No.AAI/MC/DIAL-12/Misc./2020

Dated : 17-08-2020

The Director (P & S)
AERA Building, Administrative Complex
Safdarjung Airport
New Delhi – 110 003

Subject: In the matter of Tariff(s) for Aeronautical Services in respect of IGI Airport, Delhi for 3rd Control Period (01.04.2019 – 31.03.2024) – reg.

Sir,

Reference is made to AERA letter dated 9th June, 2020 forwarding the CP No.15/2020-21 on the subject seeking the views of AAI on the issues relating to the provisions of OMDA / SSA.

2. The views of AAI on the subject concerning matters on provisions of OMDA / SSA are enclosed.

This issues with the approval of the Competent Authority.

Yours sincerely,

(Pradeep Kumar)
Executive Director (JVC)

DIAL's Proposal to AERA in MYTP for third control period	Comments of AAI
Revenue from Existing Assets is not liable for cross subsidy. **(para 7.1.15 pg.124)**	1. The proposal arises from the interpretation by DIAL of the term ***Non aeronautical assets*** forming a part of the definition of the ***Revenue share assets*** under Schedule 1 of the State Support Agreement (SSA) executed between Ministry of Civil Aviation and DIAL. 2. Relevant definitions in Schedule 1 of SSA are as under: **Target Revenue** = RB x WACC + OM + D + T -S. **S** = 30% of the gross revenue generated by the JVC from Revenue Share Assets. The costs in relation to such revenue shall not be included while calculating Aeronautical Charges. **Revenue Share Assets** shall mean (a) Non-Aeronautical Assets; and (b) assets required for provision of aeronautical related services arising at the Airport and not considered in revenues from Non-Aeronautical Assets (eg: Public Admission Fee). 3. The Revenue Share Assets definition referred above does not mention that Existing assets have to be excluded. 4. The term ***Existing assets*** is defined in ***Clause 1.1 of OMDA*** as "Existing assets means the physical, tangible, intangible and other assets of whatsoever nature existing at the airport site as on the date hereof except working capital assets other than inventory, stores and spares." The term Existing assets has been defined to distinguish AAI's assets existing at the time of handing over of the assets to DIAL from the assets which would be created by DIAL as per OMDA. 5. The Existing assets form part of the terminal building, are conjoined to other aeronautical assets and are incapable of independent access/independent existence and are predominantly servicing/catering terminal complex/cargo complex and satisfy the ***definition of Non-aeronautical assets as per OMDA*** fully due to which the Non-aeronautical revenues from the existing assets have to be considered for cross subsidisation as per the definition of S factor referred at (2) above. 6. The definition of Non aeronautical assets in OMDA inter-alia includes ***all assets*** required for the performance of non-aeronautical services at the airport which indicates that the Existing assets are also included. 7. The issue was raised by DIAL in the first and second control periods, but AERA has not agreed to the same. (Page 3.7.13 of CP page 76). 8. In view of the above, AAI has no further comments in this regard.

