Draft National Civil Aviation Policy 2015 (India)

Feedback provided by IATA

30 November 2015
The development of a new Civil Aviation Policy is an opportunity to help India realize its economic potential. With the right policy initiatives, aviation can be the wheel that spins out economic opportunities by opening new markets, driving productivity and improving India’s competitiveness. Aviation holds real promise for India’s economic development. Not only through creating opportunities within the sector itself but crucially in terms of supporting the broader economy through creating new markets for farmers and fishermen, enabling companies to move up the global value chain through high-tech manufacturing and leveraging India’s rich cultural heritage to become a leading tourism destination.

Developing policy for the air transport sector is complex and requires a considered view for each segment of the value chain. It’s not a one size fits all approach. One key consideration in designing policy intervention is to assess the level of competition that exists in the specific segment of the value chain. Where competitive forces are strong, such as the airline sector, policy intervention should generally be minimized or designed in way that limits the distortion in the product and price outcomes delivered by the market. Where competitive forces are weak, such as in the airport sector, regulatory intervention is needed to contain monopolistic powers and deliver fair and efficient outcomes. Despite the need for different approaches a common framework can be used to guide policy development.

In the absence of a common framework, special interests, ill-informed populism and political wrangling can tarnish policy making, leading to poor judgement and decisions that run counter to public interest. The new Civil Aviation Policy has an opportunity to equip the sector with a common framework that serves as the guiding compass for policy development in the sector. It can do this through embedding aviation smart regulation principles into the DNA of policy making in Indian aviation.

The framework should aim to deliver clearly defined, measurable policy objectives in the least burdensome way. It can be achieved through a transparent, objective and consultative process. Smart regulation policy design and process principles developed by IATA can serve as a useful reference or even the basis for the policy design framework: https://www.iata.org/policy/pages/smarteregulation.aspx

Applying the aviation smart regulation principles in policy development can ensure strengthened air connectivity that creates benefits to users and stimulates economy wide productivity.
4. Safety

- Clarification is sought on the proposed CAA bill and the consequent establishment of the Civil Aviation Authority of India, which was to function as the country’s safety oversight institution for the civil aviation sector. The setup of the CAA with financial and administrative autonomy, was an important recommendation arising from the ICAO report to strengthen aviation safety in India.

- The role of Indian’s Aviation Safety Regulator is critical – and needs to be assessed with a view on the future aviation demand in the country. New aircraft will introduce next generation technologies; they will require trained manpower at numbers far higher than exist today; and the new and existing aerodromes will see a great increase in air traffic movements, passenger numbers and freight and cargo movement.

- IATA recommends that the government proceed with the setup of the independent CAA, which will:
  - guarantee the statutory independence of the new civil aviation authority; and
  - create a transparent governance framework under which the new independent authority will discharge its regulatory functions.

- The IOSA (IATA Operational Safety Audit) program is an internationally recognized and accepted evaluation system designed to assess the operational management and control systems of an airline. IATA member airlines are already required to strictly adhere to the mandatory IOSA standards. All IATA members are IOSA registered and must remain registered to maintain IATA membership. Most of the scheduled carriers in India are already on the IOSA registry and the DGCA may be encouraged to mandate IOSA as an additional means to promote the safety culture in aviation.

- Safety Trend Evaluation and analysis: India should consider having a centralized mechanism for conducting Safety Trend Evaluation and Analysis across Airlines, Airports, Air Traffic Management and ground handling companies.

- Adopt a collaborative approach on safety data-sharing within governments, airlines, airports, ANSPs, engine and airframe manufacturers, alongwith international agencies. This approach will assist in establishing a proactive approach to mitigate safety risks. E.g. Global Safety Information Exchange (GSIC) program signed between US DOT, EU, ICAO & IATA in 2010 to enhance risk reduction activities in aviation safety.
5. Regional Connectivity

