

File No. AERA/20010/MYTP/CELEBI/C/Delhi/CP-II/2016-17
Airports Economic Regulatory Authority of India

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

Date: 13th February, 2017

Public Notice No.08/2016-17

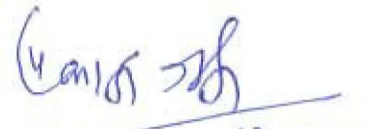
Sub: Comments/Submissions received from stakeholders on Consultation Paper No. 02/2016-17 dated 20.12.2016 in the matter of MYTP/ATP submitted by M/s Celebi Delhi Cargo Terminal Management India Private Limited for determination of tariffs for the 2nd control period starting from 01.04.2016.

Attention of all concerned is invited to Consultation Paper No. 02/2016-17 dated 20.12.2016 issued by the Authority in the matter of MYTP/ATP submitted by M/s Celebi Delhi Cargo Terminal Management India Private Limited for determination of tariffs for the 2nd control period starting from 01.04.2016.

In response thereof, the Authority has received comments/submissions from the following stakeholders.

Sl. No.	Name of the Stakeholder
1.	M/s Hammurabi & Solomon Advocates and Corporate Law Advisers.

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


P.C. Jain
AGM (Fin.)
Tel: 24695043

Subject: Fwd: Suggestion on Consultation Paper No. 02/2016-2017 dated 20.12.2016 regarding proposed increase of Tariff Rate in relation to CELEBI

Date: 01/16/17 10:29 AM
From: "puja.jindal" <puja.jindal@nic.in>

To: jain sir <pc.jain61@gov.in>

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Suggestion for Consultation Paper.doc (80kB)

----- Original Message -----

From: Jyoti Chaudhary <jyoti.chaudhary@hammurabisolomon.com>

Date: Jan 13, 2017 7:42:20 PM

Subject: Suggestion on Consultation Paper No. 02/2016-2017 dated 20.12.2016 regarding proposed increase of Tariff Rate in relation to CELEBI

To: puja.jindal@nic.in

Cc: shweta.bharti@hammurabisolomon.com, 'Shijo George' <shijo.george@hammurabisolomon.com>

Respected Madam,

We felt extremely privileged with the opportunity of sharing few words with you on 11.10.2017.

Attached is our brief feedback with respect to Consultation Paper regarding proposed increase of Tariff Rate in relation to C

Eagerly looking forward to hearing from you.

Jyoti Kr. Chaudhary

Associate Partner

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E. jyoti.chaudhary@hammurabisolomon.com

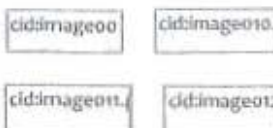


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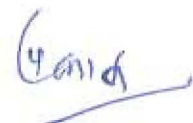
13.01.2017

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

Sub: Comments with respect to Consultation Paper bearing No. 02/2016-17 dated 20.12.2016 pertaining to MYTP of CELEBI

We take the opportunity to submit a brief write-up giving our comments/suggestions with respect to the subject consultation paper, pertaining to Multi Year Tariff Proposal of CELEBI, for your kind consideration.

1. CELEBI Delhi Cargo Terminal Management India Pvt. Ltd. (CELEBI) has submitted their Multi Year Tariff Proposal (MYTP) and Annual Tariff Proposal (2016-17), for the first control period of 5 years commencing w.e.f. 01.04.2016 to 31.03.2021 for providing Cargo Handling Services at the IGI Airport, New Delhi vide their application dated 11.03.2016 alongwith supporting documents. CELEBI has proposed increase of 12% of the tariff being claimed by it for rendering services.
 - i. As per section 2(a)(iv) and Section 2(a)(v) of the *Airports Economic Regulatory Authority of India Act, 2008*, services provided for ground handling services relating to aircraft, passengers and cargo at an airport, and services provided for the cargo facility at an airport, respectively are covered under the definition of “**aeronautical service**”.
 - ii. Further, under Section 13(1)(a) of the Act, the Authority is required to determine the tariff for aeronautical services and accordingly, the Airport Economic Regulatory Authority of India has sought comments and suggestions from stakeholders on the Multi Year Tariff Proposal (MYTP) and Annual Tariff Proposal (2016-17) as proposed by CELEBI.



