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Dear Capt. Chaudhary,

CONSULTATION PAPER No. 22/2012-13

IATA appreciates the opportunity to provide its comments to Consultation Paper No. 22/2012-13 on 'Determination of Aeronautical Tariff and Development Fee in respect of Chhatrapati Shivaji International Airport, Mumbai for the 1st Regulatory Period (01.04.2009 – 31.03.2014)'.

While it is well noted that AERA has significantly moderated the outrageous increase in aeronautical revenue proposed by MIAL of over 880%, the authority's tentative decision for a 161% increase would still present a sizeable cost burden for the airlines especially for international airlines where a landing fee increase of 120% has been proposed. IATA is concerned that if more is not done to further bring down the magnitude of increase, traffic growth at Chhatrapati Shivaji International Airport (CSIA) could be severely impacted.

IATA's detailed response to Consultation Paper No.22/2012-13 is attached. The salient points are summarized as follows:

- It is unfair to make airport users pay for the failure of the airport to control project cost and to carry out prudent and sensible project management that is to be reasonably expected of any major project execution. AERA should commission

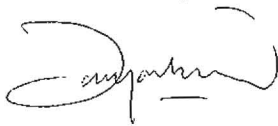
an independent study to reasonably quantify the avoidable cost increases and to use the findings as the basis for adjusting the RAB downwards.

- IATA strongly disagrees that the cost for construction of the metro station and equipment should be included in the Regulatory Asset Base. Metro stations have nothing to do with the functioning of the aviation industry and under no circumstance should they be treated as aeronautical assets which would cause airport users to unfairly shoulder the cost burden.
- IATA maintains its objection to the use of DF (a pre-funding scheme) to fund the airport development project especially now that AAI has officially declared its ability to inject more equity capital into MIAL.
- NIPFP has presented a sound basis for arriving at the range of cost of equity of 11.64% to 13.84% for MIAL. IATA proposes that AERA uses a cost of equity figure of 12% which is consistent with the assessment of NIPFP.
- IATA proposes that WACC be re-calculated using cost of equity of 12%. Based on that, WACC would work out to 10.03%.
- IATA views that any revenue from an aeronautical service (specifically cargo facility services, ground handling services and services for providing fuel to the aircraft) that the airport derives as a monopolistic entity irrespective of whether the airport provides the service itself or concessions it out (it still retains monopolistic powers over the concessionaires) should be classified as aeronautical revenue.
- IATA strongly objects to the tentative decision that FTC which is purely a market access fee without a cost basis should be allowed to automatically escalate at CPI or 7% whichever is less. AERA should moderate FTC or eliminate it altogether.
- The rate card proposed by MIAL is not in line with IATA and ICAO principles and the principles stipulated in the SSA. In particular, rates for landing domestic flights and international flights should be the same for correct cost reflectivity and UDF for international and domestic passengers should be the same.

IATA hopes that AERA would take on board its comments and suggestions that will help to bring the charges increases proposed for CSIA down to a more sustainable level.

Thank you.

Yours sincerely,



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SUBMISSION ON CONSULTATION PAPER No.22/2012-13
– DETERMINATION OF AERONAUTICAL TARIFF AND DEVELOPMENT FEE
IN RESPECT OF CHHATRAPATI SHIVAJI INTERNATIONAL AIRPORT, MUMBAI
FOR THE 1st REGULATORY PERIOD (01.04.2009 – 31.03.2014)

Subject	AERA's Tentative Decision	IATA's Comments
1. Project Cost	<ul style="list-style-type: none"> Consider the allowable project cost of Rs 12,069.80 crores consisting of Rs 11,647.46 crores in the current control period and Rs 422.34 crores not in the current control period. Cap escalation, claims and contingencies at Rs 630 crores 	<ul style="list-style-type: none"> The steep increase in project cost is a major concern. Both independent auditors have found that process issues and project management failings have led to avoidable increases in project cost. These include: <ul style="list-style-type: none"> The random basis that MIAL used in negotiating with successful bidders without developing its own cost estimates for meaningful comparison with the sub-contractors' quotes Change in approach for contracting of EPC works after awarding the contract led to the contract cost to be open ended. For the program manager cost, MIAL opted to pay an amount that was 25% more per annum than the lowest bidder. MIAL had failed on a number of occasions to communicate key increases in costs to its Board, AAI and the Ministry of Civil Aviation. <p>It is unfair to make the users pay for the failure of the airport to control project cost and to carry out prudent and sensible project management that is to be reasonably expected of any major project execution. IATA believes that a fair treatment would be for AERA to commission an independent study to reasonably quantify the avoidable cost increases and using this study to revise the RAB downwards accordingly.</p> IATA agrees that a cap in escalation needs to be placed in order to prevent runaway costs. Even so, MIAL must still exercise good project cost management and demonstrate that it has taken all necessary measures consistent with good project management to keep costs within the approved budget.

