F. No. AERA/20010/MYTP/BIAL/2011-12/VOL - III
Airports Economic Regulatory Authority of India
*****

AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi - 110003

Dated the 2nd January, 2015

Public Notice No. 14/2014-15

Subject:-Consultation Paper No. 15/2014-15 dated 26.12.2014 Amendment to the Order No.08/2014-15 dated10.06.2014 issued by the Authority in respect of aeronautical charges of Kempegowda International Airport (earlier known as Bengaluru International Airport) in view of the Orders of Hon'ble High Court of Delhi in the Writ Petition (civil) no. 4338/2014 – reg.

Attention of all concerned is invited to Consultation Paper No. 15/2014-15 dated 26.12.2014, issued by the Authority in respect of the subject Consultation Paper vide which the Authority had sought comments from the stakeholders. The last date of submission of comments was 31.12.2014. In response thereof, the Authority has received comments / submissions from the following stakeholders:

- **Airport Operators & Associations**

  Bangalore International Airport, Bengaluru (BIAL)

  Association of Private Airport Operators (APAO)

- **Airlines & Associations**

  Federation of Indian Airlines (FIA)

2. The comments / submissions received, as above, are attached for information of all concerned.

C V Deepak

(C.V. Deepak)
OSD-II
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Kempegowda INTERNATIONAL AIRPORT BENGALURU

Ref: AERA/Finance/2014-15/07

December 31, 2014

The Secretary
Airports Economic Regulatory Authority of India
AERA Building, Administrative Complex,
Safdarjung Airport,
NEW DELHI - 110 003

Dear Sir,

Sub: Stakeholder response to Consultation Paper No.15/2014-15 dated December 26, 2014

BIAL thanks the Authority for the timely release of the captioned consultation paper and for the opportunity to submit its response thereto.

BIAL states that, after the disposal of Writ Petition (Civil) No.4338/2014, BIAL has submitted the order of the Hon'ble High Court of Delhi and settlement terms entered into with Federation of Indian Airlines ("FIA") to the Authority for kind consideration. The Authority has, taking into account the order of the Hon'ble Delhi High Court as well as the settlement terms between BIAL and FIA, issued the captioned Consultation Paper No.15/2014-15.

In Consultation Paper No.15/2014-15, the Authority has proposed that CUTE, CUSS & BRS (CIC charges) will be $1 effective from 15th January 2015, for the current control period. The Authority has further proposed that the difference in collections under the revised rates resulting in a shortfall in Aggregate Revenue Requirement ("ARR"), as calculated under the MYTO will be trued up at the time of tariff determination for the next control period.

BIAL is in agreement with the proposals in CP No.15/2014-15 and has no further comments to offer. BIAL thus requests the Authority to finalize the proposals in the consultation paper and permit BIAL to levy CIC charges of $1 per departing passenger directly or through the concessionaire and further consider the shortfall for true up in the next control period as proposed.

Thanking you,

Yours faithfully,
For **Bangalore International Airport Limited,**

Authorised Signatory

ASSOCIATION OF PRIVATE AIRPORT OPERATORS

APAO/AERA/2014-15

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

Date: 31 December 2014

Sub:**Consultation Paper No. 15/ 2014-15**

Dear Sir,

A kind reference is invited to AERA Consultation Paper No. 15/2014-15 in the matter of amendment to the Order No. 08/2014-15 dated 10.06.2014 issued by the Authority in respect of Aeronautical charges of Bengaluru International Airport in view of the Orders of Hon'ble High Court of Delhi in the Writ Petition (civil) no. 4338 / 2014.

Our comments on the Consultation Paper are furnished below.

1. We note that Hon'ble Delhi High Court in its Order dated 23rd December 2014 while disposing the appeal filed by FIA given direction to AERA that AERA shall consider the settlement reached between FIA and BIAL and pass an appropriate order within 2 weeks.

2. BIAL and FIA have resolved the impasse in relation to CIC charges reducing it to $1 from $1.25 as earlier approved by AERA.

3. While appreciating the goodwill gesture shown by BIAL in settling the issue out of court even after placing it in an extremely incongruous situation where, while services were being continuously provided BIAL was not receiving any remuneration for the same,BIAL may have a shortfall of collection of aeronautical charges which may have to be trued up at the end of the current control period while determining the tariff for next control period.

4. Hence, we agree with the proposal of AERA to levy CUTE, CUSS and BRS charges on domestic and international passengers at $1 effective from 15th January 2015 for the current control period.

5. We also agree with the proposal of AERA that the difference in collection between the CUTE, CUSS and BRS charges that will accrue to BIAL now on the revised rates and the amount considered as per the MYTO will be trued up at the end of the current control period during the determination of aeronautical tariff for the next control period.

