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April 26, 2010

Shri Sandeep Prakash
Secretary
Airport Economic Regulatory Authority of India
Room No.58, Rajiv Gandhi Bhawan,
New Delhi-110003

27/4
DSD-II

SM (Shri Saxena)

Subject: Comments & submissions of the Federation of Indian Airlines (FIA) tendered in response to the 10% increase in Aeronautical Charges requested by DIAL & MIAL with effect from 03.05.2009.

Dear Sir,

The Federation of Indian Airlines a key Stakeholder under AERA Act sincerely appreciates and applauds the stand put forth by AERA in response to the 10% increase in Aeronautical Charges requested by DIAL & MIAL with effect from 03.05.2009.

The FIA through its representations at various forums have tried to bring out the delicate situation being faced by the Airline Industry of India and with this move of AERA our belief of creating a healthy aviation sector gets impetus.

FIA is hereby placing on record the following response submitted which has been arrived solely from discussions, deliberations and past experiences for the consideration by the authority.

Enclosed is the submission on behalf of FIA for your kind consideration.

Thanking you,

With best regards,

Minol Dey

FEDERATION OF INDIAN AIRLINES

The members of FIA wish to place on record its preliminary submissions on the Consultation Paper No.1/2010-11 issued by the Authority which relates to **10% increase in Aeronautical Charges request by DIAL both effect from 03.05.2009 at IGI Airport, New Delhi** Before making its submissions, members of FIA deem it necessary to place on record the following relevant facts which are material for the decision making by the Authority:-

SCOPE OF THE CONSULTATION

1. On 01.01.2009, the Airport Economic Regulatory Authority of India Act, 2008 (AERA Act) was brought into force other than Chapters 3 & 6 which were brought into effect on 01.09.2009. The Authority was established on 12.05.2009 to perform the functions vested under the AERA Act, including determination of tariff for aeronautical services in respect of 'major airports'. Ever since, tariff determination falls within the exclusive domain and jurisdiction of the Authority.

CONTEXT OF THE CONSULTATION

2. The international competitive bidding process for selection of a concessionaire to operate, maintain and develop Delhi Airport started around February, 2004 leading to award of the concession in April, 2006 when:-

(a) the Operation, Management and Development Agreement ("OMDA") was executed between the Airport Authority of India ("AAI") and the special purpose vehicle incorporated by the successful consortium, Delhi International Airport Limited ("DIAL") on 04.04.2006 wherein all governing terms and conditions were reflected, including-

(i) **CAPEX:** Chapter XIII mandates and casts an obligation upon DIAL to arrange for financing and/or meeting all financing requirements through suitable debt and equity contributions in order to comply with the obligations under OMDA including the development of Airport. It is relevant to note that Schedule 5 and 6 define and specify the Aeronautical and non-Aeronautical services in OMDA.

(ii) **TARIFF:** Chapter XII of the OMDA provides for tariff and regulation and casts obligation upon the operator to levy Aeronautical Charges as per the provisions of SSA. It further provides that the operator is free to fix the charges for non-Aeronautical services subject to the applicable law. The passenger service fee is to be collected and disbursed in accordance with the SSA.

(b) **State Support Agreement ("SSA")** was executed between the Ministry of Civil Aviation ("MoCA") and DIAL on 26.04.2006 to record the additional support to be extended by the Government of India ("GoI") to DIAL in support of OMDA including:-

- **Clause 3.1.1** of the SSA empowered the Authority with the responsibility of certain aspects of regulation including regulation of aeronautical charges in accordance with the broad principles set out in Schedule 1. Schedule 1 clearly specifies and enumerates the principles of tariff fixation.
- **Clause 3.1.2** provides that the Aeronautical Charges shall be calculated as per Schedule 6. It further clarified that the Aeronautical Charges as set forth in Schedule 6 will not be negotiated post bid after the selection of the successful bidder and will not be altered by JVC (DIAL) under any circumstances.

3. **Schedule 6** of the SSA provides for determination of Aeronautical charges. An analysis of Schedule 6 would show that the authority is to set the aeronautical charges;

- (a) In accordance with the clause 3.1.1 read with schedule 1 appended to the SSA and
- (b) subject to the condition that, at least a permitted nominal increase of 10% of the Base Airport Charges will be available to the JVC for the purposes of calculating Aeronautical charges in any year after the commencement of the fourth year and for the remainder of the Terms.
- (c) In terms of the second part of Clause 2 of Schedule 6 "a permitted nominal increase of ten (10) percent on Base Airport Charges will be available to the JVC for the purposes of calculating Aeronautical Chargers in any year after the commencement of the fourth year.

4. A reading of the various clauses of the Schedule show that from the commencement of 4th year onwards, tariff will be set by the Authority/GOI as per principles set out in Schedule 1 subject to the condition that, at the least, the nominal increase of 10% permitted during the third year, as incentive, will, continue to be available to DIAL. It is relevant to note that the nominal increase of 10% has to be on the Base Airport charges as defined in Schedule 8 and that the said increase has been earlier allowed by the Government.

5. From reading of the SSA, it is clear that **there is no automatic 10% increase in Aeronautical charges particularly after the first two years and that too subject to the condition of mandatory projects as prescribed**. For the subsequent years the Base Airport Charges as fixed with a 10% increase will always be available through out the concession period, which effectively means if cross subsidization from non aero revenue makes the

aero charges lower than the base airport charges considered with a 10% increase, then the base airport charges as indicated in the SSA with a 10% increase will prevail. For an example that under cross subsidization 30% of Non-Aero revenue goes to subsidize the Aero charges and with the increase in the revenue base of Non-Aero the 30% cross subsidy amount will also naturally increase resulting in heavier subsidization of the Aero charges. Therefore, with the increasing cross subsidization (increasing base of Non-aero) the rationale of a fixed 10% year on year increase is not justifiable.

6. It is also relevant to note there is no justification/ reason given by DIAL to ask for the 10% increase and instead it has sought to misinterpret the provisions of the SSA to claim said increase. The members of the FIA support the reasons stated in the consultation paper and submit that there is no ground for increase of 10% as asked by DIAL. Members of FIA seek the indulgence of this Hon'ble Authority to permit them to make further submissions and assist this Hon'ble Tribunal in proper adjudication of the matters in issue.