



**Federation of Indian Airlines**

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**MOST URGENT**

11 June 2018

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

**Kind Attention: Smt. Puja Jindal**

***Subject: Comments & Submission of the FIA tendered in response to the AERA CP.No.04/2018-19 titled "In the matter of determination of Fair Rate of Return (FRoR) to be provided on Cost of Land incurred by various airport operators of India."***

Dear Madam,

On 8.05.2018, Airports Economic Regulatory Authority of India to be called as "Authority" had issued the File. No. AERA/20010/FRoR/2017-18 (Consultation Paper No.4/2018-19) ("**Consultation Paper or CP**") in respect of determination of Fair Rate of Return (FRoR) to be provided on Cost of Land incurred by various Airport Operators of India. The Authority held its stakeholder consultation meeting on 30 May, 2018, seeking a detailed written submission from its stakeholder by 05 June, 2018 as extended till 11<sup>th</sup> June, 2018.

Member airlines of FIA were duly present during the meeting and raised objections on various issues pertaining to the Consultation Paper. FIA understands that the object of the present Consultation Paper is only for the purpose of seeking comments on the airports where:

- (a) Airport operator is required to bear the cost of acquisition of land;
- (b) Land has been provided to the airport operator by way of equity, and relevant agreements are silent as to the treatment on the cost of land.

By way of this present submission, FIA on behalf of its member airlines submits its preliminary objections to the CP without any prejudice and craving to submit any additional submission as and when required. ***Also, FIA reserves its right to submit any detailed objections in regard to the cost of land in case of Delhi, Mumbai and any other airport not covered within the above mentioned scenarios.***

Thanking You & Your sincerely,

For and on behalf of Federation of Indian Airlines,

  
Ujjwal Dey  
Associate Director

**A. BACKGROUND**

1. On 8.05.2018, Airports Economic Regulatory Authority of India to be called as "Authority" had issued the File. No. AERA/20010/FRoR/2017-18 (Consultation Paper No.4/2018-19) ("**Consultation Paper or CP**") in respect of determination of Fair Rate of Return (FRoR) to be provided on Cost of Land incurred by various Airport Operators of India. The Authority held its stakeholder consultation meeting on 30 May, 2018, seeking a detailed written submission from its stakeholder by 05 June, 2018 as extended till 11<sup>th</sup> June, 2018.
2. Member airlines of FIA were duly present during the meeting and raised objections on various issues pertaining to the Consultation Paper.
3. By way of this present submission, FIA on behalf of its member airlines submits its preliminary objections to the Consultation Paper without any prejudice and craving to submit any additional submission as and when required.
4. At the outset, it is noteworthy that the Authority is under a bounden duty to determine the tariff in terms of:-
  - (a) Statutory provisions laid under the of the Airports Economic Regulatory Authority of India, Act, 2008 ("**AERA Act**");
  - (b) AERA (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011 ("**AERA Guidelines**");
  - (c) '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' ("**CGF Guidelines**"); and
  - (d) Regulatory jurisprudence and settled principles of law creating a level playing field to foster competition, plurality and private investments in the civil aviation sector.

**B. CONTEXT OF THE CONSULTATION**

5. To assist the Authority in appreciating these submissions on the Consultation Paper, FIA would like to state that the present submissions are without prejudice to FIA's rights and

**FIA's submission towards the Authority's Consultation Paper No. 4/2018-19 titled  
"In the matter of determination of  
of Fair Rate of Return (FRoR) to be provided on Cost of Land incurred by various Airport Operators of India"**

contentions, reserving FIA's right to submit additional submissions/objections at later stage and subject to the following: -

(a) In para 2.1 of the CP, the objectives of the CP have been stated as follows

(i) The tariff determination methodology is based on an approach that provides a Fair Rate of Return (**FRoR**) to the airport's Regulatory Asset Base (**RAB**) which includes fixed depreciable assets of the airport. At present, the premise is that the operator is handed over land free of cost and no depreciation is charged on the land. Thus, in the current practice for computing RAB, the cost of land is not included.

