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Express Industry Council of India

EICI/AERA/060

20 September, 2019

भारतीय विमानपत्तन आर्थिक विनिमायक प्राधिकरण
सफदरजंग एयरपोर्ट, नई दिल्ली-110003
प्राप्त
डायरी न० 14242
तारीख 26/09/19

To,

Ms. Geeta Sahu
Assistant General Manager (Finance)
Air Economic Regulatory Authority of India
AERA Building, Administrative Complex,
Safdarjung Airport,
New Delhi-110003

Sub:- Comments/Submissions received from stakeholders on Consultation Paper No. 04/2019-20 dated 14.08.2019 in the matter of determination of tariff for Courier Cargo Handling Operations in respect of M/s Express Industry Council of India (EICI), Mumbai International Airport Ltd. for the Second Control Period.

Ref:- 1) Consultation Paper 04/2019-20 dated 14.08.2019

2) Our letter dtd 19 August, 2019 in response to Consultation Paper No 04/2019-20 dated 14.08.2019

3) Public Notice No.08/2019-20 dated 16.09.2019 and subsequent email inviting our comments

061/HMU(F)
26.09.19

Dear Madam,

This is with reference to Public Notice No.08/2019-20 issued by your office on 16.09.2019 enclosing comments received from various stakeholders in response to Consultation Paper No. 04/2019-20 for determination of tariff for Courier Cargo Handling Operations in respect of M/s Express Industry Council of India (EICI), Mumbai.

Adviser(T)
on tour
Sh. Kaoon
26.09.19

Our response to the comments made by various stakeholders our response is as under:-

Federation of Indian Airlines

Background

1. The Federation of Indian Airlines in its comments has indicated that the order for the second control period issued on 20th November 2017 was issued on an ad hoc basis and that no stakeholder consultation had taken place. This is erroneous observation as the

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consultation paper itself clearly mentions in para 1.4.2 that even though the Order No. 11/2017-18 dated 14th August 2017 had been passed by AERA, based on a complaint by CAI seeking reversal of the Order, afresh stakeholder consultation was held in AERA on 21st September 2017. Thereafter AERA rescinded the Order No.11/2017-18 dated 14th August 2017 and issued a fresh ad hoc Order No. 26/2017-18 dated 30th November 2017 after the stakeholder consultation. Hence clearly the stake holder consultation was held and the current consultation paper was meant to issue a final order as the 14th August 2017 order had been rescinded and an ad hoc order had been passed pending a detailed audit of EICI. Hence it will be seen that apart from the normal process for approval of the MYTP proposals which otherwise should have been on a light touch approach, the EICI proposal was in fact subject to in depth detailed scrutiny by independent AREA appointed auditors based on the complaint lodged by CAI. We are not aware if AERA has ever conducted such in depth scrutiny for any MYTP proposal. Clearly the normal process has been derailed by over two years based on baseless allegations by CAI which were found to have no substance. It is a different matter that CAI has not stopped making allegations even after the audit found the allegations to be misplaced.

Hence in conclusion the entire stakeholder consultation process was followed and given the fact that it has taken two years and issuance of two consultation papers, an audit, a stake holder consultation, perhaps FAI has assumed that the current consultation paper is a stand alone exercise which is clearly not the case and a detailed stakeholder consultation has already taken place twice i.e. once by EICI and thereafter by AERA at its headquarters.

2. While FIA has stated that EICI has not conducted a review of costs, the same is factually incorrect as the consultation paper clearly mentions in para 1.5.6 that based on the detailed audit conducted the costs were found to be in order EICI was asked to account for certain expenditure which had been incurred at different stations under the correct head. The consultation paper in para 1.5.6 and 1.5.7 clearly records that EICI has taken the same into consideration while drafting the balance sheet for FY 2018-19 and the ARR has been calculated by AERA based on the corrected audited balance sheet for FY 2018-19.

3. With respect to reduction and turn around time and service levels it is submitted that EICI is committed to ensuring the best professional standards and reduction in turnaround time. In order to enhance the services EICI is required to make capital and revenue investments to ensure the best service levels. In order to make investments EICI requires surplus revenue and a minimum 10% pre tax return on investment. The authority has provided for a 5% pre tax rate of return which after tax falls to less than 3.5% return leaving little or no room for surplus to make investments for enhancing and improving service levels as demanded by FIA.

