivalent to BAC+10% from **1st July, 2018 to 31st March 2019.**
- (iii) The component of FTC was not mentioned in the BAC schedule as it was deemed as non-aeronautical revenue then but AERA in its philosophy and guidelines has decided FTC to be aeronautical revenue as per AERA Act. Accordingly, AERA proposes to continue with the FTC at Rs. 500 per KL as was being levied by DIAL before 01.04.2009.
- (iv) The Authority proposes to consider the shortfall if any, in applicable tariff and the minimum tariff for the period 01.04.2014 to 30th June 2018, in the PSF (FC) / UDF while determining the tariff for next control period.
- (v) The excess amount required by DIAL during the 2nd control period will be calculated separately and adjusted during determination of tariff for the third control period (01.04.2019-31.03.2024)."

3.9 In terms of Section 13(4) of the AERA Act 2008, the above proposal was put forth for stakeholder consultation and written evidence based feedback, comments and suggestions were sought from stakeholders.

3.10 The Authority had also convened a stakeholder consultation meeting on the subject consultation paper on 11th July 2018.



4. Stakeholder Responses

4.1 In response to the Consultation Paper no 6 /2018-19 dated 29th May 2018 the following written responses were received by AERA:

- 4.1.1 Mumbai International Airport Ltd (MIAL)
- 4.1.2 Business Aircraft Operators Association (BAOA)
- 4.1.3 Association of Private Airport Operators (APAO)
- 4.1.4 Air Travellers Association (ATA)
- 4.1.5 International Air Transport Association (IATA)
- 4.1.6 Hindustan Petroleum Corporation Ltd (HPCL)
- 4.1.7 Indian Oil Corporation Ltd (IOCL)
- 4.1.8 Federation of Indian Airlines (FIA)
- 4.1.9 Air India
- 4.1.10 Associated Chambers of Commerce and Industry of India (ASSOCHAM)

4.2 The Authority had also sought comments from DIAL on the above stated comments from stakeholders. DIAL vide letter no. DIAL/2018-19/Regulatory/786 dated 19th July 2018 had submitted their response to the Stakeholder comments. The Stakeholder Comments, DIAL's views and Authority's views are summarized below:

4.3 Response from MIAL

4.3.1 MIAL's Comments:

MIAL has acknowledged the Authority's effort to recognize the concession agreement of DIAL in allowing the Base Airport Charges. Further, MIAL has also indicated that at Para 3.10 of the consultation paper the Authority has mentioned only 'BAC' which should be 'BAC+10%'.

4.3.2 DIAL's Response:

DIAL has indicated that since MIAL comments are in support of the consultation paper hence merits no response.

4.3.3 Authority's Views

MIAL's comments have been noted.

4.4 Response from BAOA

4.4.1 BAOA's Comments:

BAOA has stated that any issue relating to tariff should be determined by AERA in accordance with the AERA Act and not the SSA. The BAOA in this regard stated as follows:

"SSA was signed in 2005, much before enactment of AERA in December 2008. Therefore, in matters of conflict between Agreement (SSA) and Statute (AERA), the provisions of AERA Act should take precedent. Further AERA Act Para 13(a)(iv) mandates authority to determine aeronautical charges in a manner to ensure economic and



viable operations of major airports. The latter clause (Para 13(a)(vi)) should not over-ride the more important preceding clause in the Act. The main objective is the economic viability of the operations. The part of Agreement (SSA) to be honoured should only relate to clauses on the 'Term of Lease' and 'Master Development Plan' etc. Any issue relating to determination of aeronautical charges at the airport have to be under exclusive domain of AERA Act and, not SSA."

BAOA has stated that the clause of BAC +10% in the SSA was to provide a comfort zone before the enactment of AERA. Subsequently the Authority has given 16% return to the airport operator through precise calculations of aeronautical charges to ensure economic viability of the airport. Therefore, Clause 2 of Schedule 6 (SSA) becomes irrelevant for determining aeronautical charges at DIAL. AERA has already considered this Clause at paras 26.20 & 26.21 of Order 40/2015-16.

BAOA has also requested to abolish the FTC at all airports in line with the AERA Act.

BAOA has requested that in view of the objectives of Clause 2 of Schedule 6 of SSA being taken care specifically through AERA Act para 13(a)(iv), the implementation of SSA's clause would result in unfair benefit being given to airport operator at a public airport.