(iii) It is further stated that the State Governments normally provide the land necessary for the development of the airport. The arrangements they make for such transfer are as summarized below:

Type	Case	Return on Land
Transfer of land from the owner (state government)	i. Free of Cost	No return on land
	ii. Lease Basis	A lease arrangement is drawn between the land owner and airport operator; return in the form of lease is explicitly specified in such an agreement. Example: airport in Bengaluru, Hyderabad
Acquired land	iii. Acquired land provided to the airport operator against upfront payment	Land owner receives the upfront payment from the airport operator.

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	<p>iv.Acquired land provided to the airport operator through transfer in value against equity;  (And not in exchange of an upfront payment.)</p>	<p>Example: Airports in Chandigarh, Cochin, Kannur.  <u>Return in such a case is yet to be determined.</u></p>
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- (b) Further in para 2.1.5 the Authority, recognizing the considerable expense on land acquisition, allegedly leading to a demand of return on land by the respective government stakeholders, has stated in the consultation paper issued for Chandigarh, Goa and Cochin airports, as follows:

"In respect of cost of land, the Authority notes that land is not a depreciable asset and if taken into RAB, the return over it has to be paid perpetually. Besides, if the principle of FRoR based on cost of capital is applied on cost of land the aeronautical charges may have to be fixed at exorbitantly high rates. However, the Authority realizes that unless some kind of return is given on land, future land acquisitions for airport purposes could become a major hurdle for airport development. Therefore, it is proposed to conduct a study based on which the treatment to be given to cost of land can be determined."

- (c) Further, in para 2.1.7, it is stated that study commissioned by the Authority explores what should be the return on cost of land in a situation where the land is brought against equity for airport development, and the agreement between the concerned stakeholder government and the airport operator is silent about return on such a land.
- (d) Further, in para 4.4, it is stated that based on the study conducted by Ernst and Young, the Authority is of the view that primarily there are two options to provide return on cost of the land:

*(i). The land cost will not be included in the RAB. However, the FROR on the cost of the land will be included in the ARR. No depreciation will be allowed on the cost of land*

*(ii). Amortizing the historical cost of the land over the concession period, in this case also, the cost of the land will not be included in the RAB. The amortization will be taken as an operational expenditure on notional basis for determination of tariff.*

**(e)** Further, in para 5.1, it is stated that:

*"5.1 Judging the scenario analysis has stated above the Authority is of the view:*

*5.1.1 The cost of land in case of airports tends be high because the land is located in or in the vicinity of urban area.*

*5.1.2 The percentage increase in tariff in case the cost of the land is amortized over 30 years concession period will be lower.*

*5.1.3 It will also be fair on the investor who exits in between the concession period since the valuation of the business/ share price will be based on the then land price and valuation and income potential.*

*5.1.4 The Authority intends to take the value of land being utilized for aeronautical purpose only providing a return on land cost.*

*5.1.5 With the development of an airport, the state government also benefits in the form of increased value of land and increased economic benefit from Airport related activity.*

*5.1.6 In public interest, the return on cost of land should be such that its impact on tariff is minimum."*

(f) Further, in para 5.2, it is stated that:

*"In view of the approaches suggested to provide return on land of cost, the Authority proposes to conduct stakeholders' consultation and obtain view regarding rate of return to be provided on cost of land in the following situations:*

*5.2.1 Where airport operator is required to bear the cost of acquisition of land*

*5.2.2 Where land has been provided to the airport operator by way of equity contribution by the equity shareholders"*

6. Pursuant to the enactment of the AERA Act, the Authority has been established to perform the functions vested under the AERA Act including Section 13 of the Act, which includes determination of tariff for aeronautical services, viz.-

(a) Section 2(a) of the AERA Act defines "aeronautical services".

(b) Section 13 (1)(a) of the AERA Act provides that the tariff for such aeronautical services at a major airport is to be determined by the Authority after taking into consideration various factors as mentioned under the said Section 13.