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2. Inclusion of cost for construction of metro station and equipment	<ul style="list-style-type: none"> To note the submission by MIAL that it may be required to bear certain costs with respect to metro connectivity to CSI airport. Subject to review of correspondences from Government of Maharashtra, MMRDA and Ministry of Civil Aviation and other relevant associated aspects. 	<ul style="list-style-type: none"> IATA strongly disagrees that the cost for construction of metro station and equipment should be included in the Regulatory Asset Base. Metro stations have nothing to do with the functioning of the aviation industry and under no circumstance should they be treated as aeronautical assets which would cause airport users to unfairly shoulder the cost burden.
3. Determination of DF, DF levy rate, period of DF levy and project funding.	<ul style="list-style-type: none"> Total amount of DF that could be billed by MIAL is Rs 3,400 crores. Two options of DF presented <ul style="list-style-type: none"> – international pax pay Rs600 and domestic pax pays Rs100 – international pax pay Rs1,300 and domestic pax pays Rs200 	<ul style="list-style-type: none"> IATA disagrees with the use of DF (a pre-funding scheme) to fund the airport development project especially if other financing measures are available. IATA supports the Ministry of Civil Aviation's directive for the removal of DF at CSIA by January 2013 and welcomes AAI's notification to AERA that it would be able to inject more equity into MIAL. With other financing options available, there is no valid reason for DF at CSIA to continue from January 2013 onwards. In any case, IATA disagrees with both options of DF presented by AERA as the difference in fees between international and domestic passengers for both options are unjustifiably large. The development fee paid by international and domestic passengers should be the same. IATA notes that the proportion of 2:1 proposed by MIAL for international UDF to domestic UDF converges towards a level that is more reasonable. With the removal of DF (which unnecessarily frontloads the project costs on users), IATA urges AERA to look at spreading any additional returns arising from higher financing cost over a longer time period to moderate the increase in airport charges.

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4. Asset Allocation between aeronautical and non-aeronautical assets	<ul style="list-style-type: none"> AERA will commission an independent study on allocation of assets between aeronautical and non-aeronautical assets and take the necessary corrective action at the commencement of the next control period from 1 April 2014. 	<ul style="list-style-type: none"> IATA fully supports AERA's decision to commission an independent study and make the necessary adjustments to the asset allocation based on the results of this study.
5. Operational Capital expenditure	<ul style="list-style-type: none"> Future operational capital expenditure incurred by MIAL based on audited figures, evidence of stakeholder consultation and review by the authority be reckoned for the determination of X-factor. 	<ul style="list-style-type: none"> IATA proposes that a cost cap be set for the future capital items identified. Furthermore, in its review, AERA should consider whether the airport has taken all necessary steps to ensure that project costs are kept as efficient as possible.
6. Cost of Equity	<ul style="list-style-type: none"> Adopt Return on Equity as 16% in the WACC calculations 	<ul style="list-style-type: none"> IATA believes that NIPFP has presented a sound basis for arriving at the range of cost of equity of 11.64% to 13.84% for MIAL. IATA views that AERA should therefore adopt a cost of equity for MIAL which is within that range and strongly disagrees with AERA's proposal to arbitrarily grant over two additional percentage points to the upper range value of NIPFP's cost of equity estimate. IATA proposes that AERA uses a cost of equity figure of 12% which is consistent with the assessment of NIPFP.
7. Consideration of Upfront Fee paid by MIAL to AAI towards equity	<ul style="list-style-type: none"> Not to consider upfront fee paid by MIAL to AAI towards equity share capital of MIAL 	<ul style="list-style-type: none"> IATA agrees that AERA has rightly disallowed consideration of the upfront fee towards MIAL's equity share capital. The SSA is unambiguous in its position that there should be no pass through of cost for the upfront fee. Treating it as equity would run contrary to this condition.
8. WACC	<ul style="list-style-type: none"> WACC is calculated at 10.77% 	<ul style="list-style-type: none"> IATA proposes that WACC be re-calculated using cost of equity of 12%. Based on that, WACC would work out to 10.03%.