4.4.2 DIAL's Response to BAOA's Comments:

DIAL in response to the BAOA's comments has stated as follows:

"..It is pertinent to mention here that the AERA Act 2008, where the Authority draws its power to determine the aeronautical tariff itself preserves the concession offered by the Central Government under section 13 (1) (a) (vi). Hence the Authority has to consider the provisions of the OMDA / State Support Agreement (SSA), the concession offered by the Central Government to DIAL, while determining the tariff for DIAL. The TDSAT also in its order 23rd April 2018, has laid emphasis to honor the concession agreement.

The right granted to DIAL in Clause 2 of Schedule 6 of the SSA is a sovereign assurance given by the Government of India to DIAL for the entire duration of the Term and not solely for the period till when AERA has not been formed as sought to be made out. The same is also evident from Clause 2 of Schedule 6 of the SSA which reads as follows: "From the commencement of the fourth (4th) year after the Effective Date and for every year thereafter for the remainder of the Term, Economic Regulatory Authority/GOI (as the case may be) will set the Aeronautical Charges...."(Emphasis added)

In view of the above, it is evident that Clause 2 of Schedule 6 of the SSA mandates not only the GOI but also the AERA once it has come



into existence to allow DIAL to collect aeronautical charges as per Schedule 6.

The increase allowed by MoCA on 16th February 2009 was given for the third year of operations in terms of the Clause 1 of Schedule 6 of SSA. However, Clause 2 of Schedule 6 of SSA enshrines a contractual right to maintain a minimum aeronautical charge equivalent to BAC +10% of BAC in any year during the term of the concession.

As regard to the referred para no 26.21 of Order 40 / 2015-16 the matter in contention was an automatic increase of 10% year on year, which was decided therein by the Authority. The present issue relates BAC + 10% of BAC (one time) to be the minimum aeronautical charges in any year during the term of the concession period, which has not been dealt with by the Authority before the issuance of the consultation paper no.6 of 2018-19. Hence, the para no. 26.20 and 26.21 referred from the Order no 40 / 2015-16 are not relevant to the consultation paper in contention.

Tariff charges are determined for each airport separately with varying charges. Abolishing the FTC across all airports is not a matter of contention in the current consultation paper.

There is no arbitrary increase of 10% of BAC but in fact it is a contractual right enshrined under the schedule 6 of SSA.

In addition to the foregoing, DIAL submits that the issue of applicability of BAC+10% of BAC need to be allowed by the AERA in terms of Schedule 6 of SSA once the determined by AERA under Section 13 of the AERA Act falls below the BAC+10% of BAC in any year during the term. As such, the submission made by BAOA that the implementation of BAC+10% of BAC would undo the setting up of an independent regulator are erroneous and without any substance."

4.4.3 **Authority's Views on BAOA's Comments:**

The section 13 (1) (a) (vi) of the AERA Act provides that the Authority has to consider the concession offered by Central Government in discharge of its function of tariff determination. The Authority while determining the tariff for DIAL has recognized the importance of the SSA in this regard. The Hon'ble Appellate Tribunal, TDSAT has also emphasized to honour the contractual obligations of the parties, unless there is a clear conflict between the agreement and the statute. The applicability of BAC +10% of BAC is governed by the Schedule 6 of the SSA between DIAL and Govt. of India and is therefore required to be considered by the Authority, in case the tariff determined by AERA under Section 13 of the AERA Act falls below the BAC+10% of BAC in any year during the term.



The issue of Fuel Throughput Charges to be abolished at all airports is not a matter to be decided by AERA itself. This required wider consultation and involvement of other agencies such as MoCA, AAI, Oil companies etc. as it involves Non-Major Airports also. The AERA has treated FTC an aero charges. The abolition of aero charges is going to effect/ increase other aero charges as the airport operators has to be compensated for loss of revenue from FTC, as FTC is one of the means to meet ARR.

4.5 Response from IATA

4.5.1 IATA's Comments:

IATA in its response has raised concerns over the applicability of Fuel Throughput Charges in the Base Airport Charge. In this regard, IATA has indicated that as (FTC) was not part of the BAC and therefore this situation gives AERA some discretion on how to set this particular charge. IATA has indicated that Authority is to use the historical price then the more appropriate charge would be that of 2006 instead of Authority's proposed levels of 2009.