4. It is hence most respectfully submitted that based on the comments of FIA and the need for enhancement of infrastructure a minimum 10% post tax return on an investment should be allowed as has been the case till date. The ad hoc arrangement of return of 5% was done purely on the basis of complaint of CAI pending the audit and hence there is no ostensible reason why the ad hoc arrangement which was made pending the audit should be continued

post the audit unless the audit has recommended that the maximum return should be limited to 5% only.

5. As far as the turn around time is concerned for processing of shipments as the same is based on compliance with customs clearance procedure and security regulations, EICI does not have any direct role to play in the same. EICI, however, as a industry body has been working with various regulatory bodies to streamline the regulatory processes and to this end had also developed the EDI system for customs to ensure speedy and electronic processing of shipments.

6. FIA mentions that EICI could avail of the customs cost recovery waiver notified by customs. It may be noted that EICI has already received waiver of customs cost recovery charges at Delhi and Bangalore, however customs has denied the same to EICI at Mumbai on account of certain peculiar circumstances for which EICI is engaged with the CBIC on almost weekly basis.

   EICI has taken up the matter with CBIC and the Finance Ministry and is hopeful that the issue will be resolved and the waiver will be granted soon. EICI shall inform all stakeholders as soon as the waiver is granted.

   It may be noted that Customs Cost recovery charges are a separate charge which had not been added to the terminal processing charges and the annual revenue requirement as it is a pass through charge which EICI collects and hands over to Customs. While in the past as also in the current proposal EICI has asked for an approval of the tariff for Customs Cost Recovery charges, the Ministry of Finance and CBIC are of the view that the Customs Cost Recovery charges being in the nature of government dues are not aeronautical charges and hence are not subject to approval by AERA.

Courier Association of India

Background

7. It is important to understand the background of a stakeholder in order to appreciate its comments. At the outset, we wish to clarify that far from "representing the huge majority of stakeholders", as claimed in the CAI comments they only represent 10% of the users in terms of the total volume processed at the Mumbai Courier Terminal and only 5% of the Import volume processed over the past 1 year. The Courier Association of India is a rival body of couriers representing a different segment within the express industry as opposed to the regular established couriers. They were also the ones who had made certain baseless allegations because of which the tariff at Mumbai could not be revised and implemented in 2017. The delay has lead to huge cost overruns and as a result with the fall in volume now an even higher tariff is required to keep the operation viable, which would have not been the case if the tariff approved in August, 2017 had been implemented. This delay caused by a small minority has now impacted the entire industry adversely. It is also

relevant to note that M/s CAI has been involved in litigation against EICI and hence their comments may be viewed in perspective accordingly.

8. CAI has stated that they are disappointed to note the Authority's decision of giving a return of only 5% on the revenue of EICI. They have also stated that this is in contravention to the AERA guidelines. The AERA guidelines provide for a return of 16% and hence it is not clear if they are suggesting that the return should be 16% or otherwise. It is, however, pertinent to point out that while EICI is a not for profit company, it sis subject to taxes and has to pay taxes like any other company. It does however put it in a more disadvantageous position as it cannot taken any loans. Hence in case the suggestion is to provide a higher rate of return, as also suggested by other stakeholders to ensure investment in improvement of services, then we welcome the same

9. Their comments regarding EDI are unsubstantiated and incorrect. The authority has already conducted an audit regarding the same. Introduction of EDI has lead to faster processing of express shipments and has brought about more transparency in express operations. All stakeholders have welcome the transparency and speed of processing shipments that introduction of EDI has brought about and which was part of a public private partnership with the express industry. EICI itself does not want to continue maintaining the system as it requires a considerable cost and about 3 years back has taken up the matter with CBIC for takeover and is regularly following up with them. We shall inform all stakeholders as and when customs takes over the system. We also urge the Authority to write to CBIC requesting them to take over the system and waive the customs cost recovery charges at Mumbai.

10. CAI has also raised the customs cost recovery waiver and it may be noted that the same is a pass through and is paid to customs. As explained above we are already in discussion with the board for grant of customs cost recovery waiver at Mumbai and shall inform the stakeholders as and when the same is received.