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6. It may be recalled that during the Consultation process held in respect of current tariff as determined by AERA for BIAL wherein APAO had made a submission that CIC charges (Cute, CUSS & BRS charges) need to be considered as Non Aero charges. APAO wish to reiterate our above request and request the Authority to kindly consider the CIC charges as Non Aeronautical specially when it is concession fee only which BIAL gets, while approving revised charges of $1 per depax of BIAL. Further, we request AERA to approve the charges to be collected either by BIAL directly or through concessionaire as the case may be.

We request the Authority to kindly consider our suggestions and issue necessary orders at the earliest.

Thanks & Regards
For Association of Private Airport Operators

Satyan Nayar,
Secretary General,
Mob: +91 98100 49839

FEDERATION OF INDIAN AIRLINES

Federation of Indian Airlines
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31 December 2014

To,
The Secretary,
Airports Economic Regulatory Authority of India
AERA Building, Administrative Complex,
Safdarjung Airport, Aurobindo Marg,
New Delhi – 110003.

Kind Attention: Shri. Alok Shekhar

Subject: Comments & submissions of the Federation of Indian Airlines (FIA) tendered in response to the Authority's Consultation Paper No.15/2014-15 | Amendment to the Order No.08/2014-15 dated 10.06.2014 issued by the Authority in respect of aeronautical charges of Kempegowda International Airport

Dear Sir,

The FIA submits its response (enclosed) to the that the Authority's Consultation Paper Consultation Paper No.15/2014-15 | Amendment to the Order No.08/2014-15 dated 10.06.2014 issued by the Authority in respect of aeronautical charges of Kempegowda International Airport.

The Consultation Paper deals with the ICT charges, which is an important constituent in forming cost to the airlines and the therefore the Order delivered by the Authority will have a huge financial impact on the member airlines in the times to come.

FIA therefore, all the more request the Authority to kindly keep in mind the turbulent times the airline industry is going through and is very hopeful that the Authority will come out with an Order that will be rational and healthy for the aviation industry.

Thanking you,

With best regards and warm wishes for the New Year 2015,

Ujjwal Dey
Associate Director

BEFORE THE HON'BLE AIRPORTS ECONOMIC REGULATORY AUTHORITY OF INDIA, NEW DELHI

IN THE MATTER OF: *Authority's Consultation Paper Nos.15/2014-15 titled "Amendment to the Order No. 08/2014-15 dated 10.06.2014 issued by the Authority in respect of aeronautical charges of Kempegowda International Airport (earlier known as Bengaluru International Airport) in view of the Orders of the Hon'ble High Court of Delhi in the Writ Petition (Civil) no. 4338/2014"*

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SUBMISSIONS ON BEHALF OF THE FEDERATION OF INDIAN AIRLINES

1. Federation of Indian Airlines ("**FIA**") on behalf of its member airlines submits that the Airports Economic Regulatory Authority ("**AERA**") has issued the Consultation Paper No.15/2014-15 on 26.12.2014 titled *"Amendment to the Order No. 08/2014-15 dated 10.06.2014 issued by the Authority in respect of aeronautical charges of Kempegowda International Airport (earlier known as Bengaluru International Airport) in view of the Orders of the Hon'ble High Court of Delhi in the Writ Petition (Civil) no. 4338/2014"* ("**Consultation Paper**").

2. In order to appreciate the need to issue this Consultation Paper, it is important to take note of the following:-

(a) On 10.06.2014, AERA had issued Order No. 08/2014-15 dated 10.06.2014 ("**Tariff Order**") determining the tariff for Kempegowda International Airport, wherein amongst others, AERA levied Information, Communication and Technology charges ("**ICT Charges**") on airlines at the rate of $1.25 per passenger.

(b) On 30.06.2014, FIA filed an appeal i.e. Appeal No. 1 of 2014 titled *'FIA v. AERA & Ors.'* challenging the legality, validity and propriety of the Tariff Order on several issues including the ICT Charges determined by AERA.

(c) On 01.07.2014, Airports Economic Regulatory Authority Appellate Tribunal ("**AERAAT**") ordered *status quo* in respect of ICT Charges.

(d) On 15.07.2014, Bangalore International Airport Limited ("**BIAL**") filed W.P (C) No. 4338 of 2014 before the Hon'ble High Court of Delhi challenging the order dated 01.07.2014 passed by AERAAT.

(e) On 23.12.2014, the Hon'ble High Court of Delhi passed an order *inter alia* disposing of W.P (C) No. 4338 of 2014 by:-

(i) Recording the settlement arrived at between the parties i.e. FIA and BIAL.

(ii) Giving two weeks' time to AERA to pass an order giving effect to the settlement.