IATA has also proposed that the Authority considers using the FTC as a means to adjust for the revenue imbalances created by the application of the 'BAC+10%' requirement. IATA further proposed that AERA could adjust the FTC to an extent that nets off the unjustified additional revenue created from the application of 'BAC+10%' in order to match the resultant revenue with the amount obtained through applying AERA Order No. 40/2015-16. Applying an FTC rate of Rs. 131.75 per KL would serve this purpose.

With regards to the over-recovery by DIAL leading up to July 2017 estimated at Rs 5200 Crores, IATA has urged AERA to resolve this aspect soonest by applying true-up in the third control period at the latest and not to accept the prospect of doing so in the fourth control period.

4.5.2 DIAL's Response on IATA's Comments :

DIAL with regard to FTC charges has contended that the FTC is the charge in addition to the Base Airport Charges as was applicable at the time of takeover from AAI. DIAL has also contended that the FTC was fixed initially on agreed rates with Oil Companies and subsequently approved by AERA. DIAL has proposed that they should be allowed to charge FTC on the same basis as was prevalent at the time when Base Airport Charges were levied by AAI at the IGI Airport, i.e., the rate which would be negotiated between DIAL and the oil companies. The relevant extract of the DIAL response is given below:

"DIAL has requested to apply the minimum charges of Base Airport Charges (BAC) plus 10% of BAC as per schedule 6 of the SSA. FTC is a separate charge in addition to the charges given in Schedule 8 of the SSA, it is further submitted that on the applicability of Base Airport



Charges (Schedule 8) +10%, DIAL should be allowed to charge FTC on the same basis as was prevalent at the time when Base Airport Charges were levied by AAI at the IGI Airport, i.e., the rate which would be negotiated between DIAL and the oil companies.

It is submitted that even in terms of the reply issued by AAI to the pre-bid queries during the bidding of the works for the IGI Airport, it is evident that at that time AAI was charging FTC at the rate negotiated between itself and the oil companies and it was also clarified that pursuant to the bidding, the airport operator would be entitled to charge FTC at the rate negotiated between itself and the oil companies.

In this regard we refer to our request dated 19th July 2018 wherein we have requested AERA to allow DIAL FTC at the currently prevailing rate of Rs.688.17 per KL negotiated and agreed between DIAL and the oil companies"

As regard to the over-recovery DIAL has stated as follows:

"DIAL is in the process of expansion of the existing terminals, landside and airside infrastructure, to meet the growing traffic needs. In order to achieve the target, DIAL has envisaged a capital expenditure plan of ~Rs. 8000 Crore excluding IDC and EDC. As a result of substantial capital expenditure the tariffs are likely to be higher than the current tariffs and would also take care of any under / over-recovery. Considering the situation DIAL requests AERA to consider excess collection, if any, during the 3rd and / or the 4th control periods as part of tariff determination without linking the excess recovery with the present consultation paper on BAC plus 10% of BAC."

4.5.3 Authority's Views on IATA's Comments:

The Authority has examined the proposal of IATA and the response given by DIAL. As regard to inclusion of FTC as part of Base Airport Charges the Authority has put forth it's views and justification for such inclusion at Para 3.9 (3) of the Consultation Paper no. 06 / 2018-19. Schedule 6 of the SSA assigns an unassailable right to DIAL to collect minimum tariff as was applicable in the third year of the concession term. Accordingly, the tariff as applicable before 01.04.2009 becomes the basis for implementation of Base Airport Charges and not that of 2006 as proposed by IATA or any negotiated tariff as proposed by DIAL. Hence the Authority decides to allow Rs 500 per KL as the rate for Fuel Throughput Charges. The tariff for the 2nd control period has been fixed taking into account the amount recoverable from FTC charge. In case the FTC is lowered/ abolished/ or not considered as aero revenue, the other aero charges will have to be increased to match the ARR.



On the issue of over-collection during the second control period, the Authority would consider the same in the true up while determination of tariff for the Third Control period for DIAL. Appropriate adjustments would be made in view of the provisions of the SSA and AERA Act 2008.