2. For the purpose of determining the tariff, the Airports Economic Regulatory Authority of India has issued guidelines under Section 15 of The Airports Economic Regulatory Authority of India Act, 2008 namely "*Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Services Provided for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft) Guidelines 2011*" (hereinafter referred to as "Guidelines").

i. Rule 2.19 of the Guidelines defines Multi Year Tariff Proposal to mean a proposal by the Service Provider(s) to the Authority before the start of a Control Period for determination of tariffs either pursuant to determination of Aggregate Revenue Requirement and Yield per Unit for a given Control Period where applicable; or pursuant to specification of a *light touch approach* for fixing tariffs where applicable, including evidence submitted/required for the assessment of **materiality, competition and reasonableness of User Agreement(s)**, in accordance with Section AI.2;

3. As per the Guidelines, **materiality, competition and reasonableness of User Agreement** are determined as follows:

(a) **Materiality:**

As per Rule 4.3 of the Guidelines, if the Materiality Index (Cargo Volume at major Airport A divided by Total Cargo Volume at Major Airports multiplied by 100) is **2.5% or more than 2.5%** then, the service provided for cargo facility at particular airport shall be deemed to be 'material'.

(b) **Competition:**

As per Rule 5.1 of the Guidelines, where a Regulated Service is being provided at a major airport by **two or more** Service Provider(s), it shall be deemed 'competitive' at that airport.



(c) **Reasonableness:**

As per Rule 6.1 of the Guidelines, an existing User Agreement(s) is considered as reasonable if:

- the Service Provider submits existing User Agreement(s) between the Service Provider and all the User(s) of the Regulated Service(s), clearly indicating the tariff(s) that are agreed to between the Service Provider and the User(s) of the Regulated Service(s),
 - the User(s) of the Regulated Service(s) have not raised any reasonable objections or concerns in regard to the existing User Agreement(s), which have not been appropriately addressed.
4. Once it is ascertained that where Regulated service is deemed 'material but competitive' and the Authority is assured of its reasonableness of the existing User Agreement, the Service Provider(s) shall submit, for the consideration of the Authority, an Annual Tariff Proposal for review of Tariff(s) to be charged. The Proposal shall be on non-discriminatory basis, with reference to conditions of Tariff(s), volume of the discount, rationale behind giving the discount and such other factors as may be relevant.

5. Analysis of the documents/data submitted by CELEBI:

In the instant case, with regard to the assessment of **materiality, competition and reasonableness of User Agreement(s)**, the following may be noted:

(a) *Materiality:*

So far as the test of materiality is considered, as per the Traffic/Cargo statistics for the period April 2014 to March 2015 published by the Airports Authority of India, the percentage share of cargo volume for IGI Airport, New Delhi is stated to be 27.98%. Based upon this data which is more than the requisite Materiality Index of 2.5%, the subject regulated service has been considered to be **material**.



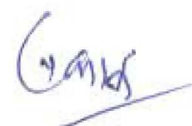
(b) Competition:

As per the information provided by Celebi in Form F1(b), it transpires that Delhi Cargo Service Centre India Pvt. Ltd. is another service provider that is rendering similar service at Delhi Airport. As per Rule 5.1 of the Guidelines, where a Regulated Service is being provided at a major airport by **two or more** Service Provider(s), it shall be deemed 'competitive'. Thus, in the instant case, the regulated service is deemed to be **competitive**.

(c) Reasonableness:

As mentioned above, as per Rule 6.1 of the Guidelines, in order to assess reasonableness, it is necessary that the Service Provider submits existing User Agreement(s) between the Service Provider and all the User(s) of the Regulated Service(s), clearly indicating the tariff(s) that are agreed to between the Service Provider and the User(s) of the Regulated Service. Further, the User(s) of the Regulated Service(s) must not have raised any reasonable objection or concern in regard to the existing User Agreement(s), which have not been appropriately addressed.

