

MIAL/VPR/2020-21/06

31st July, 2020

Director (Policy & Statistics),
Airports Economic Regulatory Authority of India (AERA),
AERA Building, Administrative Complex,
Safdarjung Airport,
New Delhi 110 003.

Sub: Comments on Consultation Paper No 15 of 9th June, 2020 on determination of Aeronautical tariff in respect of IGI Airport, Delhi.

Sir,

With reference of above, we give here below our comments:

1. Weighted Average Cost of Capital (WACC):

The Authority in the said consultation paper has not considered Idiosyncratic risk in the calculation of Cost of Capital. Cost of capital of a closely held unlisted company like DIAL includes a significant amount of risk premium for illiquidity. We request the Authority to consider atleast 1% to 2% towards idiosyncratic risk premium while computing cost of capital. The Authority while computing Beta for the computation of the cost of equity, majorly considered the Airports which are not from developing economies. Beta is a measure of systematic risk. Risk factors applicable to developed economies are completely different than developing markets. Therefore, in order to arrive at true risk the Authority is requested to consider beta of airports from the developing economies.

The Authority in the said consultation paper has considered Return on Real Estate Security Deposit (RSD) at cost of debt. We would like to state that the amount collected from RSD are mainly utilized for funding of aeronautical projects. However, in absence of RSD, the cost of project would have been funded by mix of debt and internal accruals (Reserves). Therefore, the Authority should consider return on RSD at WACC instead of just Cost of Debt.

2. Fuel Throughput Charges:

The Authority has considered revenue from Fuel Throughput charges (FTC) as Aeronautical Revenue, relying on entry no. 17 of Schedule 5 of OMDA i.e. "Common Hydrant Infrastructure for aircraft fueling services by authorized providers" stating that it refers to the Fuel Into Plane (ITP) services. The Authority has taken a stand that any fee consequent to the supply of fuel to the aircraft (which is an aeronautical service) called by any name whatsoever (Fuel



Mumbai International Airport Ltd
Chhatrapati Shivaji Maharaj International Airport
1st Floor, Terminal 1B, Santacruz (E), Mumbai 400 099, India.
T +91 22 6685 0900 / 66850901 F + 91 22 66852059
www.csia.in
CIN-U45200MH2006PTC160164

ENERGY
AIRPORTS
TRANSPORTATION
HOSPITALITY
LIFE SCIENCES
REALTY

Throughput/License Fee etc.) would be aeronautical revenue as per the provisions of both AERA Act, 2008 and OMDA.

The Section 2 (a) (vi) of the AERA Act limits the scope of “Aeronautical Services” to services provided “for supplying fuel to the aircraft at an airport” and not to the access provided to the fuel supplier to the airport. The charge for such grant of concession/ privileges does not fall under revenue from aeronautical services.

No service in respect of “*Common Hydrant Infrastructure for aircraft fueling services by the authorized providers*” is provided by DIAL at the IGI Airport and FTC is not a charge in respect of services covered under section 2 (a)(iv) or article 17 of Schedule 5 to OMDA. FTC is levied by airport operator on the oil companies towards access to trading platform provided to oil companies for carrying on their business of fuel sale/supply at airport premises. Hence, FTC is not a charge for rendering any aeronautical service and accordingly the revenue generated through FTC should be considered as non-aeronautical revenue while determining tariff.

In this connection we would further like to add that the charge in lieu of FTC discontinued w.e.f. 15th January 2020 should not be levied on the passengers, since the GST levied thereon would be an expense in the hands of passengers, which is against the spirit behind discontinuation of FTC i.e. input tax credit in respect of charge on passengers would be lost. This charge to be imposed in lieu of FTC, should be a charge on airlines, who were / are using the ATF.

3. Foreign exchange losses and Interest on Borrowings:

DIAL as part of the financing of the airport project has undertaken offshore funding which comes at a lower cost but carries exchange risk. The exchange risk depends on various factors which are not predictable. DIAL had resorted to offshore funding which had benefited the users in terms of lower cost of debt however due to foreign exchange fluctuations the cost has increased. In this regard we would like to submit that the exchange risk cannot be predicted and depends on various uncontrollable factors. The cost of debt is actual outflow to the lenders and in a regulatory scenario the entire cost as a principle should be allowed to the airport operator.

Authority in its own order no. 40/2015-16 for second control period for DIAL had decided to consider the forex loss at the time of true up in third control period. While the Authority in the referred consultation paper has considered forex loss for second control period but not considered the forex loss for first control period at all. This is against the consistency principle outlined in Schedule 1 to SSA. Forex loss is actual cash outgo and a legitimate expense, which in a regulatory scenario should be allowed through tariff.



