AIRPORTS COUNCIL INTERNATIONAL

5 August 2020

Director (P&S, Tariff)
Airports Economic Regulatory Authority of India (AERA)
AERA Administrative Complex
Safdarjung Airport, New Delhi – 110002
India

Sent by Email only to gita.sahu@aera.gov.in, director-ps@aera.gov.in

In the Matter of Determination of Aeronautical Tariffs in respect of Indira Gandhi International Airport, Delhi for the Third Control Period

Dear Sir,

Airports Council International Asia-Pacific (ACI Asia-Pacific) welcomes the opportunity to write in response to Consultation Paper No.15/2020-2021 (the "Consultation Paper") in the Matter of Determination of Aeronautical Tariffs in respect of Indira Gandhi International Airport, Delhi (DIAL) for the Third Control Period (1.4.2019 – 31.3.2024).

In representation of 114 airport operators managing 603 airports in 49 countries of the Asia-Pacific and the Middle East Regions, ACI Asia-Pacific's mission is to promote professional excellence in airport management and operations through a range of capacity-building services, policies and recommended practices.

ACI Asia-Pacific provides comments on two specific issues in the Consultation Paper:

1) True up of Base Airport Charges + 10%

ACI Asia-Pacific understands that the State Support Agreement (SSA or Agreement, dated 26 April 2006) signed between DIAL and the Government of India sets out the tariff setting methodology in Schedule 1 of the SSA. In addition, Schedule 6 of the SSA includes clauses to allow for the "Base Airport Charges (BAC) + 10%" approach as the minimum Aeronautical Charges in any given year.

In computing the Target Revenue during the Control Period, it is therefore reasonable to assess DIAL's eligibility to the "BAC+10%" approach of tariff-setting by comparing the aeronautical charges to be collected under the Schedule 1 methodology with the "BAC+10%" (i.e. Schedule 6) methodology. Should the Schedule 1 aeronautical charges fall below the "BAC+10%" approach, then the "BAC+10%" aeronautical charges should be adopted.

Once a methodology is chosen, the Agreement does not appear to have provisions requiring the calculation or true-up of the difference in revenue projected under the 2 methodologies. Hence, any proposed ploughed back of “excess” revenue would seem a departure from the permitted methodology allowed in the Agreement. Accordingly, we would urge AERA not to plough back the revenue received under the BAC+10% approach when computing excess recovery under the true up mechanism.

2) Revenue from Revenue Share Assets for cross subsidy purpose

Schedule 1 of the SSA laid down the tariff setting principles and the formula to determine target revenue for DIAL for a given control period:

$$TR_i = RB_i \times WACC_i + OM_i + D_i + T_i - S_i$$

With respect to the **S-Factor**, as per the SSA:

> *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.*** *(emphasis added)*
>
> *“**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 (e.g. Public Admission Fee)*

a) Deduction of Annual Fee pertaining to Revenue Share Assets

The above definition of S-Factor clearly stipulated that in considering the revenue for cross-subsidy, any costs in relation to the generation of revenue should be excluded. Moreover, Clause 3.1.1 of the SSA also explicitly provided that “*… Upfront fee and the Annual Fee paid/ payable by the JVC to AAI under the OMDA shall not be included as part of the costs for provision of Aeronautical Services and no pass through would be available in relation to the same.*” It can be seen that such restriction is in relation to the aeronautical services only. Further, the definition of revenue from Revenue Share Assets under the SSA excludes only the cost in relation to the generation of such assets. Annual fee being a contractual obligation does not form a cost in relation to the generation of the revenue rather it is an outcome of the revenue generated.

As such, the Annual Fee paid by DIAL should be outside the purview of the S-Factor and we submit that AERA to exclude Annual Fee from the calculation.

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b) Revenue from Existing Assets/Demised Premises

In paragraph 2.6.4 of the Consultation Paper, DIAL submitted that as per the terms of the concession agreements, the revenue generated from the Existing Assets i.e. the physical, tangible, intangible and other assets of whatsoever nature existing at the airport site at the time of award of concession, should not be considered as part of revenue from Revenue Share Assets.

The definition of Revenue Share Assets comprises non-aeronautical asset and the assets required for provision of aeronautical related services arising at the Airport. The definition of non-aeronautical asset sets out in the OMDA clearly states that revenue from demised premise and any asset owned other than by JVC or any third Entity should not be considered for cross subsidy.

Given the above, to ensure consistency with the provisions in the concession agreements, it would be reasonable to exclude revenue from Existing Asset in the definition of Revenue Share Assets. We therefore submit that AERA should allow the exclusion of revenue from Existing Assets in calculating the cross-subsidy in tariff determination for DIAL.

In conclusion, we would like to emphasize that to create confidence in the market, adherence to a signed concession agreement must be respected as it is termed as sovereign risk. Prolonged debates and disputes on the terms and conditions stipulated in the concession agreements that span multiple control periods after the investment has been made will adversely impact the credibility of the Government as a party to the agreement, and with a possibility of steering away potential investors. We urge AERA to consider these factors in the overall development of the airport sector.

ACI Asia-Pacific thanks AERA for the opportunity to present this submission and we look forward to continue our engagement with AERA on economic and regulatory issues of the Indian airport industry.

Yours sincerely,

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