BUSINESS AIRCRAFT OPERATORS ASSOCIATION

Ref. No. BAOA/AERA/03/2018-19
June 08, 2018

Secretary,
Airports Economic Regulatory Authority of India,
AERA Building,
Administrative Complex,
Safdarjung Airport
New Delhi – 110 003

Subject: - Comments on AERA Consultation Paper 06/2018-19

Madam,

Please refer the AERA Consultation Paper 06/2018-19. Following comments are offered.

i) It is submitted that, while considering DIAL request for increase in charges as per SSA clause 2 of Schedule 6, Authority must look at the issue in a more holistic way and correct all the anomalies that occurred before AERA came into being in 2009.

ii) SSA was signed in 2005, much before enactment of AERA in December 2008. Therefore, in matters of conflict between Agreement (SSA) and Statute (AERA), the provisions of AERA Act should take precedent. Further AERA Act Para 13(a)(iv) mandates authority to determine aeronautical charges in a manner to ensure economic and viable operations of major airports. The latter clause (Para 13(a)(vi)) should not over-ride the more important preceding clause in the Act. The main objective is the economic viability of the operations. The part of Agreement (SSA) to be honoured should only relate to clauses on the 'Term of Lease' and 'Master Development Plan' etc. Any issue relating to determination of aeronautical charges at the airport have to be under exclusive domain of AERA Act and, not SSA.

iii) The definite reason of BAC+10% being there in the SSA Schedule 6 in 2005 was due to AERA Act yet to be enacted. The aim was to provide the required 'comfort zone' to the airport operator pending enactment of AERA. Further, the subsequent AERA Order 40/2015-16 had not only provided that comfort through AAR calculation, but also gave airport operator FROR of 16% on equity at para 26.19 of the Order. Interim relief, as per Schedule 6 of SSA, was rightly provided by MoCA by authorising 10% increase BAC on 16 Feb 2009. Later, with FROR of 16% being provided through precise calculation of aeronautical charges to ensure economic viability of airport operations. Therefore, Clause 2 of Schedule 6 (SSA) becomes irrelevant for determining aeronautical charges at DIAL. AERA has already considered this Clause at paras 26.20 & 26.21 of Order 40/2015-16.

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iv) There have been restructuring of some aeronautical charges like UDF/X-ray/Cute counter, which were not part of SSA, Schedule 8. Therefore, instead of selectively passing order on Clause 2 of Schedule 6, Authority needs to look at all the aeronautical charges, de novo. At para 3.9(3) of CP 06, Authority has observed that FTC was not part of aeronautical charges in SSA and the same is now being considered as aeronautical in terms of para 2 (a)(vi) of AERA Act. However, it is submitted that FTC is, in fact, 'royalty' charged for supplying fuel to the aircraft at an airport, being levied in addition to lease rentals paid by the oil company. Prior to enactment of AERA, airports were collecting FTC from oil companies at mutually agreed rate as non-aeronautical charge. This is the reason FTC charges are not standardised for common fuel services across all major airports in India. To cite an example, FTC is Rs. 688.17 per KL at DIAL and Rs. 1478.94 per KL in Kolkata. On the subject of 'royalty', please refer the attached comments sent by BAOA in response to AERA CP 08/2016-17 **(In the matter of Capping the percentage of Royalty / Revenue Share payable to Airport Operator as a "Pass Through" Expenditure for the Independent Service Providers providing Cargo facility, Ground Handling and Supply of Fuel to the Aircraft at Major Airports)** dt. 13 March 2017. AERA's final order in this regard is still awaited. Pending issue of this much awaited AERA order, Authority is requested to completely abolish FTC all airports in line with provisions of AERA Act.

v) It is submitted that allowing 10% arbitrary increase in BAC, through mention of Schedule 6 of SSA, would undo the painstaking efforts undertaken since 2005 to set up an Airport Economic Regulatory Authority (AERA) for independently and efficiently regulating aeronautical charges at major airports in India. In this regard, Authority is requested to refer to 'Introduction' and 'Statement of Objects and Reasons', given at the very beginning of AERA Act 2008. In view of the objectives of Clause 2 of Schedule 6 of SSA being taken care specifically through AERA Act para 13(a)(iv), the implementation of SSA's clause would result in unfair benefit being given to airport operator at a public airport.

We are available for further discussions/clarification on our above submissions to the Authority.

Thanking you

For **Business Aircraft Operators Association**

Gp. Captain R.K. Bali (retd.)
Managing Director

Enclosed: - Comments sent by BAOA in response to AERA CP 08/2016-17

BUSINESS AIRCRAFT OPERATORS ASSOCIATION

Ref. No. BAOA/AERA/01/2017-18 May 01, 2017

To,

Secretary,
Airports Economic Regulatory Authority of India,
AERA Building,
Administrative Complex,
Safdarjung Airport
New Delhi – 110 003

Subject:- Comments on AERA Consultation Paper 8/2016-17

Dear Sir/Madam,

Our comments are as follows:-

Comments on AERA Consultation Paper 8/2016-17

Introduction

AERA, established as per AERA Act 2008 passed by parliament, was formed to regulate tariff and other charges for aeronautical services rendered at **'public airports'**. Para 2 a(iv) of AERA Act defines Ground Handling (GH) services relating to aircraft, passengers and cargo at an airport as aeronautical services. Further, para 2(a)(ii) of AERA Act defines landing, housing or parking of an aircraft or any other ground facility offered in connection with aircraft operations at an airport as aeronautical service. The above, well-defined aeronautical services in AERA Act, have not yet been fully regulated by AERA, as per the **'Act'** in spite of being in existence for over seven years now.