(c) The Authority is under statutory obligation to consider all relevant statutory provisions including the AERA Guidelines. It is pertinent to note that AERA Guidelines, states the regulatory building blocks for the purposes of tariff determination, which includes the following:

(i) **Regulatory Asset Base** - One of regulatory blocks is the Regulatory Asset Base (**RAB**). In term of the AERA Guidelines, in the normal course all airport fixed assets will come under the scope of the RAB. However, the Authority may based upon the due consideration of relevant factors and the guiding principles (as mentioned under the Guidelines) may include or exclude certain fixed assets from the scope of RAB.

(ii) **Depreciation** – Under Clause 5.3.4 of the AERA Guidelines, it is provided that land is not a depreciable asset and its cost shall be excluded from the original cost while calculating the depreciable value of the asset.

- (iii) **Fair Rate of Return (FRoR)** – Under Clause 5.1.1., it is stated that the Authority shall calculate the FRoR for a Control Period basis the basis the estimate of the weighted average cost of capital for an Airport Operator in terms of the formula prescribed therein.

**7. 'Determination' by the Authority:**

- (i) Section 13(1)(a) of the AERA Act requires the Authority to 'determine' the tariff for aeronautical services. Any 'determination' by a statutory authority must clearly show the application of mind and analysis carried out by the Authority. It is to be noted that to ensure transparency while exercising its discharge of functions by the Authority under AERA Act it is implied obligation to produce all relevant document and make decision which are fully documented and explained. In this regard judgment of the Hon'ble Supreme Court in the case of Ashok Leyland Ltd. vs. State of Tamil Nadu & Anr. reported as (2004) 3 SCC 1 (FB)(at Paragraph No. 94) is noteworthy. Hon'ble Supreme Court has held that the word 'Determination' must also be given its full effect to, which pre-supposes application of mind and expression of the conclusion. It connotes the official determination and not a mere opinion or finding. The Hon'ble Telecom Dispute Settlement Appellate Tribunal ("TDSAT") has also held that determination requires application of mind in the Judgment dated 16.12.2010 in Appeal No. 3(C) of 2010 titled as ZEE Turner Ltd. vs. TRAI & Ors. (at Paragraph No. 150). In view of the above judgment, it is imperative that the Authority has to apply its mind after considering all relevant information, data, submissions filed by stakeholders in determination of RAB and FRoR. The Authority cannot rely upon any study or report even if the same is from any expert body, without any application of mind in coming to any conclusion, as the same would be contrary to provision of AERA Act.
- (ii) However, in the present case, the study conducted by Ernst Young dated 23rd April, 2018 on the determination of Fair Rate of Return (FRoR) to be provided on Cost of Land incurred by various Airport Operators of India, has at several instances in the report displayed factors, which are either negative or are

inconclusive as to the opinion on the aspect of rate of return to be provided on cost of land, more particularly discussed in the section below.

### C. ISSUEWISE SUBMISSIONS

**(a) No returns to be provided on cost of land - cost of Land should not be a part of RAB, either directly or indirectly – Options under Clause 4.4 of the CP to be discarded**

The Authority has under Clause 4.4 of the CP, stated two options for stakeholder's review and selection, for providing suitable return on the cost of land for airport operators.

At the outset, FIA would like to humbly submit that, land is an asset, whose value will always increase exponentially over a period of time. In other words, land is always subject to capital appreciation and is not a depreciating asset.

The depreciating nature of land has been recognized under Clause 5.3.4 of the AERA Guidelines dealing with depreciation (as referred above in Para 6 (c) (ii) of this reply). Thus, the land being termed as a non-depreciating asset has been the force of statutory recognition and accordingly cannot be dealt in a manner contrary to the law.

Further, the depreciating nature of land also been expressly acknowledged by the Authority as mentioned in the consultation papers of Chandigarh, Goa and Cochin airports. The Authority has acknowledged that if the principle of Fair Rate of Return (**FRoR**) is applied then aeronautical charges may have to be fixed at exorbitantly high rates. The relevant extract of Authority's view as follows:

*"In respect of cost of land, the Authority notes that land is not a depreciable asset and if taken into RAB, the return over it has to be paid perpetually. Besides, if the principle of FRoR based on cost of capital is applied on cost of land the aeronautical charges may have to be fixed at exorbitantly high rates"*

Keeping in view of the above, the cost of land should not be part of RAB, directly or indirectly, and any form of return on land should be discouraged, whether it is proposed through FRoR, depreciation or amortization or otherwise. Accordingly, FIA humbly submits that neither of the two options stated under Clause 4.4 (as mentioned above) of the CP should be exercised/explored by the Authority and the such options needs to be discarded.