4.6 Response from FIA

4.6.1 FIA's Comments

FIA has raised the concern that the proposal of AERA in the Consultation Paper is contrary to the decision of the Appellate Tribunal in Judgment dated 23.04.2018 passed in Appeal No. 10/2012 filed by DIAL challenging the first tariff order. It has been contended that the decision of AERA on the issue of BAC in the 1st control period has been upheld by the Appellate Tribunal. Further DIAL has challenged the 2nd control period Order and the same is still pending for adjudication, hence the issue of BAC during 2nd control period cannot be reopened in a clandestine manner and as a back door entry.

FIA has contended that while exercising its powers, the AERA is obliged to ensure transparency by holding due consultations and providing reasonable opportunity to make submissions. FIA has also contended that AERA must ensure that all the documents on which it is relying are made available to the stakeholders and that the principles of natural justice and transparency must be followed scrupulously.

FIA has also raised the contention that DIAL has not produced any report or document in support of the fact that the Aeronautical Charges fixed by AERA for the Second Control Period have fallen below the BAC.

It has been contended by FIA that the projections of DIAL have been accepted by AERA without due evaluation and that AERA has erred in accepting DIAL's contention that the aeronautical charges fixed by AERA for the Second Control Period have fallen below the BAC without conducting an evaluation as to its accuracy and impact analysis. It has also been contended that DIAL has collected more than what is due to it and therefore, the proposal for BAC+10% would be detrimental to the airlines and the passengers who would have to bear the burden of increase in BAC over and above an exorbitant tariff.

FIA has contended that the applicability of BAC shall have an adverse impact on the airlines and the passengers and therefore, the same should not be granted by the AERA. FIA has also contended that DIAL has over recovered and therefore, BAC is no longer required to be implemented by AERA. Further, FIA has resisted the implementation of the BAC on the ground that the same shall be an added burden on the airlines and passengers and therefore, would inhibit the ability of airlines to raise their fares. Further, FIA has contended that BAC cannot be used for funding the gap of the airport operator and that the same should be bridged through debt financing, subsidy by Government or additional equity.



4.6.2 DIAL's Response To FIA's Comments

DIAL has provided issue wise response to the FIA's comments which are listed below:

"It is pertinent to mention here that the matter in appeal before the Appellate Tribunal in the Appeal no. 10 / 2012 filed by DIAL was for an automatic increase of 10% of BAC year on year. The decision of the Authority that DIAL was not entitled for year on year increase was considered in the first control period order and second control period order which was also upheld by TDSAT in the first control period order. The consultation paper in contention is only for Base Airport Charge +10% of BAC (one time) as the minimum aeronautical charges in any year during the term of the concession. The issue of BAC+10% of BAC as minimum aeronautical charge has never been dealt with by the Authority before the issuance of the consultation paper no 06/2018-19."

As regard to the matter relating to over-recovery raised by FIA, DIAL has provided the following response:

"FIA while raising the stated contention, has not taken into account the scheme of the State Support Agreement (SSA) as well as the mandate of Section 13(1)(a)(vi) of the AERA Act. Schedule 6 of the SSA mandates in unequivocal terms that the calculation of Aeronautical Charges at IGI Airport need to be done in accordance with Schedule 1 of the SSA. It is pertinent to mention here that in terms of the Clause 2 of Schedule 6 of the SSA, the aeronautical charges so calculated in terms of Schedule 1, falls below the Base Airport Charges (BAC) + 10% of BAC then the BAC+10% of BAC would be applicable.

Further, in terms of Section 13(1)(a)(vi) of the AERA Act, AERA while determining the tariff in any year has to take into account the Concessions granted by the Central Government. The same has also been upheld by the Appellate Tribunal vide its judgment dated 23.04.2018 wherein it has categorically been held that the contractual obligations of the parties should be honoured, unless there is an explicit provision in the statute overriding the agreement. However, there is no such explicit provision in the statute empowering the Statutory Authority to ignore such existing rights.

It is submitted that the sole precursor to the applicability of BAC+10% of BAC is that the aeronautical charges as calculated under Schedule 1 of the SSA are below the BAC+10% of BAC which are charges not requiring any determination and are already fixed and stated in Schedule 8 of the SSA.

Further, the issue of over/under recovery of aeronautical charges, if any, is a matter to be dealt with as part of the process of tariff



determination for the next control period which is an independent exercise of the applicability of BAC in contention. "

On the contention of FIA that DIAL has not provided the report or documentation to support that the tariffs have fallen below BAC, DIAL has stated as below:

"The exercise of comparison of the aeronautical charges to the BAC is an objective exercise involving numerical comparison and does not require any subjective analysis.