Relevant extracts of the order dated 23.12.2014 are reproduced below for ease of reference:

> *"...The parties submit that the **petitioner and Respondent No. 2 have now arrived at a settlement whereby it is agreed that the charges at the rate of US$ 1.25 be scaled down to US$ 1.0 for each departing passenger for CUSS, CUTE and BRS respectively.***
>
> *In the circumstances, the petition is disposed of with a direction that AERA shall consider the aforesaid settlement and pass an appropriate order within a period of two weeks from today. It is clarified that the impugned order dated 01.07.2014 shall not come in the way of AERA in fixing the charges as agreed between the parties..."* (***"Emphasis Supplied"***)

3. By way of the Consultation Paper, AERA has proposed the following:-

> *"4. Proposal: Regarding Revised CUTE, CUSS and BRS Charges*
>
> *i. The Authority proposes that CUTE, CUSS and BRS Charges leviable on domestic and International departing passengers will be US$1 effective from 15th January 2015, for the current control period.*
>
> ***ii. The difference in collections between the CUTE, CUSS and BRS Charges that would accrue to BIAL now under revised rates and the amount considered as per the MYTO will be trued up at the end of the current control period, during the determination of Aeronautical tariff for the next control period.***
>
> *iii. All other decisions issued as part of the MYTO will continue to be applicable and the proposals given herein would be considered as an amendment to the already issued MYTO."* (***"Emphasis Supplied"***)

4. It appears that the Consultation Paper has the effect of overreaching the settlement reached between the parties as the Consultation Paper provides for adjustment of the difference in collections between ICT Charges that would accrue to BIAL under revised rates and the amount determined as per the Tariff Order by way of true-up at the end of the current control period.

SUBMISSION OF FIA

BIAL cannot be allowed to recover the ICT Charges retrospectively

5. It is submitted that from 01.07.2014 till 23.12.2014, the *status quo* as imposed by AERAAT was in force on account of which BIAL was prohibited from levying any ICT Charges. It was only by the order of the Hon'ble High Court of Delhi dated 23.12.2014 in W.P (C) No. 4338 of 2014 that AERA was directed to consider the settlement between the parties and pass an appropriate order. In light of the above, it is pertinent to note that AERA ought to amend the Tariff Order to give effect to the order of the Hon'ble High Court of Delhi and the settlement reached between the parties by way of the levy of charges prospectively. AERA's proposed decision rightly makes levy of ICT Charges effective from 15.01.2015. However, by allowing the true-up of the difference in collections of ICT Charges under the revised rates i.e., $1 and the ICT Charges under the Tariff Order, i.e., $1.25, AERA has allowed/entitled BIAL to illegally recover the charges with effect from 01.07.2014, which is contrary to the terms of settlement and order of the Hon'ble High Court dated 23.12.2014. Allowing ICT Charges to be levied retrospectively by AERA would render (a) AERAAT's order dated 01.07.2014, (b) Hon'ble High Court of Delhi's order dated 23.12.2014 and (c) the settlement between the parties as infructuous and meaningless. Therefore, AERA must clarify that no ICT charges would be applicable from 01.07.2014 till 15.01.2015.

6. In addition, it is submitted that the present Consultation Paper and the proposed decision therein seems to be based on BIAL's request to AERA by letter dated 25.12.2014 and contrary to the nature and spirit of the settlement. It is pertinent to note

that neither the order dated 23.12.2014 in W.P. (C) No. 4338 of 2014 nor the terms of settlement between BIAL and FIA, marked as Annexure –II and Annexure –IV to the Consultation Paper respectively, provide for any adjustment of the difference between the original and revised ICT charges, by way of true-up at the time of determination of aeronautical tariff for the next control period. Allowing for adjustment of the aforesaid difference is contrary to the terms of the settlement and would render the said settlement as meaningless.

7. It is submitted that the settlement between BIAL and FIA intends to permanently reduce the ICT Charges from $1.25 to $1.00 per departing passenger (both domestic and international). The said settlement never intended or agreed to postpone the payment of the balance amount i.e. $0.25 per passenger to the next control period. It is submitted that AERA solely at unilateral request of BIAL cannot interpret the terms of settlement in a way which would render meaningless (a) AERAAT's order dated 01.07.2014, (b) High Court of Delhi's order dated 23.12.2014 and (c) settlement arrived at between BIAL and FIA. It is submitted that order of the Hon'ble High Court of Delhi dated 23.12.2014 in W.P(C) No. 4338 of 2014 was passed in the matter when all the parties were represented including AERA, therefore any deviation by AERA from the said order dated 23.12.2014 and the terms of settlement should not be permitted.

8. Without prejudice to the above, it is submitted that:-

(a) AERA being an independent Regulator ought to conduct the true-up exercise after analysing the data and material placed before it.

(b) It is submitted that the second part of the decision which provides for adjustment of the difference between the original and revised ICT charges by way of true-up at the time of determination of aeronautical tariff for the next control period would amount to loading past financial burdens of BIAL on future consumers for services which have not been used by them. This is against the settled position of law that future consumers cannot be burdened with past liabilities etc.