**(b) Express Acknowledgement by the Authority that land around airport benefits the State Government**

In para 4.2 of the CP it is stated that previously, as the land was acquired by the Government agencies and transferred to the operator free of cost or at nominal value, the Authority did not include the cost of the land in the RAB and did not feel any requirement to pay any return on the cost of the land. It is further stated that however presently, the land is either acquired by the operator themselves and the cost of the land are funded by equity contribution of the shareholders, or acquired by the State Government and transferred to the operator as a part of the equity contribution. In this case, the investors desired that a return should be paid on the cost of the land. It is further stated that refusal to provide such a return could disincentivize acquisition of land which is a primary requirement for airport development.

In response to para 4.2, FIA strongly objects to the presumption that refusal to provide a return on land could disincentivize the acquisition of land. FIA humbly submits that Authority acknowledges that development of the airport land and its vicinity thereto, indirectly benefits the State Government due to economic development of the area around Airport. Airport operator are the most beneficiary from such land which surrounds airport, by commercial exploitation through Hotels, Shopping Complexes, Entertainment hubs etc. FIA submits that, as is mentioned in the CP, the Authority is well aware of the economic benefits of the land adjoining the area of the airport to the private entities and relevant state government, and infact, the same was specifically pointed out to the Government of Punjab and Haryana in the case of determining tariff in case of Chandigarh Airport.

In para 4.3 of the CP, it is stated that the Authority feels that the land is a scarce resource and in future land might not be available for Airport development unless it is acquired by paying the market price. The land cost might be a major component of the total project cost and in case no return is given on the land, the stakeholders might not be interested in investment on the land which may hamper airport development in future.

In response to the para 4.3 of the CP, FIA would like to reiterate its response on para 4.2 above and would additionally state that if airport wants surrounding land for expansion after few years, such surrounding lands are actually not available as commercial setups/establishments makes it difficult for acquisition and expansion plans of the airports.

**(c) Equity represents the benefits/returns to the shareholders**

FIA humbly submits that in the table mentioned in para 5 (a) (iii) above of this reply and Clause 5.2 of the CP, it is seen that the Authority wishes to determine the return to be provided to the Airport operators where land has been provided against equity in the operating company of the airport. FIA humbly submits that upon being a shareholder of the airport operating company which entitles the appropriation of profits earned by the airports, the shareholders are already in a position to recover the profits made by the operating company from the total pool of aeronautical and non-aeronautical revenues. In addition to the above, FIA humbly states that the development of an airport is joint venture exercise between the Government/AAI and the private airport operator, where the relevant Government with an intent to cater to the demand of tourism and transportation wishes to develop its airport. It is not disputed that the development of the airport, results in the increase of the economic activity and returns for the state by way of increase in commerce, tourism, trade and tax revenues and increased employment. Thus, in view of the above i.e. the share of equity and also the economic benefits and returns the State/Government receives, there remains no reason for any further compensation/return is given to the cost of land.

**(d) State as a Sovereign is required promote the concept of welfare state**

The concept of welfare state is enshrined under the Directive Principles of the State Policy under the Constitution of India. In the case of *Maharao Sahib Shri Bhim Singhji Ors. vs. Union of India (UOI) and Ors.*, the Hon'ble Supreme Court of India stated that *"..In short, the directives emphasise, in amplification of the Preamble, that the goal of the Indian polity is not laissez faire, but a welfare State, where the State has a positive duty to ensure to its citizens social and economic justice and dignity of the individual..."*. Accordingly, FIA submits that bearing in mind the nature of the State being that of a welfare state under the Constitution of India, the State should not demand any return or any kind of gain for the provision of land for the purposes of development of an airport i.e. a project which is launched keeping in view the public interest and welfare.