11. CAI has also questioned the methodology of the Authority in calculating the tariff. We do not wish to comments on the same, however the inaccuracies observed by us have already been highlighted in our initial comments dated 19th August 2019.

12. CAI has also pointed out that the charges at other locations are lower when compared to Mumbai. It may be noted that the lease rentals and the royalty charges are also the highest in Mumbai and which are beyond the control of EICI. It may be noted that the charges vary based on the volumes processed in a facility. Unfortunately in Mumbai there has been a drastic fall in volumes on account of customs clamping down heavily on couriers who were not complying with the regulatory requirements leading to the volumes drastically falling to almost 20% of the original.

13. With respect to CAI observations regarding additional operators, as they claim to be the representatives of the majority of the stakeholders, they can themselves set up an express facility and EICI would welcome the same.

DHL comments

14. M/s DHL in its comments has highlighted that MIAL has been significantly increasing its rates charged to EICI which in turn is raising the costs for the users. It has also highlighted that there is no commensurate investment by MIAL in creating additional infrastructure while increasing rentals and demanding high royalties. These costs ultimately get transferred to the users and leads to high tariffs. We agree with the comments of DHL and request the Authority to take cognizance of the stakeholder comments and take steps to reduce the rentals, minimum guarantees and royalties which are the real cause of the high tariffs. EICI undertakes to immediately pass on the benefit of any reduction that the Authority can provide in terms of the charges raised by MIAL.

15. M/s DHL has also raised their genuine concerns regarding the precarious financial situation of EICI at Mumbai as the express terminal has been making losses of approx. 80 lakhs per month for the last one year on account of the delay in revision of the tariff and which has lead to a situation where EICI has had to put the users to notice that in case the tariff is not approved, EICI will be left with no option but to close down the express terminal at Mumbai by the 30th September 2019.

16. M/s DHL has also highlighted the discrepancy regarding customs cost recovery charges which have been taken as revenue in the ARR whereas they are past through charge. This has lead to an incorrect calculation of the tariff which makes the EICI Mumbai Express Terminal commercially unviable. EICI would like to avoid such a situation at all costs, however at the same time it cannot continue and unviable operation as it cannot even get a bank loan. We hence look to the Authority to ensure that cooperative not for profit ventures like EICI are promoted and not discriminated against and provided a 3.5% post tax return on investment which is not the norm in any industry.

    The Authority must strike a balance between ensuring low rate for users and ensuring that a cooperative venture is commercially sustainable. In case EICI is forced to shut down some private company with profit as its motive will come into place and demand 16% return which will only raise the tariff for users. It can be seen that certain rival organizations who find fault with EICI operations have never set up an express terminal as they are aware that it is an extremely difficult proposition given the drastic fluctuation in volume driven by extraneous and unpredictable circumstances where volumes can suddenly fall from 3500 tonnes a month to 700 tonnes a month in a matter of months.

17. M/s DHL has also raised the concern that while MIAL keeps raising the charges, no additional space is provided which leads to a situation where the services suffer as no additional space is provided, however the costs increase which are passed on to the users. We agree with the comments of DHL and request that the Authority take up the matter with MIAL and ensure that there is cap on the maximum increase that can be claimed in any year as also to study the rationalization of charges imposed on the Express Terminal so that the benefit of such measures can be passed on to the users by way of lower tariffs.

18. M/s DHL has made a strong plea to ensure that the Express Terminal at Mumbai is not forced to shut down as it will affect the entire Express Industry and will also affect the trade and commerce of western India which is routed through the Mumbai Express Terminal.

DTDC comments

19. M/s DTDC as a stakeholder has also raised its concern regarding the discrepancy in customs cost recovery charges which are a pass through being considered as revenues of EICI for calculation of tariff.

20. They have also highlighted that we have only been given a 5% return on investment which is pre tax and works out to a post tax margin of only 3.5%, which is commercially unviable given the wide fluctuation in volumes. A 5% fall in volume will make the operation unviable and given the time that AERA takes to grant approval for a revised tariff, the operation could become unviable in the absence of a reasonable return to provide a cushion for any such unpredictable events. We hence request the Authority to provide a minimum 10% post tax profit to ensure the continued commercial viability of the Mumbai Express Terminal.