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9. Operation and Maintenance costs, mechanism for its allocation into aeronautical and non-aeronautical expenses, and efficiency factor	<ul style="list-style-type: none"> AERA will commission an independent study to assess the efficient operating costs of CSIA. 	<ul style="list-style-type: none"> IATA fully agrees with AERA on the need for an independent study to determine efficient operation and maintenance costs and how these are to be allocated between aeronautical and non-aeronautical heads.
10. Revenue from Revenue Share Assets	<ul style="list-style-type: none"> True up the actual non-aeronautical revenue at the time of tariff determination for the next control period subject to the projections by MIAL in respect of non-aeronautical revenue being treated as the minimum/floor for the current control period. 	<ul style="list-style-type: none"> IATA agrees that trueing up for the next control period and setting MIAL's forecast as the floor would be an appropriate way to adjust for the forecast of non-aeronautical revenue.
11. Treatment of revenue from cargo services	<ul style="list-style-type: none"> Government's confirmation noted that the revenue from services of cargo and ground handling in Mumbai is to be regarded as non-aeronautical revenue irrespective of whether these services are provided by the Airport Operator itself or concessioned out to third parties. 	<ul style="list-style-type: none"> It is clear from the AERA Act that any service provided for the cargo facility at a major airport is classified as an aeronautical service. The AERA Act is specifically put in place to regulate the monopolistic powers of an airport. It follows that any revenue from an aeronautical service that the airport derives as a monopolistic entity irrespective of whether the airport provides the service itself or concessions it out (it still retains monopolistic powers over the concessionaires) should be classified as aeronautical revenue. IATA believes that while the AERA Act requires the authority to take into consideration the concession offered by the Central Government, it does not require the authority to unquestionably accept all terms in the concession agreement. Where the terms in the concession agreement contradict the AERA Act, the provisions of the act should take primacy.

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		<ul style="list-style-type: none"> The Ministry of Civil Aviation had alluded to cargo being a key aeronautical activity and an activity to be regulated by AERA in a working group report on 'Air Cargo Logistics in India' published in May 2012. On page 109 of the report, on a view expressed concerning express cargo, the report stated the following: '...it is important to appreciate the role of air express operations and express cargo as a whole being a key aeronautical activity and not an ancillary non-aeronautical activity akin to duty free shops. There is thus a clear need for regulatory intervention with a solid regulatory framework recognizing Express Cargo as an integral aeronautical activity...'
12. Treatment of Revenue from Ground Handling	<ul style="list-style-type: none"> MIAL has treated revenue from ground handling concession as non-aeronautical revenue. 	<ul style="list-style-type: none"> Like for cargo services, the AERA Act clearly categorizes ground handling services relating to aircraft, passengers and cargo at a major airport as aeronautical services. It is the intention of the AERA Act to regulate the monopolistic power of the airport in the area of ground handling services as well. Hence, irrespective of whether the airport provides the service itself or concessions it out (the airport still holds a monopolistic position over ground handling concessionaires), the revenue that the airport derives from ground handling services should be treated as aeronautical revenue.
13. Treatment of fuel throughput charge (FTC)	<ul style="list-style-type: none"> FTCs are charges in respect of provision of aeronautical service namely, supply of fuel to the aircraft, hence it is an aeronautical charge and is to be determined by the Authority under the Section 13(1)(a) of the AERA Act. Revenue from FTC is to be considered as aeronautical revenue. Consider the revision in FTC in line with MIAL's 	<ul style="list-style-type: none"> As with cargo services and ground handling, the AERA Act considers a service provided for supply fuel to the aircraft at a major airport as an aeronautical service. While the debate is ongoing as to how ICAO treats fuel concession revenue (or FTC in the Indian context), what truly matters in India is what the AERA Act says. As the AERA Act classifies fuel service as an aeronautical service, it follows that any revenue derived by the airport irrespective of whether the airport provides the service itself or concessions it out, should be considered as aeronautical revenue. IATA strongly objects to the tentative decision that FTC which is purely a market access fee without a cost basis should be allowed to automatically

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	<p>agreement with the oil marketing companies and consider the escalation at CPI or 7% whichever is less.</p>	<p>escalate at CPI or 7% whichever is less.</p> <ul style="list-style-type: none"> Fuel concession fees or market access fees have been abolished in many parts of the world. In a landmark ruling by the European Court of Justice in 2003 in the case of Hannover Airport versus Lufthansa, the court judgment (reproduced below) is this: <i>Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports, in particular Article 16(3) thereof, <u>precludes the managing body of an airport from making access to the groundhandling market in the airport subject to payment by a supplier of groundhandling services or self-handler of an access fee as consideration for the grant of a commercial opportunity</u>, in addition to the fee payable by that supplier or self-handler for the use of the airport installations. On the other hand, that body is entitled to collect a fee for the use of airport installations, of an amount, to be determined according to the criteria laid down in Article 16(3) of the Directive, which takes account of the interest of that body in making a profit.</i> <p>Ever since the ruling, every airport in the European Union had subsequently withdrawn market access fee for fuel supply.</p> <ul style="list-style-type: none"> The current level of FTC at BOM is already unreasonably high and the authority should not condone a baseless annual escalation that is unheard of anywhere in the world and that is only possible because of a lop-sided agreement that oil marketing companies have no alternative but to sign if they are to continue doing business at the airport. According to the AERA Act, the authority is not obligated to consider agreements that do not involve the Central government especially one that was put in place as a result of the overwhelming market power of the airport.
14. CUTE Counter Charges	<ul style="list-style-type: none"> Consider CUTE Counter service as aeronautical service and payment made by airlines being a direct payment to MIAL as aeronautical revenue. 	<ul style="list-style-type: none"> IATA agrees with the treatment of CUTE Counter service as aeronautical service. This is consistent with the AERA Act as CUTE Counter service is a type of ground handling service related to passengers at an airport. IATA maintains that since CUTE Counter service is an aeronautical service, the revenue derived by the airport for provision of this service (whether