**(e) Documents to be provided to show whether any guaranteed return on land was promised/agreed to be provided**

In para 5.2 of the CP it is stated that:

*"In view of the approaches suggested to provide return on land of cost, the Authority proposes to conduct stakeholders' consultation and obtain view regarding rate of return to be provided on cost of land in the following situations:*

*5.2.1 Where airport operator is required to bear the cost of acquisition of land*

*5.2.2 Where land has been provided to the airport operator by way of equity contribution by the equity shareholders"*

In regard to the above case where Authority wishes to conduct the consultation process, FIA wishes to submit that it should be shown by the Authority by way of sufficient documentary evidence, as to whether any acquisition of land and its consequent use thereafter for airport purposes, has been guaranteed/assured with any return on the land. In other words, it has to be reflected in the documentary evidence that the land meant for airport purposes was acquired and/or transferred by the stakeholder state government on the premise/pre-condition that a return was always payable to the stakeholder state government. FIA submits that, in such case, the documents/agreements containing such a stipulation should be shared with the stakeholders for their review.

FIA submits that in the absence of such documents, the consultation process will not be transparent in accordance with Section 13 (4) of the AERA Act.

**(f) Certain findings of the study report by Ernst and Young are either negative or are inconclusive in nature**

A. The study conducted by Ernst Young dated 23rd April, 2018 on the determination of FRoR to be provided on Cost of Land incurred by various Airport Operators of India, has at several instances in the report displayed the negative or inconclusive result on the aspect of rate of return to be provided on cost of land, as is seen below:

- (i) **Inconclusive** - Under Para 3.1.1 (b) it is stated that Regulation 24 of the CERC's order on Renewable Energy Tariff Determination provides that the capital cost for Wind Energy should include land cost. However, it is not conclusive if land cost is included to compute tariff in other renewable energy technologies.

In view of the above, FIA humbly states that the study report itself states the fact that inclusion of cost of land is not consistently applied throughout all forms of renewable energy technology for determination of tariff. This gives an inference that a different treatment of land may be envisaged by competent authorities and the outcome of study in this field remains inconclusive. Accordingly, the Authority ought to consider only those aspects in the study report which is conclusive in its facts and figures.

- (ii) **Negative** - Under Para 3.1.2 (c) dealing with National Highways Authority of India, the cost of land is not included in either the Project Cost or in the formula used for calculating tariff.

In view of the above, FIA humbly states that the study report while dealing with the other authority dealing with an alternative mode of transport in India – i.e. by road, in which expectedly land forms an integral element, the cost of land is neither included in the Project Cost or formula for calculating tariffs. Thus, given by the analysis of the road sector (NHAI), the result of land cost being provided any form of return is negative.

- (iii) Under Para 3.2.3 (d) & (e), it is provided that Auckland Airport includes the land in pricing its asset base. However, it further provided that the Auckland Airport uses the hybrid model for tariff.

In this regard, FIA would like to humbly submit that the mere consideration (if not final reliance) by the Authority on the model of Auckland Airport using the hybrid till for comparative analysis, is patently wrong as the Auckland model using the hybrid till is against the spirit of the AERA Act which mandates the Single Till (refer Annexure – A) and is accordingly opposed by FIA.

FIA has however noted the fact that the Authority has stated in relation to Auckland Model as *"... However, if a system of valuing the land at Market Value of Alternative Use as is followed in Auckland Airport-- or recording land as part of the RAB and providing FRoR on indexed cost of land per year as is followed in the Land Transport Department of South Africa--- is applied at the Indian airports, it may lead to a steep increase in tariff. This would adversely affect both passenger and cargo traffic, as they would ultimately bear the burden of increased tariff..."*

- B. The Study conduct by Ernst and Young also states the following:

*"4.1.1 When an airport is operated under Regional Connectivity Scheme (RCS), the National Civil Aviation Policy (NCAP), 2016 specifies in sub clause f) of clause 4), that the State Government will provide land free of cost and free from all encumbrances and also provide multi-modal hinterland connectivity (road, rail, metro, waterways, etc.) as required. Thus, land for airport under RCS will not earn any return.*