- The basic intent of the draft Civil Aviation Policy in supporting growth of Regional Connectivity in India, is well appreciated.
- However the approach seems to be extremely prescriptive – one which may result in a distortion in the efficient functioning of the market for air services; contribute to building further sub-optimal schemes for air service provision which can realistically never be dismantled; and which may forego demand/supply market mechanics to overinvest in infrastructure which may not be economically sustainable.
- The Regional Connectivity Scheme (RCS) proposal adds to the regulatory burden on the airlines and builds further to the lexicon of existing categories of air routes in the domestic Indian market that airlines need to fly. It adds to the existing Category I, Category II, Category IIA, Category III routes under the Route Dispersal Guidelines.
- RCF levy of 2% on Air travel:
  - The levy of 2% on all domestic and international air tickets would add to the cost of air travel and reduce the economic benefits associated with aviation. With respect to the levy on international tickets, it is important to note that such a policy would contradict the Policies on Taxation in the Field of International Air Transport of the International Civil Aviation Organization (ICAO) and contained in ICAO Document 86321. Additionally, such a levy on international air transport would contradict Article 15 of the Chicago Convention, which states that “No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon”. India is a contracting state of ICAO, a UN specialized agency, and should actively seek to adhere to its obligations with respect to the policies set out in Document 8632 and the Chicago Convention to which India is a signatory.
  - Given the high price elasticity of demand for air travel in India, the levy on air travel would have a negative impact on the growth rate of air travel as it would add to the cost of travel to passengers. As such, IATA strongly recommends that the proposed additional 2% levy be removed from the draft National Civil Aviation Policy document.
  - Any levy or charge in relation to the provision of facilities and/or services for civil aviation must be directly related to the cost of providing such services to passengers. Such a levy should not be applied for general revenue purposes or for paying for costs towards CISF etc. for Security/Immigration/Customs purposes. A levy applied to the aviation sector that serves to simply raise national or local government revenues to fund unrelated activities (e.g., health and sanitation, education, etc.) and which are not applied to civil aviation in their entirety or on a cost-specific basis, is effectively a form of taxation and should be avoided. Consequently, it is important that in the event a charge is deemed necessary to support the development of aviation related services and infrastructure, that such a charge: 1) be based directly on the costs associated with these services; 2) be subject to transparent and independent audit procedures to ensure that the revenues collected from the charge are appropriately accounted for and used to fund only clearly stated goals and initiatives; and 3) that such

1 Available at: http://www.icao.int/publications/Documents/8632_3ed_en.pdf
charges be limited in duration and withdrawn once the stated objectives associated with the charge have been achieved.

- The proposal for a levy of 2% is also unfair to the scheduled domestic and international airlines and their passengers. It seeks to provide these public funds:
  - generated through an (as-yet) unframed set of guidelines;
  - to an unknown set of players;
  - whose business model may be contingent on concessions theoretically on-offer by states and central Ministries;
  - who are being drawn into a highly capital intensive sector through lowering the paid-up capital requirements;
  - and whose staying capacity in the face of rising input costs (like ATF), but a fixed & pre-determined target price, has not been tested.

- It is strongly recommended that the rules, processes and definite time-period governing such a levy are discussed, deliberated and defined properly before the introduction of the levy. The levy should not be introduced from 1 Jan 2016, before the structures governing the RCF and SCAs have been properly outlined.

- Further, it must be ensured that the levy is not an uncapped amount (through the ad valorem nature of the levy, as currently proposed). The levy should be capped at a justifiable level based on the costs directly associated with its objectives and not subject to unreasonable and unsubstantiated regular increases.

• Building of no-frills airports
  - Revival and modernization of the existing airports & airstrips is a welcome initiative, one which IATA supports fully.
  - However, the easy availability of RCF funding has the pitfall of misdirecting investments and creating ‘white elephants’. There have been instances over the past decade, of AAI or the states in India identifying locations to build new airports and providing air services to trigger traffic growth, which have not seen any air services after the opening of that airport. This points to the shortfalls in using administrative and political decision making in catering to market needs.