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		directly or concessioned out) should be treated as aeronautical revenue. This includes the concession fee paid by SITA to MIAL.
15. Quality of Service	<ul style="list-style-type: none"> A rebate mechanism will not be imposed in the current control period in addition to the liquidated damages mechanism in OMDA. 	<ul style="list-style-type: none"> IATA believes that a fair system in the case of service shortfall by the airport is to provide a rebate to the users. The rebate mechanism should be in place at the same time as when the higher airport charges start to apply.
16. Tariff Structure / Rate Card	<ul style="list-style-type: none"> Notes the tariff structure and rate cards for the tariff years 2012-13 and 2013-14 corresponding to tariff hike (CPI-X) of 881.28%. 	<ul style="list-style-type: none"> Principle 10 in Schedule 1 of SSA requires charges to be set in accordance with IATA pricing principles. Consultation with users is a cornerstone of IATA pricing principles which are aligned with that of ICAO. Users' inputs on the rate card should be fairly considered before it is finalized. In its current form, the rate card proposed by MIAL is not in line with IATA and ICAO principles and the principles stipulated in the SSA, as elaborated hereunder. This cannot be supported by IATA. <ul style="list-style-type: none"> The rates for landing domestic flights and international flights should be the same for correct cost reflectivity. The rates should be common and solely based on MTOW i.e. the same aircraft type using the same facilities at the airport should be charged the same irrespective of its point of origin. The different percentage increases for international and domestic landing fees proposed by MIAL have further widened the disparity. UDF for international and domestic passengers should be the same. The increases proposed for landing, parking and housing are too steep and should be re-balanced with UDF to more accurately reflect the usage of the terminal building by passengers. Fuel throughput charge which has no cost basis should be removed or at least moderated. An automatic escalation should not be allowed. CUTE Counter charges should not discriminate by airlines as charging competing airlines different fees distorts the playing field.

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	<ul style="list-style-type: none"> Notes MIAL's request to determine UDF as a balancing tariff item. 	<ul style="list-style-type: none"> In summary, the tariff structure that is in line with IATA principles would be as follows: <ul style="list-style-type: none"> Landing rates for international flights and domestic flights must be exactly the same to be cost-reflective. There should be no cross-subsidy of cost. UDF for international and domestic passengers should be the same. CUTE charges should be the same for domestic and international flights. There should be a greater re-balancing of the costs towards UDF. A reduction in the X-factor in the final order by AERA should not just cause UDF to reduce but should also proportionately bring down the increases in landing, parking and housing fees and moderate the new fee i.e. aerobridge charge.
17. Alternatives for UDF implementation	<ul style="list-style-type: none"> To levy UDF from date of tariff hike OR To levy UDF 3 months after tariff hike (for domestic flights) and 6 months after tariff hike (for international flights). 	<ul style="list-style-type: none"> IATA would support the option of deferring UDF implementation for a stated number of months after the tariff hike. MIAL needs to set up a counter at the airport to collect UDF for passengers who have ticketed but not paid the UDF.
18. Proposed New Slot Charge	<ul style="list-style-type: none"> Stakeholders' comments sought to enable a final view to be taken on a new slot charge proposed by MIAL. 	<ul style="list-style-type: none"> IATA is opposed to MIAL's proposal to introduce a slot charge for flight cancellations. Slot allocation is not made through imposition of charges, but through adherence to the internationally accepted Worldwide Slot Guidelines (WSG). Nowhere else in the world is there a slot use charge. Introducing a slot charge is not the right way to solve the slots problems at Mumbai Airport. The common and accepted way to resolve the problem is through coordination committees, slot performance committees and the appointment of an independent slot coordinator to manage the slot coordination in accordance with the internationally accepted Worldwide Slot Guidelines (WSG).

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		<ul style="list-style-type: none"> The Guidelines for Slot Allocation issued in October 2012 by the Ministry of Civil Aviation (MOCA) have no mention of a charge for Slots. The proposal for implementing a Slot-charge is thus not in line with government policy.