*4.1.2 Guidelines on airport development by AAI is also specified in NCAP, 2016. In clause 13, sub-clause a), point iii), NCAP states that AAI will take up new greenfield or brownfield airports subject to condition that land will be provided free of cost and from all encumbrances by state government*

*without treating it as equity. Thus, land in an airport which is under the development of AAI, will not garner any returns."*

In view of the above, it is clear that the spirit of the Central Government under the National Civil Aviation Policy, 2016 (NCAP) in relation to either greenfield and brownfield airport to be taken up by AAI and also in the case of Regional Connectivity Scheme, is that no return on land is proposed to be provided to the airport operators/AAI. Accordingly, in the present exercise for determination of the cost of land, FIA humbly submits that the Authority should be mindful of the intent of the Central Government as reflected in the NCAP i.e. no return on the cost of land should be given to the airport operators.

**(g) Land for Non – Aero Land to be also be included**

Without prejudice to the above submission of FIA that cost of land should not be a part of RAB or provided any return, it is stated in case the Authority decides to provide any return on the cost of land, following may be considered.

Under para 5.1.4 of the CP it is stated that the Authority intends to take the value of land being utilized for aeronautical purpose only providing a return on land cost. In response to the same, FIA humbly submits that if such practice is implemented, value of return on non-aeronautical land should be used for while determining tariff, along with other non- aeronautical revenues. FIA submits that the same is premised on the principle that FIA has been repeatedly requesting the Authority to adopt i.e. "Single Till approach wherein revenues from non-aeronautical activities are also considered while determining tariff at major airports. In this regard, reference may be made to FIA's detailed submission to retain Single Till Model at all major airports for tariff determination as mentioned under **Annexure – A**.

**8. FIA therefore submits as under:**

**(a) Cost of land should not be included in the RAB either directly or indirectly and any type of return on the cost of land needs to be discouraged/disregarded.**

**9.** FIA understands that the object of the present Consultation Paper is only for the purpose of seeking comments on the airports where:

**(a)** Airport operator is required to bear the cost of acquisition of land;

(b) Land has been provided to the airport operator by way of equity, and relevant agreements are silent as to the treatment on the cost of land.

***Accordingly, FIA reserves its right to submit any detailed objections in regard to the cost of land in case of Delhi, Mumbai and any other airport not covered within the above mentioned scenarios.***

**10.** In addition to the above submissions, it is respectfully submitted that airlines and consequently, passengers will have to bear the burden of increase in Aeronautical Tariffs if any return on the cost of land is proposed to be given by the Authority. It is noteworthy that Airlines and passengers must not be burdened with any tariff to be collected to fund the capital investments of a private concessionaire.

**11.** The Authority is aware that airlines have been going through difficult times with high prices of crude oil. Increase in aeronautical tariff as proposed by the Authority will erode airlines capabilities to increase fares to sustain its operational capabilities.

**12.** FIA reiterates its submission that there is a critical relationship between passenger traffic and growth of the civil aviation sector. What would benefit both the airport operator as well as the airlines is a reasonable and transparent passenger tariff, both direct and indirect – since then the airlines will be able to attract more passengers and the airports would benefit both through higher collection of aeronautical charges as also enhanced non-aeronautical revenue at the airports. In FIA's view, the airport should be regarded as a single business as its aeronautical and non-aeronautical revenues are intertwined.

**12.** Single Till Model ought to be applied to ALL the airports regulated and operated by the Authority regardless of whether it is a public or private airport or works under the PPP model and in spite of the concession agreements as the same is mandated by the statute.

**13.** Single Till is in the public interest and will not hurt the investor's interest and given the economic and aviation growth that is projected for India, Fair Rate of Return (FRoR) alone will be enough to ensure continued investor's interest.

14. It is submitted that order passed by an administrative authority, affecting the rights of parties, must be a speaking order supported with reasons. It is well settled position of law that:

- (a) Reasons ought to be recorded even by a quasi-judicial authority.
- (b) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (c) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (d) Insistence on reason is a requirement for both accountability and transparency.
- (e) Reasons in support of decisions must be cogent, clear and succinct.
- (f) A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- (g) Requirement of giving reasons is virtually a part of 'Due Process'.