21. M/s DTDC has also raised the issue of high tariffs charged by airport operators which ultimately affect the tariff of the Express Terminal users. They have rightly identified the root cause of the problem of high tariffs and hence till the Authority rationalizes and regulates the high tariff charged by the airport operators, the tariff at the Mumbai Terminal cannot be reduced for the users. We hence urge the Authority to take up the matter with the airport operator at Mumbai to ensure rationalization of the charges.

22. M/s DTDC has also highlighted their concern regarding the possibility of the EICI operations shutting down at Mumbai on account of commercial unviability due to non revision in tariffs. This is a genuine concern of most stakeholders as their operation will shut down if the Express Terminal is closed down.

    We are confident that the Authority will take a note of their comments and approve a commercially viable tariff for the Mumbai Express Terminal at the earliest. Hence we agree with the comments of M/s DTDC.

EICI comments

23. We reiterate our earlier observations vide our letter dtd 19 August, 2019. Briefly stated we had highlighted the following:
    Customs cost recovery charges a pass through taken as income

a. The revenue for 2018-19 has been shown as INR 71 crores which includes Customs Cost Recovery Charges amounting to INR 14.39 crores. Hence the actual revenue should have been INR 56.61 crores. This patent error needs to be rectified.

Return on Investment limited to an unreasonable pre-tax 5%

b. It is ironical that on the one hand the Authority is aware that EICI is a 'not for profit' industry body and all profits are ploughed back for the benefit of the development of the express industry; at the same time while the AERA guidelines provide for 16% Profit Before Tax, we have been meted out discriminatory treatment and been given only a 5% Profit Before Tax return on investment.

We wish to **highlight that being a not for profit organisation does not mean that we do not have to pay taxes and we are like any other company with the only difference that we do not have shareholders to whom we distribute profits and instead all surplus is to be ploughed back for development of the express industry including infrastructure. This in effect implies that we have to rely solely on our surplus and cannot take loans.**

Hence this makes a strong case for a higher return on investment than other companies, however ironically we have been given a rate of return on investment which is even lower than that for any profit making company. We have to run the operations on the same business principles and a fair rate of return as any other company. Hence there is no reason why a lower rate of return should be given to us.

As has been seen above, the stakeholders expect certain service levels and infrastructure to be maintained which required funds, however if EICI is treated unfairly

While most Government policies promote industry bodies, as they play a crucial role in development of industry, it is ironical that the Authority has decided that an industry body should be given a lower return on investment of only 5%. On the contrary as a not for profit body does not have the ability to take loans, raise finances it has to rely on its reserves to tide over unforeseen situations requiring capital. Keeping this in mind, as well as the fact that EICI has historically always kept the tariff low based on the volumes, the Authority ought to have provided a higher return on investment. We were hence shocked to see a confirmation of the adhoc rate of 5% which was to be reviewed based on the audit.

Clearly this will have the effect of rendering the EICI Express Terminal at Mumbai unviable and will be forced to shutdown. In the past the authority has granted us a 16% Profit Before Tax as has been given to similarly placed Express Terminal operators and to now adopt a discriminatory stand against EICI is not acceptable and is against the principles of justice and equity. With frequent fluctuations in volumes there will be no cushion to adjust rates, and as can be seen from past experience, AERA will not be able to approve an immediate increase in tariff. **Hence we most humbly request you to reconsider this change and approve a 16% Profit Before Tax and not 5% which was only meant to be an adhoc order and was meant to be reviewed after the audit.**

Unfair treatment of Service Providers vis a vis Airport Operators

Airport service Providers Royalty -30% while actual service providers cap of 5%

c. In this context we wish to highlight that while we appreciate the Authority wishes to reduce the tariff for users we whole heartedly support the Authority in this endeavour. We wish to submit that in order to do so, instead of limiting the return on investment of EICI to 5% it would be better to reduce the rates of royalties which are the key factor for the high tariffs. In this context we wish to highlight the Order No 1/2018-19 dtd. 5 April, 2018 on Capping of royalties and the relevant text is reproduced below which clearly reveals that the royalties and high lease rentals charged by Airport Operators are the main factor for high costs.