It is also pertinent to note that while raising the aforementioned objection, FIA has not produced any report or document contrary to the finding of the AERA that the aeronautical charges as determined for the Second Control Period are lower than the BAC."

On the issue raised by FIA that the expenditure incurred by DIAL should have been examined by AERA before making the proposal for applicability of BAC. DIAL has responded as below:

"As already stated above, the applicability of BAC is an independent exercise and mutually exclusive from the process of determination of tariff under Section 13 of the AERA Act. Therefore, the principles need to be followed by AERA for determination of tariff have no application to the question of applicability of BAC+10% of BAC , as the latter only arises once the tariff has been determined and is found to be lower than the BAC+10% of BAC as given in Schedule 8 of the SSA.

It is a matter of fact that the tariff as determined by AERA for the Second Control Period which is presently applicable at IGI Airport is lower than the BAC and therefore, as per the mandate of Clause 3.1.1 and Schedule 6 of the SSA, BAC+10% of BAC should be made applicable at the IGI Airport as proposed by AERA in the Consultation Paper."

FIA has stated that the AERA has not done independent due evaluation and has erred in accepting DIAL's contention that aeronautical charges fixed by AERA for the Second Control Period have fallen below the BAC without conducting an evaluation as to its accuracy and impact analysis. DIAL has responded as below:

"The aforementioned contention of FIA is factually incorrect as can also be seen from the Consultation Paper. It is submitted that AERA has done an independent comparative analysis of the tariff as per the aeronautical charges calculated in terms of Schedule 1 of the SSA and the BAC as given in Schedule 8 of the SSA and the same is also reflected in Para 3.8 of the consultation paper as well as Annexure 4 of the Consultation Paper. As such, it is incorrect to suggest that AERA has blindly relied upon the submissions made by DIAL. Further, it is reiterated that the FIA has failed to independently show that the



contention of DIAL that the tariff calculated by AERA for the second control period is not lower than the BAC+10% of BAC. As such, FIA is merely trying to discredit DIAL without any basis."

4.6.3 Authority's Views on FIA's Comments:

The Authority has analysed the comments of FIA as well as the DIAL's comment. FIA has contended that the Authority's proposal to implement BAC+10% of BAC in the consultation paper seeks to overturn the said decision of the TDSAT. In this regard it is pertinent to mention here that the issue before the TDSAT was for an automatic increase of 10% over BAC every year. However, the present determination in contention is limited to the applicability of minimum tariff in terms of Section 6 of the SSA. The Authority has hence examined the issue of the applicability of the minimum tariff to be fixed at Base Airport Charges +10% of BAC only.

As regard to transparency and holding due consultation, the Authority has uploaded all relevant documents along with the consultation paper no 6/2018-19 for evaluating the proposal. Further, stakeholder consultation was also convened by the Authority on 11.07.2018 in terms of the AERA Act 2008 where all stakeholders were invited to express their views. Therefore, the Authority views that all necessary consultation has been transparently conducted and addressed in reaching to the conclusion for this order. Further, the Authority has also evaluated the proposal and is of the view that the rates as given in the order no 40/2015-16 have fallen below the Base Airport Charges as is evident from the comparison at Para 3.8 and Annexure 4 of the consultation paper. It may be noted that para 2 of schedule 6 of the SSA says that at any time the airport charges fixed should not fall below BAC+10%. The said para speak about charge/ rate and not revenue. So it is felt there is no scope to analyse any other aspect other than a single aspect whether the charges fixed are lower than BAC+10% as stated in SSA (numerical comparison).

The Authority is of the view that the Base Airport Charges is the minimum tariff entitled to DIAL within the terms and provisions in SSA and OMDA. Hence, Authority is of the view that even if the appeal against 2nd control period Order is pending for adjudication, the BAC can be implemented.

On the issue of over-collection during the Second Control Period, the Authority would consider the same in the true up exercise while determination of tariff for the Third Control period for DIAL. The true up has to be done taking into account the order of TDSAT on first control period. The TDSAT order has asked AERA to consider some aspect like, cost of RSD, efficiency of cost, aero non aero ratio which require some time to study and appropriate adjustments would be made in view of the provisions of the SSA and AERA Act 2008.