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<tr><td>Annual Fee to be reduced from revenue from Revenue Share assets before cross subsidy. (Para 7.1.15 ,page 124)</td><td>
1. The proposal arises from interpretation of Clause 3.1.1 of the SSA which inter alia provides that the upfront fee and the annual fee paid/payable by JVC to AAI under the OMDA shall not be included as a part of costs for provision of Aeronautical services and no pass through would be available to them.
2. Based on the above, DIAL has interpreted that the annual fee is also not a cost for provision of Non aeronautical services and hence not a cost in relation to revenue from Revenue share assets.
3. Clause 3.1.1 of the SSA referred above clearly states that no pass through shall be available in relation to annual fee which means that DIAL cannot recover the annual fee though any tariff determination principle.
4. Considering that the annual fee percentage quoted (via., revenue share payable to AAI) was the bidding criteria to win the bid for the airport, the same should not form part of pass through costs under any head and has to be incurred by the airport operator as per the terms of the OMDA.In fact, annual fee percentage quoted at the time of bidding is the raison d’être for DIAL to be the airport operator.
5. The issue was raised by DIAL in the first and second control period, but AERA has not agreed to the proposal of DIAL.
6. No further comments can be offered by AAI.
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<tr><td>Fuel throughput charge (FTC) is an aeronautical related service and to be treated as a revenue from revenue share assets.
(Pare 7.1.15 ,page 124 of CP)</td><td>
1. The proposal arises from the interpretation of the term “Revenue share assets” defined under Schedule 1 of the State Support Agreement (SSA) executed between Ministry of Civil Aviation and DIAL.
2. A reference is made to the relevant definitions in Schedule 1 of the SSA as under:
• Target Revenue = RB x WACC + OM + D + T -S.
• S = 30% of the gross revenue generated by the JVC from Revenue Share Assets. The costs in relation to such revenue shall not be included while calculating Aeronautical Charges.
• “Revenue Share Assets” shall mean (a) Non-Aeronautical Assets; and (b) assets required for provision of aeronautical related services arising at the Airport and not considered in revenues from Non-Aeronautical Assets (eg: Public Admission Fee).
3. The definition of Revenue share assets stated above does not establish in any way that fuel throughput charge is “an aeronautical related service”. Fuel charge is an aeronautical charge as per section 2(a)(vi) of AERA Act, 2008.
4. “Common Hydrant Infrastructure for aircraft fuelling services by authorized providers” is one of the aeronautical services listed in Schedule 5 of OMDA.
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	5. Hence FTC and all associated charges (Fuel Infrastructure charges /Into Plane services charges) for supply of fuel to the aircraft are aeronautical charges. **6.** AERA has been classifying all associated charges relating to an aeronautical service (as defined in the AERA act 2008) as aeronautical charge. The same methodology is uniformly adopted by AERA at all airports. For an example, in the case of AAI, although rent received from land leased to Ground handling agents and oil/cargo companies are treated as non-aeronautical revenue in the books of AAI, AERA has treated it as an aeronautical service while determining tariff. (**Ref: Decision 10a of Chennai tariff order no. 3/2018-19.)** ***7.*** A reference is also made to decision of TDSAT on the decision taken by AERA in the first control period, which says the ***"the colour of revenue from aeronautical service cannot be changed to that of revenue from non-aeronautical service by an act of delegation or leasing out by the concessionaire. (pg 4 ,1.3.1 of CP).*** 8. AERA has treated the fuel charges as Aeronautical charges in the first control period, second control period and CP of the third control period. 9. Keeping in view the above, AAI has no further comments on the proposal.
Cost of Equity (CoE) to be grossed up with tax to ensure the same return after tax. **(page 12 , 2.3.1 , page 108, 5.1.2)**	1. The proposal is based on interpretation of the WACC as defined in Schedule 1 of the State support agreement executed between Ministry of Civil Aviation and DIAL. 2. As per Schedule 1 of the State Support Agreement, Target Revenue = RB x WACC + OM + D + T –S Where, WACC = nominal post-tax weighted average cost of capital, calculated using the marginal rate of corporate tax. 3. In the TDSAT order in the matter raised by DIAL on the AERA order on the first control period, TDSAT has directed AERA to redo the exercise through a scientific and objective approach, independently of any observations in the Third Control Period. (Page 4 ,1.3.1 of the CP). 4. Accordingly, AERA had commissioned a separate independent study for evaluation of the cost of capital for DIAL through IIM Bangalore and incorporated the same in the CP. 5. Keeping in view the above ,AAI has no further comments in this regard.
DIAL has claimed that they are eligible for Base airport charges w.e.f. 1.1.2016 and proposed to true up accordingly. (Para 3.8.1 to 3.8.3 pg. 78 to 81)	1. As per ***clause 2 of Schedule 6 of the SSA***, "the authority /GOI (as the case may be) will set the Aeronautical charges in accordance with Clause 3.1.1 read with Schedule I appended to this agreement, subject always to the condition that, ***at the least a permitted nominal increase of 10% 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 reminder of the term".***

	2. DIAL has submitted the True up of the second control period. (FY 2014 to FY 2019) in the Third control period to AERA. 3. The Tariffs for the 2nd control period were effective from 01/01/2016 as per AERA order. DIAL has been recovering the tariffs of the first control period (where there was increase of 346%) in the second control period up to 6th July 2017 due to stay from the High court. DIAL implemented the AERA order of the 2nd control period from 7th July 2017 as per order of Supreme court. The Tariffs in the AERA order for the second control period were lower than the Base charges + 10%. 3. Subsequently, AERA issued the order for Base airport charges in November 2018 to be implemented by DIAL from Dec 1 ,2018 and not from the date the 2nd control period tariff was implemented as tariff orders are implemented prospectively. 4. DIAL has over recovered in every year of the 2nd control period except in the last year. It is observed from AERA's working in the CP, that there is an overall over recovery of Rs.5737 crores (page 88, sl no. 3.10.6) in the 2nd control period and revenue earned in every year of the control period except last year is higher than the revenue which DIAL would have earned through Base charges + 10%. 5. As per AERA philosophy, in the true up exercise, the target ARR is compared with the actual aeronautical revenue and the resulting over recovery/under recovery is adjusted in the next control period. It is observed from the tariff proposal of DIAL that the actual aeronautical revenue earned by DIAL during the second control period is much higher than the trued up target ARR determined by AERA and also the revenue that DIAL would have earned if base charges were collected during the period. 6.Hence as the requirement as per Schedule 6 of the State Support Agreement is met, Base charges +10% from 1/01/2016 cannot be made applicable .