1 June 2012

Shri Alok Shekhar
Director
Ministry of Civil Aviation
Rajiv Gandhi Bhavan
New Delhi 110 003
Email: aloks.moca@nic.in

Shri Oma Nand
Under Secretary
Ministry of Civil Aviation
Rajiv Gandhi Bhavan
New Delhi 110 003
Email: oma.nand@nic.in

Dear Shri Shekhar & Shri Nand,

DRAFT APPROACH PAPER ON ECONOMIC REGULATIONS OF NON-MAJOR AIRPORTS IN INDIA

IATA welcomes the opportunity to provide its inputs on the draft Approach Paper on economic regulations of non-major airports in India which was posted on the Ministry of Civil Aviation's (MOCA) website on 25 May 2012.

IATA believes that the issues addressed in this Approach Paper are indeed critical, as is reflected by the four-month timeframe taken by the Ministry since the stakeholder conference on 20 January 2012 to produce this draft. However, the amount of time (5 working days) provided for submission of comments to the paper is not commensurate with its importance. As many stakeholders are seeing this draft Approach Paper for the first time, IATA would urge that the Ministry extend the submission deadline to 30 June 2012 to provide interested parties adequate time to study the implications of this draft paper and for submitting more extensive inputs.

At this point, IATA would like to provide its preliminary inputs and hope to be able to augment these in the near future. IATA's inputs are as follows:

- Economic Regulation of Airports is an extensive and a widespread field and cannot be looked at piecemeal. The Approach Paper seems to only have a narrow focus

International Air Transport Association
111 Somerset Road,
#14-05, TripleOne Somerset
Singapore 238164
Tel: +65 64992262
Fax: +65 64151201

www.iata.org

the AERA Act would arise when these airports eventually come under the jurisdiction of the Act.

- It is surprising that the Ministry of Civil Aviation has chosen to interpret and wrongly judge the application of Single Till in UK as "a historical anomaly". The assertions that '*the single till treatment in the UK has a historical anomaly caused by the terms of the Bermuda II Air Agreement with the United States*' and that '*BAA was kept under single till for extraneous reasons*' are a clear distortion of the real facts. The single till approach was used in the UK simply because it was deemed to be the most effective approach for regulating a natural monopoly. It was a choice not imposed on the UK by extraneous factors.

  In light of this surprising interpretation, IATA made a specific reference of paragraph 5 and paragraph 6 on page 11 (International Experience) of the Ministry's paper to the UK Civil Aviation Authority (CAA). The response from the CAA's Regulatory Policy Group casts serious doubts on the paper's interpretation of the UK bilateral agreements. In its response of 1 June 2012, the CAA Regulatory Policy Group stated that:

  i. The Bermuda II Agreement no longer applies as it has been suspended by an Air Services Agreement between the EU and USA.

  ii. The CAA has consistently price regulated Heathrow, Gatwick and Stansted airports on a single till basis since it first set a price control on them in 1991, and

  iii. **Notwithstanding Bermuda II, the CAA has considered single till to be the best basis for price controls on each occasion it has set price controls.**

  The Competition Commission of UK had also outlined its current thinking on single/dual till – and the document is enclosed for your reference.

  In light of the above clarification received from the UK CAA, while IATA fails to understand why the Approach Paper has chosen to wrongly interpret UK's bilateral agreements, serious doubts are raised about the selective use of examples in the Approach Paper to make a case for Dual / Hybrid Till.

  The international experiences section of the Approach Paper must be reviewed in full – as also its impact on the Regulatory Till (Section 7 of the Approach Paper).

International Air Transport Association

111 Somerset Road,
#14-05, TripleOne Somerset
Singapore 238164
Tel: +65 64992262
Fax: +65 64151201

www.iata.org

price controls". The Ministry should not permit the same mistake from being repeated in the regulation of non-major airports and for airports going into privatization.

- Regulation by contract is acceptable only if the terms are not deliberately set up to circumvent the AERA Act. Any deliberate attempt to do so cannot be tolerated so as to preserve the sanctity of law.

- In reference to the statement that '*In the case of an existing airport having a regulatory framework specified in their concession agreements, like Delhi and Mumbai, the regulatory mechanism to be applied to the new airports in the same city should be able to provide a level playing field*', IATA does not think that a level playing field should be the right objective. The objective should be to create effective competition so as to incentivize the airports to be more cost effective. A second airport in Delhi regulated on single till compared to IGIA that is regulated on hybrid till does not make it worse off. As a matter of fact, this airport, because of its ability to offer lower airport charges, would have the higher prospect of performing better than IGIA in growing traffic. The outcome would be in the interests of passengers and the aviation industry.

- The point made that '*unhealthy competition between two airports in a dual airport system can destroy both*' is a fallacy. Competition must be allowed to flourish to drive efficiency. Efficient airports will promote healthy traffic growth which will in turn sustain the airports. Also, the government should not intervene unnecessarily to determine traffic distribution between the two airports.

- The existence of two airports does not necessarily constitute "*perfect competition*" as there are a number of factors that could provide airports with a dominant position (e.g. risk of collusion, difficulty for airlines to transfer operations between airports, connectivity at each airport, etc.). Therefore a "light handed" regulatory approach should not be automatically applied without careful assessment of existing conditions.

- AERA must be allowed to regulate major airports independently as provided under the AERA Act. The Ministry of Civil Aviation should not be able to issue directions to AERA, on case to case basis, to continue with the economic regulatory philosophy through which the airport was being regulated by the Ministry. This would undermine the ability of AERA to function independently and effectively. The use of "*case to case basis*" (as mentioned in the approach paper) will bring in arbitrariness to decision making. While the approach paper has a

International Air Transport Association

111 Somerset Road,
#14-05, TripleOne Somerset
Singapore 238164
Tel: +65 64992262
Fax: +65 64151201

www.iata.org