4.7 Response from AIR INDIA

4.7.1 Air India's Comments:

Air India has sought clarification as under on the applicability of X-ray baggage charges:

"Only B-747 and DC-10 type of aircraft (wide body aircraft) have been specified due to which there is no clarity of applicable charges for international operations with other types of aircraft. Air India and its subsidiary AI Express operates to various international destinations with other types of aircraft having different seating capacity such as B- 737, A-319, A-320 and A-321 etc. for which the applicable rates have not been specified"

In reference to the X-ray baggage charges Air India has brought to the notice of the Authority, Ministry of Civil Aviation's order no.AV13028/001/2009-AS dated 16.04.2010 which prohibits the charging of X-ray baggage charges. Air India has requested the Authority to review the applicability of X-Ray baggage charges.

Air India has requested that the over collection of Rs.5,200 Crores be considered in fixing the tariffs and the airlines who have shouldered the burden of the excess amount collected may be compensated by way of discounts in tariffs in proportion to the excess amount collected from them.

4.7.2 DIAL's Response to Air India's Comments:

DIAL with regard to the charging methodology of X-ray baggage charges has given clarification as under:

"The specified charges are considered as a part of the Schedule 8 of the SSA with a permitted increase of 10%. The x-ray baggage tariff for international flights primarily differentiates between the turnaround flights and transit flights. However, some of the wide body aircrafts have been mentioned in the categorization of aircraft type for turnaround flights. However, with time the type of aircrafts have evolved and many variants have entered the competitive market including wide body and narrow body.

In order to preserve the sanctity of the Schedule 8 of the SSA and to bring in the clarity, the tariff may be considered as follows in case of x-ray charges to be charged for international flights:

- 1. USD 209.55 for all wide body (Code D, Code E and Code F) turnaround flights*
- 2. USD 149.33 for all narrow body turnaround flights (Code C) and all transit flights*



The above may be considered by the Authority for clarification in the rate card applicable for implementation of the tariff equivalent to BAC+10% of BAC. "

Further, as regard to the applicability of X-ray baggage charges DIAL has submitted following comments:

"DIAL is eligible in any year during the term for the minimum aeronautical charges equivalent to BAC+10% as per Clause 2, Schedule 6 of SSA. In terms of the contractual rights the minimum aeronautical charges should be as per Schedule 8 which is the Base Airport Charges (BAC), increased by 10% of BAC any time during the term of the concession. The Schedule 8 of the SSA which is the Base Airport Charges (BAC) as per the concession includes the x-ray baggage charges along with other charges. The recovery of BAC+10% of BAC is not linked to any capital or revenue related recoveries.

Based on the circular referred by AI, DIAL stopped charging x-ray charges due to the baggage screening equipment cost was recovered through PSF (SC). However, the Ministry of Civil Aviation vide order dated 18.02.2014 has directed all airports that the PSF (SC) fund is only for expenditure on deployment of CISF and other security forces at the airport. Since April 2014, DIAL has been incurring all security capital expenditure and maintenance of all security related assets by itself and not from PSF (SC). AERA has also clarified this position in the consultation paper.

In view of the above, DIAL is eligible to recover the x-ray baggage charges in terms of Clause 2 of Schedule 6 read with Schedule 8 of the SSA. "

4.7.3 Authority's views on Air India's Comments:

Authority has taken note of the Air India's comments regarding lack of clarification of charging with respect to some wide body and narrow body flights. DIAL has proposed to charge wide body turnaround flights at USD 209.55 in the applicable tariff for BAC+10% of BAC and all narrow body turnaround flights at the lower rate of USD 149.33 including all transit flights. DIAL's proposed mechanism for turnaround and all transit flights brings clarity in the charging methodology of X-ray baggage charges for wide body and narrow body flights and further the same is not detrimental to the airlines, the Authority is agreeable to the proposal of DIAL in this respect.

The Authority has taken note of the MoCA letter dated 16.04.2010, wherein the Ministry has abolished the X-ray baggage charges. The matter was referred to MoCA. It is further clarified by MoCA vide letter dated 09.10.2018 that DIAL is eligible for baggage screening charges in



base fare, but only for equipment bought from DIAL's own funds. The equipment bought from PSF fund is not eligible for base fare. Accordingly, the Authority had sought information from DIAL regarding details of baggage screening equipment bought from PSF fund and DIAL's own fund separately along with original cost, date of procurement, depreciation rate, present book value etc.