15. In view of the above, it is respectfully prayed that the Authority keeps in mind the interests of the airlines and civil aviation sector before finalizing any decisions regarding any returns to be provided on the cost of land. Authority's proposal to provide any form of return on the cost of land, if accepted, will have cascading impact on the airlines and consequently, on the civil aviation industry.

#### **Annexure – A**

#### **Re. Authority ought to follow Single Till Model for determination of Aeronautical Tariff**

1. In para 2.1 it is stated that the Authority vide its Order No. 13/2010-11 dated 12.01.2011 (Airport Order) and Direction No. 5/2010/11 dated 28.02.2011 (Airport Guidelines) had issued guidelines to determine tariffs at major airports based on Single Till mechanism. Subsequently, after the issuance of NCAP, the Authority has amended guidelines vide its Order No. 14, 2016-17 dated 12.01.2017 to determine future tariffs using Hybrid Till. It is to

be noted that issuance of the policy that is NCAP cannot be used to override the statutory provision i.e. Section 13 (1) (v) of the AERA Act. Hybrid till is followed, which is in contravention to AERA tariff guidelines. In this context, the following facts are noteworthy:

2. It is noteworthy that in a matter pending adjudication before the Hon'ble Airports Economic Regulatory Authority Appellate Tribunal ("**AERAAT**"), MoCA had submitted by way of its Counter-Affidavit that the Authority is an independent regulator and suggestions of Government of India/ MoCA are not legally binding on it. Further, it has submitted that MoCA has no role to play with respect to determination of aeronautical tariff. The Authority being a party to the said matter is aware of the contents of MoCA's Counter Affidavit in the said matter.
3. It is submitted that Single Till is premised on the following legal framework being:
  - (a) Section 13(1)(a)(v) of AERA Act envisages that while determining tariff for aeronautical services, the Authority shall take into consideration revenue received from services other than the aeronautical services.
  - (b) Clause 4.2 of AERA Guidelines recognizes Single Till approach which sets out the following components on the basis of which ARR will be calculated:-
    - (i) Fair Rate of Return applied to the Regulatory Asset Base
    - (ii) Operation & Maintenance Expenditure
    - (iii) Depreciation
    - (iv) Taxation
    - (v) **Revenues from services other than aeronautical services**
  - (c) AERA in its Single Till Order has held that "*Single Till is most appropriate for the economic regulation of major airports in India*".
4. It is submitted that determination of aeronautical tariff warrants a comprehensive evaluation of the economic model and realities of the airport – both capital and revenue elements. AERA's approach of Hybrid Till for Chennai International Airport deserves to be discarded.
5. In the Single Till Order, Authority has strongly made a case in favor of the determination of tariff on the basis of 'Single Till'. It is noteworthy that the Authority in its *inter alia* Single Till Order has:
  - (a) Comprehensively evaluated the economic model and realities of the airport – both capital and revenue elements.
  - (b) Taken into account the legislative intent behind Section 13(1)(a)(v) of the AERA Act.



- (c) Concluded that the Single Till is the most appropriate for the economic regulation of major airports in India.
- (d) The criteria for determining tariff after taking into account standards followed by several international airports (United Kingdom, Australia, Ireland and South Africa) and prescribed by ICAO.
6. The Authority in its AERA Guidelines (Clause 4.3) has followed the Single Till approach while laying down the procedure for determination of ARR for Regulated Services. In this respect, the matter must be dealt with by the Authority considering the ratio pronounced by the Constitutional Bench in the Hon'ble Supreme Court Judgment in PTC vs. CERC reported as (2010) 4 SCC 603 (*please ref: Paragraph Nos. 58 to 64 at Page Nos. 639 to 641*). wherein it is specifically stated that regulation under an enactment/statute, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations.
7. The fundamental reasoning behind 'Single Till' approach is that if the consumers/passengers are offered cheaper air-fares on account of lower airport charges, the volume of passengers is bound to increase leading to more foot-fall and probability of higher non-aeronautical revenue. The benefit of such non aeronautical revenue should be passed on to consumers/passengers and that can be assured only by way of lower aeronautical charges. It is a productive chain reaction which needs to be taken into account by the Authority.