Mumbai International Airport Ltd
Chhatrapati Shivaji Maharaj International Airport
1st Floor, Terminal 1B, Santacruz (E), Mumbai 400 099, India.
T +91 22 6685 0900 / 66850901 F + 91 22 66852059
www.csia.in
CIN-U45200MH2006PTC160164

ENERGY
AIRPORTS
TRANSPORTATION
HOSPITALITY
LIFE SCIENCES
REALTY

In the Second Control Period while computing effective cost of debt the Authority has included refinancing cost in the total interest component. Refinance charge is one time arrangement cost which is incurred to reduce the rate of interest over the life of loan. Accordingly, we request Authority to exclude refinance charges while calculating effective cost of debt. Refinance charges should be allowed as part of administrative cost separately.

The Authority has proposed to consider interest rate for Phase 3 expansion at 9.92% subject to an upper cap of 50 basis points. As the interest rate is determined by market factors, capping of interest rate is not the correct approach. No cap should be imposed on the cost of debt, which should be allowed at actuals.

4. **Taxation:**

Hon'ble TDSAT in its Order of 15th November, 2018 in MIAL Appeal no. 4 of 2013 against the AERA order no. 32 of 2012-13 for tariff determination for 1st Control Period for MIAL has remarked as:

"...by the provision in the Agreement, 'S' is an element of revenue on aero side and by the same yardstick must be added while calculating the 'T'. We find some merit in these arguments."

Hon'ble TDSAT has remanded the above said issue for considering 'S' (being 30% of revenues from RSA) as part of aeronautical revenue for calculation of tax, to AERA in its order dated 15th November, 2018.

While the Authority has proposed to compute Tax for the 2nd and 3rd control period on the above lines, it has not considered 'S' being 30% of revenue from RSA for the 1st Control Period as an element of revenue on aeronautical side.

The Authority is requested to take a consistent view on computation of Tax considering 'S' as a component of aeronautical revenue for all the control periods starting from the 1st control period.

5. **Base Airport Charges**

Authority needs to follow the tariff principles laid down in the SSA. As per SSA, the aeronautical charges derived as per Schedule 1 Principle of tariff fixation and under Schedule 6 Aeronautical Charges (i.e. BAC +10%) are mutually exclusive exercise and cannot be merged.



Mumbai International Airport Ltd
Chhatrapati Shivaji Maharaj International Airport
1st Floor, Terminal 1B, Santacruz (E), Mumbai 400 099, India.
T +91 22 6685 0900 / 66850901 F + 91 22 66852059
www.csia.in
CIN-U45200MH2006PTC160164

ENERGY
AIRPORTS
TRANSPORTATION
HOSPITALITY
LIFE SCIENCES
REALTY

While calculating aeronautical charges in any year of control period, the Authority has to compare aeronautical charges computed as per Schedule 1 and BAC + 10% as per Schedule 6 of SSA and consider higher of the two as aeronautical charges in any year of the concession term.

Authority has acted in contravention of the Concession terms by truing up the actual aeronautical revenue of third control period determine as per Schedule 1 of SSA and aeronautical revenue computed in accordance with Schedule 6 of SSA.

We request Authority that DIAL and MIAL are one of its first kind of airport project which were awarded by GoI under PPP model. To ensure business sustainability, GoI had provided the Base Airport Charges +10% as the bare minimum revenue levels which DIAL or MIAL are eligible for in any year during the entire concession term. Accordingly such minimum level is not subject to true up and hence Authority should not propose to take back such minimum revenue from the airport operator.

We request Authority to reconsider its proposal of truing up the BAC and provide business sustainability to the airport.

6. Project Cost and Delay Penalty

As per section 13 (1) (a) (i) of the AERA Act, Authority has to consider the capital expenditure incurred while determining tariff for the Airport. DIAL proposed project cost of Rs. 9782 Cr. for which authority proposed to allow an amount of Rs. 9126 Cr. based on the recommendation of by KITCO and applied inflation and GST over it. It may not be possible for the airport operator to achieve the same cost levels as estimated. Accordingly, we would like to submit that the allowance of project cost should not merely depend on the estimates and cost arrived through price discovery process should be given due weightage and this is the cost which the tenderers envisaged for a particular project. Also, there involves various risk factors like construction risk, investment risk, logistic challenges, etc. which differ from organization to organization and cannot be benchmarked by one single yardstick. Accordingly, Authority should not ignore the cost arrived through price discovery and allow the actual project cost.

Further, Authority has introduced 1% penalty in case the phase 3 A expansion is not completed within given timelines. There is no such provision in the Concession Agreement or the AERA Act. Such penalty will unnecessarily burden the Airport Operator. There is no incentive to the airport operator to delay the completion, because it would certainly not be getting any return on incomplete assets, besides there shall be true up of actual working and any excess collected by the airport operator shall be recovered with the appropriate carrying cost. It is all the more in the interest of the Airport Operator to complete the project within



Mumbai International Airport Ltd

Chhatrapati Shivaji Maharaj International Airport
1st Floor, Terminal 1B, Santacruz (E), Mumbai 400 099, India.