Ground Handling Services

Ground Handling (GH) services are well-defined aeronautical services at an airport. Therefore, in addition of being so defined in AERA Act 2008, government further issued AIC 3/2010 (as attached) on 'grant of permission for providing GH services at airports, other than those 'controlled by AAI'. The attached AIC 3/2010 lists out all the GH services to be provided at Annex A & B. The AIC 3/2010, para 1.1 (iii) and AERA Act 2008, para 2 a (vii), also give Central Government authority to additionally specify any activity, it considers, should be part of aeronautical services at public airports. While 'self-management of GH services' remains the right of each operator whether scheduled or non-scheduled, AERA being the regulatory authority, has to decide charges for aeronautical services at all

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public airports as per guidelines given in State Support Agreement (SSA), specifically for PPP model airports. There is no provision of any royalty to be considered by AERA while deciding charges for aeronautical services at any public airport. 'Royalty' is a legacy of British India and used to be called 'Lagaan' during pre-partition times. Even the dictionary meaning of 'Royalty' disqualifies it to be part of costing at a 'public airport'. 'Royalty has been defined, in accounting terms, as 'payments made to someone whose invention, idea of 'property' is used. Therefore, at public airports charging royalty, over and above charges for aeronautical services, is illegal, unethical and akin to being an 'organised loot', in monopolistic situation, of common man in India travelling through medium of air. All operators, whether scheduled and 'non-scheduled' pass on these illegally charged amounts of 'royalty' to the common public, which is using air transportation as means to commute to save their time and better use their skills in more progressive way for growth of Indian economy. Therefore, illegal charging of 'royalty' is impeding optimum growth of aviation industry.

We would like to draw the kind attention of 'Authority' to the variable royalties being charged as different 'GH' Agencies across public airports in India. Attached as Annex II & III. Even AAI has region-wise variable rates of royalty at public airports operated by it. In case of 'public airports', operated under PPP model, AERA has so far given free run to airport operators to follow any model of own choice-'royalty' or 'revenue sharing'. And, this model is being allowed by AERA in addition to the 'rental or licence fee' for using the premises of 'airports for ground services that are part of aeronautical services, as defined in 'AERA Act'. The 'Act' makes it obligatory on part of AERA to fix charges of all aeronautical services at a public airport on 'cost plus basis' as provided in SSA, including Independent Service Providers (ISP's) giving cargo facility and 'supply of fuel'.

Once the charges are fixed in a rational and 'cost-plus' basis, allowing 14-15% return on investments, the airport operator at a public airport, whether, AAI or 'under PPP', should not be allowed to charge any amount above the AERA's prescribed ceiling to the public. It may be left to the airport operator to provide these essential aeronautical services under own 'safety certified' arrangements or, thru accredited GH Agencies by any of the three - 'Revenue Sharing / 'Licence Fee' / 'Mixed Revenue sharing & Licence-Fee'- mechanism. This is the only way AERA should be discharging its responsibilities to ensure Indian public pays reasonable and the right charges for all aeronautical services provided at public airports.

Maintenance Hangars under DGCA's approved CAR 145 at Public Airports

The Consultation Paper has not addressed the issue of maintenance hangars at a public airport functioning under CAR 145 approvals. The licence fee for rental of these maintenance hangars, providing aeronautical services as per AERA Act para 2 a (ii) for ensuring continuous airworthiness and safe flying operations of aircraft at a public airport, has to be fixed by AERA in accordance with the Act & OMDA Annex 5 (attached). Besides, giving free hand to airport operators (both AAI & under PPP) for fixing licence fee as non-aeronautical charges, AERA has, further, not even stopped charging of 'royalty' in addition the licence fee at these public airports. The 'licenced fee' of these maintenance hangars has been astronomically increased without any justification. Please see attached rates of 2006 and 2013 for reference (Annex VI)

In view of the above, while addressing issue of royalty for GH, Cargo & Fuel Supply, AERA should immediate fix license fee/ rental for maintenance hangars at all 'public airports' as per provisions of AERA Act and completely remove and additional fee / charges under any head, like 'royalty' or 'revenue sharing' etc., being charged, hitherto.

Conclusion

AERA should be complimented for bringing out the Consultation Paper 8/2016-17 as part of its public duty to ensure all aeronautical services at public airports are charged reasonably and on cost plus basis. No further time should be allowed to pass to correct the situation and, 'royalty', which is the legacy of British India, be abolished completely and instantaneously.

The AERA consultation paper 8/2016-17 relates to capping of Royalty at 30%. BAOA strongly contests the very existence of Royalty because it is illegal, unethical, and prejudicial. Further, it runs counter to the functioning of AERA as the sole regulator of aeronautical charges at public airports in India. BAOA also strongly questions the recent trend of ISP's changing the word 'Royalty' to 'Revenue Share', indicating an underhand attempt to force upon the illegal charges under different nomenclature.

Thanking you

For **Business Aircraft Operators Association**

Gp. Captain R.K. Bali (retd.)
Managing Director

Enclosed:- Annex I (AIC 3/2010)
Annex II & III (Royalty & GH charged at various airports)
Annex IV (Extract of AERA)
Annex V (OMDA, Schedule 5)
Annex VI (Maintenance Hangar Licence fee 2006 & 2013)