1.2 While examining the Multi Year Tariff Proposals (MYTPs) of various Independent Service Providers (ISPs), it has been observed that some of the airport operators are charging unreasonably high royalty/licence fee/revenue share from the ISPs. There is no regulation at present to deter charging of exorbitantly high royalty/licence fee/revenue share by the Airport Operator. The rate of royalty/licence fee/revenue share as a proportion of gross revenue charged for services do not seem to be commensurate with the cost or quality of service provided by the operator.

1.3 Royalty/licence fee/revenue share payable to the Airport Operator by ISPs are made a part of the total operating expenditure which in other words becomes "A Pass Through Cost". The entire amount of royalty/licence fee/revenue share payable to airport operator is taken as an operating expenditure by ISP and it is being allowed as "Pass Through" under the present mechanism, resulting in high tariff to be levied by the ISP.

1.4 The profitability of the ISP may also be low due to high rate of royalty/licence fee/revenue share payable by ISP to the Airport Operator and this limits the surplus generated and capability of the ISP to upgrade facilities and quality of service and if there is a monopoly situation there is no incentive to invest in expansion and modernisation of facilities. The ultimate user bears these additional charges and very often they are unaffordable thereby limiting the growth of the sector.

1.5 Mostly these charges are meant to acquire the right to do business in the airport. They do not have any relevance to costs incurred by airport operator and ISP and are therefore not consistent with the policies of ICAO relating to tariff determination.

Hence it should be ensured that the fair return of the ISPs should not be sacrificed at the altar of Airport Operators who get over 50% of the revenues, while the ISP is given a meagre 5% rate of return in which it is expected to invest in infrastructure and maintain high service levels of operations. It is hence prayed that the tariff may be decided on the basis of equity and a fair rate of return.

d. It is important to highlight that the Authority must see that in the current calculations of the MYTP at Mumbai, following is the outflow from the total revenue to the Airport Operator:

Revenue Sharing and Royalty Details paid to Airport Operator at Mumbai by EICI

Income	**Amount FY 2018-19**
Facilitation Fees (Export)	14,20,58,049
Facilitation Fees (Import)	25,97,02,961
X-Ray Charges	3,39,79,240
Detention Fees	10,40,05,089
User Access Fees	1,47,38,400
Total Income	**55,44,83,739**

Expenses paid to Airport Operator	**Amount FY 2018-19**
Revenue Sharing @ 30%	16,19,23,602
Royalty on Manpower @ 30%	1,72,40,620
Total	**17,91,64,222**
Rent	11,23,50,453
Total	**29,15,14,675**

Hence it will be seen that out of a total revenue from the Operations 30% is paid as royalty on revenues and in addition further royalty is paid on contractors engaged at the Terminal which leads to double royalty. The total hence works out to 32.3 % as royalty to the Airport operator on the overall revenues of EICI at Mumbai. This is in stark contrast to the Authority's proposal to cap the return on investment of EICI to 5% pre-tax and is contrary to all principles of equity and fairness. It may be noted that the entire Express Terminal at Mumbai has been built by EICI and the Airport Operator only provided land for the same. In addition to the above the Lease rentals for the space further amount to about Rs 11, 23,50,423/-. **Hence out of a total revenue of EICI of approximately Rs 56 crores about Rs 29 crores or approximately 51% of the revenue goes to the Airport operator for providing space and as royalty charges.** This should clearly highlight to the Authority as to what needs to be done in case the tariff is to be brought down as more than 51% goes to the Airport Operator without any investment and we do hope the Authority will take notice of the same and take appropriate steps to rectify this.

e. The Consultation Paper mentions certain findings of the Audit, to which we had provided clarifications to the Auditors. As we have not been provided a copy of the Audit Report we are presuming that our submissions and justifications were taken on record.

We would deeply obliged if the MYTP proposal for the Second control period for the EICI Express Terminal, Mumbai could kindly be issued at the earliest based on the merits mentioned above and keeping in mind the pressing circumstances given that the operations at the current rates have become unviable.

Kindly acknowledge receipt.

With high regards,

Yours sincerely,
For EXPRESS INDUSTRY COUNCIL OF INDIA

Nikhil Saini
Director Policy