T +91 22 6685 0900 / 66850901 F + 91 22 66852059
www.csia.in
CIN-U45200MH2006PTC160164

ENERGY
AIRPORTS
TRANSPORTATION
HOSPITALITY
LIFE SCIENCES
REALTY

the timelines and minimum possible time frame to start getting return on the addition to RAB, hence there is no need of proposing to impose penalty on delayed/ non-completion. There should be room for allowing the project cost without such levy in case of delayed completion due to reasons beyond the control of DIAL viz., delay approval from the Authorities, delayed availability of bank finance, delay in availability of land/ site, etc. We request the Authority not to introduce such penalty.

Also, in the given pandemic scenario the business environment has become very dynamic and construction activity depends on various factors which may be beyond control of the airport operator. Accordingly, Airport operator should not be burdened with such penal provisions.

7. Other Income

Airport Operator as part of its cash management process invests its interim surplus funds and the retention of the share-holders' funds in the business till the same are paid out as dividends, and earns interest income on such investments. This revenue is neither generated from non-aeronautical service nor aeronautical services and shall accordingly be outside the regulatory purview. However, Authority in case of DIAL has considered the interest income as part of non-aeronautical income while calculating cross subsidy.

The Authority in the First Control Period of DIAL had not considered the revenues realised by it on account of Interest Income (bank deposit, other deposits and on account of delay payments), and profit on sale of investments as non-aeronautical revenue. However, in the Second Control Period true up, Authority changed its stand and treated Interest Received (Deposit with Banks & Delayed payment), Income from Current & Non-Current Investments, as non-aeronautical revenue.

We request the Authority to be consistent in its approach in determination of tariff and keep other income out of purview of non-aero revenue as was considered in the first control period order for DIAL.

8. Operating Expenses

The Authority has proposed to consider in the referred consultation paper, projection of Rent, Rates and Taxes at average of past five years expense of second control period and constant amount is carried forward in the next five years of third control period. As these expenses are governed by the respective Agreements, where in majority of the cases escalation clause is applicable or as per circulars / rules of the relevant authorities, consideration of average of past five years of second control period would be an incorrect approach. The Authority should have considered these expenses as per projections based on the actual expenses incurred in



Mumbai International Airport Ltd
Chhatrapati Shivaji Maharaj International Airport
1st Floor, Terminal 1B, Santacruz (E), Mumbai 400 099, India.
T +91 22 6685 0900 / 66850901 F + 91 22 66852059
www.csia.in
CIN-U45200MH2006PTC160164

ENERGY
AIRPORTS
TRANSPORTATION
HOSPITALITY
LIFE SCIENCES
REALTY

FY 2018-19, rather than considering average of past 5 years, which generally would be lower than the actual expense incurred in the last year of the 2nd Control Period.

9. Hypothetical Regulatory Assets Base (HRAB) :

HRAB, the Initial asset base is part of regulatory asset base (RAB) on which return on WACC is allowed for determination of aeronautical tariff. SSA Schedule 1 specifies that HRAB is to be computed using inter-alia, the then prevailing tariff and the revenues pertaining to Aeronautical Services at the Airport, during the financial year preceding the date of such computation.

During the FY 2008-09, the year preceding the date of such computation, the then prevalent tariff were fixed by MoCA in 2001 for CSIA, Mumbai when it was under AAI. AAI in its response on the White Paper issued by the Authority on 22nd December, 2009 has acknowledged that its tariff were fixed under Single Till and the total revenue and expenditure were taken into consideration for fixation of their tariff for its airports, which included IGI Airport also.

Since this angle had escaped attention of the Authority, when computing HRAB in the 1st Control Period, it should now suo-moto reconsider its earlier stand, where instead of considering both the aeronautical revenues and the non- aeronautical revenues (which subsidised the aeronautical revenues), the Authority had considered only the already subsidised aeronautical revenue for computation of HRAB.

In light of above, MIAL requests the Authority to suo-moto re-compute HRAB for DIAL considering the “then prevailing tariffs and the revenue” where both the aeronautical revenue and the non-aeronautical revenue have in entirety subsidised the aeronautical operations.

We request the Authority to consider the above said comments on their merits and take well considered decision in the final order.

Thanking you,

Yours Sincerely,

For Mumbai International Airport Ltd.



(Sanjiv Bhargava)

Vice President- Regulatory



Mumbai International Airport Ltd

Chhatrapati Shivaji Maharaj International Airport
1st Floor, Terminal 1B, Santacruz (E), Mumbai 400 099, India.

T +91 22 6685 0900 / 66850901 F + 91 22 66852059

www.csia.in

CIN-U45200MH2006PTC160164

ENERGY
AIRPORTS
TRANSPORTATION
HOSPITALITY
LIFE SCIENCES
REALTY