6. In the instant case, CELEBI has provided few pages of some of the following User Agreements, as attached to the consultation paper:
1. IATA Standard Group Handling Agreement between AIR China Ltd. and Celebi dated 26.03.2013.
 2. IATA Standard Group Handling Agreement between AIR Mauritius Ltd. and Celebi dated 15.07.2015.
 3. IATA Standard Group Handling Agreement between Turkmenistan Airlines and Celebi dated 03.06.2016.
 4. IATA Standard Group Handling Agreement between Blue Dart Aviation Ltd. and Celebi dated 25.03.2013.
 5. IATA Standard Group Handling Agreement between Federal Express Corporation and Celebi dated 30.09.2013.

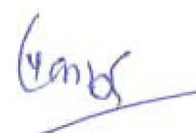


Out of the aforesaid Agreements provided, the following have already expired:

S.No.	User Agreement	Term
1.	IATA Standard Group Handling Agreement between AIR China Ltd. and Celebi dated 26.03.2013.	01.04.2013-31.03.2016
2.	IATA Standard Group Handling Agreement between Blue Dart Aviation Ltd. and Celebi dated 25.03.2013.	01.04.2013-31.03.2016
3.	IATA Standard Group Handling Agreement between Federal Express Corporation and Celebi dated 30.09.2013.	01.04.2013-31.03.2016

No fresh/renewed Agreements have been provided with regard the aforesaid expired agreements. It is also pertinent to mention that none of the aforesaid Agreements annexed to the consultation paper, is complete and further the Annexed pages of the Agreement do not reflect the relevant terms and conditions of agreement including the covenants with respect to tariff rates, as is required for assessment under Rule 6.1 of the Guidelines. Thus, any order passed on the basis of the subject proposal may be vulnerable to challenge on the ground of "*reasonableness*".

7. The comparative increase sought in 2016-2017 over earlier approved tariffs is around 12% in the major tariffs heads like TSP, Demurrage, trans-shipment cargo etc. the basis of which has been supported by the submission that CELEBI has not been able to generate returns commensurate to the investments made by it for modernizing the terminal. According to CELEBI, since there is competition, it has been restrained from levying tariffs, and in lieu thereof it has suffered a revenue shortfall of Rs. 72.6 crores from the first control period, which it now seeks to mitigate.



8. The documents furnished for supporting the proposal do not shed enough light as to on what basis the proposed increase in the rate of Tariff to 12% has been mooted. Further, it still stands wanting on the part of CELEBI to explain as to in what manner the 12% increase would help it in mitigating the alleged revenue shortfall. This apart, the meeting of 07.03.2016, in which rate of increase in Tariff is claimed to have been mooted to 15%, did not appeared to have representation of concerned stakeholders. Therefore, the extant proposal of CELEBI warrants proper scrutiny on the touchstone of "reasonableness", lest any order passed on the basis of such proposal would remain vulnerable to challenge.

9. In the above backdrop, our observations are as follows:

- (a) The increase of 12% proposed in the tariffs, otherwise does not appear to be reasonable as it may likely lead to inflated cost of cargo handling and will directly impact the users.
- (b) Such increase in the Tariff rate will be detrimental to the interest of competitiveness and may be vulnerable to challenge on that count.
- (c) It would be advisable that rather than having a static increase of 12% in the tariff, a slab based tariff rate may be stipulated for the given volume of cargo; i.e. in case of higher volume of cargo traffic, lower Tariff may be stipulated to apply, and in case of lower volume of cargo Traffic a higher tariff may be stipulated. This may balance the interest of service provider as well as user and would play in the interest of reasonableness.
- (d) Further IGI, New Delhi, having materiality index of 27.98%, it is unlikely that IGI would suffer from lower volume of cargo traffic, which may adversely affect the interest of service provider. This need be considered, while adjudicating the element of "reasonableness".