DIAL in response to the above requirement has provided the details vide their letter no DIAL/2018-19/Regulatory/1420 dated 24th October 2018. The details supported by a Statutory Auditor and joint Statutory Auditor's certificates indicated that the DIAL has procured assets relating to baggage screening equipments worth Rs. 119.66 Crores from PSF fund and Rs. 2.23 Crores from DIAL's own funds. However, DIAL contended that the funding of security equipment should not have formed basis for deciding on Base Airport Charges as the BAC+10% of BAC is a concession right and not linked to source of fund. Further, DIAL has also given the following proposal:

"AERA has indicated to allow the X-ray baggage charges eligibility under BAC to the extent of baggage screening equipment owned by DIAL. Although allowing X-Ray charge as part of base airport charge is not related to cost recovery, however, since it is considered as a pre-requisite for allowing X-Ray baggage charges as part of BAC by AERA, DIAL agrees to revert the funds to PSF account at original cost of Rs 119.66 Crores relating to baggage screening assets. As we are agreeable to remit the original cost of screening equipment to PSF, the Authority is requested to re-determine the Regulatory Asset Base in the Schedule 1 calculation to the extent of such payment."

The Authority is of the view that DIAL may be permitted to collect X-ray baggage charges as part of Base Airport Charges on confirmation of remittance of amount by DIAL to PSF fund by the Ministry of Civil Aviation.

Regarding the over collection during the second control period the Authority would consider the same in the true up while determination of tariff for the Third Control Period.

4.8 Response from IOCL AND BPCL

4.8.1 IOCL's and BPCL's Comments:

IOCL and BPCL has requested that the Fuel Throughput Charges so decided may be implemented from prospective date.



4.8.2 Authority's Views:

The Authority has decided to consider 01.12.2018 as date of implementation of Base Airport Charges at IGI airport Delhi for the second control period.

4.9 Response from APAO ATA ASSOCHAM

APAO, ATA and ASSOCHAM are in agreement with the proposal under consultation paper no 6/2018-19. The comments are noted by the Authority.



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AERA

5. Order

5.1 The Authority has scrutinized the stakeholder's comments and has taken note of the responses provided by DIAL. In terms of Concession granted to DIAL in reference specifically to Schedule 6 of the SSA, DIAL has a contractual right and is entitled to Base Airport Charges (BAC) provided under schedule 8 of OMDA +10% of BAC in any year of the concession term. Accordingly in terms of Section 13(1)(a) of the AERA Act the Authority decides to consider the concession offered in determination of tariff.

5.2 Upon careful consideration of the Material available on records, the Authority, in exercise of powers conferred upon it by Section 13(1)(a) of the AERA Act, 2008, hereby orders that:

5.2.1 DIAL is entitled to maintain minimum aeronautical charges equivalent to BAC+10% of BAC in any year during the term of the concession in terms of the SSA awarded by the Government.


5.2.2 Accordingly, the authority decides to allow DIAL to charge the rates equivalent to BAC+10% of BAC effective from 1st December 2018. The applicable aeronautical charges effective from 1st December 2018 are therefore mentioned at Annexure I.

5.2.3 DIAL is not entitled to charge X Ray charges, since the investment on screening equipments was made from PSF and not by DIAL . The X-ray baggage charges (as stipulated in Schedule 8 of SSA+ 10%) shall be applicable from the date of DIAL's remittance of required amount to PSF fund. A separate order to this effect will issue on receipt of confirmation of remittance of the required amount into PSF from Ministry of Civil Aviation.

5.2.4 DIAL is permitted to charge FTC at Rs. 500 per Kilo litre which was the rate applicable on 01.04.2009. This rate will be applicable effective from 01.12.2018.

5.2.5 The Authority shall consider suitable true up of all aeronautical revenues realised by DIAL in the second control period while taking up tariff determination for the third control period.

By the order and in the
Name of the Authority


(Puja Jindal)
Secretary

To

Shri K Narayana Rao, Director,
GMR Delhi International Airport (P) Ltd. (DIAL),
New Udaan Bhawan, Opp. Terminal 3, IGI Airport, New Delhi 110037, India



Annexure 1 – Detailed Tariff Card approved by the Authority effective from – 01.12.2018.

I) LANDING CHARGES

Rate per landing - International Flight

Weight of the Aircraft	Rate Per Landing (In INR)
≤ 21 MT	Not Applicable
≤ 100 MT	INR 250.47/ MT
>100 MT	INR 25047+ INR 336.60/MT in excess of 100 MT

Rate per Landing - Domestic Flight

Weight of the Aircraft	Rate Per Landing (In INR)
≤ 21 MT	INR 113.30/ MT
≤ 100 MT	INR 187.88/ MT
>100 MT	INR 18788+ INR 252.45/ MT in excess of 100 MT

Note

1)	Minimum charges of INR 1,100 per landing, except in case of domestic aircraft with MAUW ≤ 21 MT
2)	25 per cent surcharge on landing charges for supersonic aircraft
3)	5 per cent surcharge on International landings between 2301-2400 hours IST (peak hour)
4)	5 per cent discount on International landing between 1301-1600 hours IST
5)	15 per cent reduction in landing charges in case of payments within the 15-days credit period for domestic flights
6)	The domestic leg of international routes of Indian operators is treated as domestic flights as far as airport charges are concerned
7)	No landing charges for helicopters and aircraft with seating capacity ≤ 80 and operated by domestic scheduled operations and for helicopters of all types

II) PARKING AND HOUSING CHARGES

Housing charges

Weight of the Aircraft	Housing Charges Rates per Hour
≤ 100 MT	INR 8.14 MT
>100MT	INR 814+ INR 10.78 MT in excess of 100 MT



Parking Charges

1)	When an aircraft is parked in the open, only half of the housing charges are levied. No parking charges are levied for the first 2 hours.
2)	While calculating the free parking time, standard time of 15 minutes is added on account of time taken between touchdown and actual parking time on the parking stand. Another standard time of 15 minutes is added on account of taxiing time of aircraft from parking stand to take off point.
3)	For calculating chargeable parking time, part of an hour shall be rounded off to the nearest hour
4)	Charges shall be calculated on the basis of the nearest MT
5)	Charges for each period parking shall be rounded off to the nearest Rupee
6)	At in contact stands, after free parking hours, normal parking charges are levied for the first two hours.
7)	After this period, the charges are double the normal charges.

III) X-Ray Baggage Charges

As noted at para 5.2.3, separate Order for X-Ray Baggage charges shall be issued.

IV) PASSENGER SERVICE FEE (PSF)- FACILITATION

Rate per embarking passenger	
₹ 77 for tickets issued against INR	US\$ 1.93 for tickets issued against foreign currency

For conversion of US\$ to INR the rate as on the 1st day of the month for the first fortnightly billing period and rate as on the 16th of the month for the second fortnightly billing period shall be adopted.

V) PASSENGER SERVICE FEE (PSF)- SECURITY

Rate per embarking passenger	
₹ 130 for tickets issued against INR	US\$ 3.25 for tickets issued against foreign currency

For conversion of US\$ to INR the rate as on the 1st day of the month for the first fortnightly billing period and rate as on the 16th of the month for the second fortnightly billing period shall be adopted.

VI) Fuel Throughput Charges

Rate Per KL (IN ₹)
₹ 500



VII) GENERAL CONDITION

1. The Ministry of Civil Aviation, Govt. of India vide order no. AV.16011/002/2008-AAI dated 30.11.2011 has directed AAI to exempt the following categories of persons from levy and collection of PSF (Security).
 - (a) Children (under age of 2 years),
 - (b) Holders of Diplomatic Passport,
 - (c) Airlines crew on duty including sky marshals & airline crew on board for the particular flight only (this would not include Dead Head Crew, or ground personnel),
 - (d) Persons travelling on official duty on aircraft operated by Indian Armed Forces,
 - (e) Persons traveling on official duty for United Nations Peace Keeping Missions.
 - (f) Transit/transfer passengers (this exemption may be granted to all the passengers transiting up to 24 hrs. "A passenger is treated in transit only if onward travel journey is within 24 hrs. from arrival into airport and is part of the same ticket, in case 2 separate tickets are issued it would not be treated as transit passenger").
 - (g) Passengers departing from the Indian airports due to involuntary re-routing i.e. technical problems or weather conditions.
2. Flight Operating under Regional Connectivity Scheme will be completely exempted from charges as per Order No. 20/2016-17 dated 31.03.2017 of the Authority from the date the scheme is operationalized by Govt.
3. All the above Airport Charges and Fee are subject to applicable taxes.