• Target price of Rs 2500 per hour:
  - There is no scientific basis on which the target price of Rs. 2500 per passenger per hour of air travel, has been arrived at. Government intervention in arriving at a price in an industry which has been able to competitively price its services in the marketplace, is not an efficient strategy – and has the potential of distorting the existing pricing structures as well.
  - As things stand today, consumers in India benefit from the ability to purchase airline tickets which are at times, priced much lower than this government prescribed target price.
  - There is a question mark on the efficiency of the scheme and the rules/infrastructure/resources which will be required for its implementation.
  - If scheduled commuter airlines (SCA) can benefit from MoCA subsidies on these routes through the Viability Gap Funding route, the industry will not have any incentive in maintaining cost efficiencies. Can the airlines avail the subsidy by just flying empty seats as well?
- If the pricing of rail travel in India is a yardstick which was used at arriving at this target price-level, then it should be known that rail travel pricing itself has not been derived through / or exposed to any level of market dynamics.
- The below note prepared by IATA Economics points to the negative impact of Price Controls. It also points to the significant consumer benefit achieved through lower average fares, which has been generated by India’s scheduled airlines over the past decade.

**IMPACTS OF PRICE CONTROLS**

**IATA ECONOMICS**

Determining price through the dynamic interaction of supply and demand is the basic premise of economics. Consumer preferences and needs for a product determine how much of it they will buy at any given price. In addition, consumers will purchase more of a product or service as its price declines, all else being constant. In turn, firms decide how much they are willing to supply at different prices. In general, if consumers are willing to pay higher prices for a product, then firms will try to produce more of it. The dynamic interaction between consumers and firms leads to an equilibrium market price -- where quantity demanded by consumers is equal to the supply produced by sellers. This naturally occurs in markets that are competitive, and produces the most efficient allocation of resources. The airline industry is generally highly competitive, so allowing for free market operations produces the optimal outcome.

In markets that are operating competitively, price controls distort the interaction between consumers and firms and lead to a misallocation of resources. When government adopts a price control, it defines the market price of a product and forces transactions to take place at that price instead of the equilibrium price set through the interaction between supply and demand. Price ceilings, which prevent prices from exceeding a certain maximum, cause shortages. The supply of airline seats, for example, will decrease, but the quantity demanded of air travel will increase. The result will be excess demand and not enough capacity. Although some travelers will be lucky enough to fly, others will miss out. So some travelers and airlines who would be willing to transact at the market equilibrium price do not do so under a price control, and that is seen as a loss to society, or a deadweight loss in economics terms.

Another important consideration to the above example is that imposing a price ceiling will make air travel less expensive for some customers who would otherwise be willing to pay more than the level of the ceiling. This can be a benefit to those costumers from the price perspective, but the price control implies that airlines are then foregoing revenues from these customers. In order to try and recover some of the lost revenue, they would likely increase the price of the lowest priced fare, potentially up to the level of the ceiling. This then would disadvantage those travelers who are highly price sensitive, as the lowest air fares might be higher than they are willing to pay. Finally, even for the customers who are paying less than they would ordinarily be willing to as a result of the price control, the product being offered may no longer feature the same characteristics due to the price reduction (e.g. just the basic seat product may be offered, without any otherwise included additions to the service).
Not only is the government intervention imposing a price outside of the market equilibrium and causing a loss in wealth to the society, it is also inhibiting the dynamic nature of market forces that lead to an equilibrium price. In a free market, supply and demand shift constantly in response to various driving factors, best reflecting the most current market conditions. But the government price can only change, in most cases, after a lengthy process. As a result, the government price will most likely either be too high or too low, and not an equilibrium price level.

In the airline industry, allowing market conditions to determine price is critical for managing financial performance and supporting airline business continuity. Sustaining airline operations enables leisure and business travel, and provides the connectivity that adds to productivity and economic growth in the long run.

Given the asset intensive nature of the airline business, the objective of most carriers is to grow and be profitable. They therefore focus on staying price competitive. When pricing happens through market forces it reflects the level of passenger demand which is strongly influenced by traveler needs and seasonality. The ability of airlines to offer differential pricing allows airlines to meet the needs of different customer segments as well as the demands of different seasons and holidays. This also enables airlines to manage revenue flows and to hopefully achieve profitability. During low season, airline prices do not provide a sufficient return for the carrier to be profitable. Airlines make up for this during periods of high demand when there is greater willingness to pay. If airlines offered the same fare throughout the year, they would have large number of empty seats during the off-peak seasons and no seats left to sell during high season as demand would be much greater than capacity.

Airline pricing is one tool airlines use to match capacity and demand and helps the airlines earn the revenue to meet their high fixed costs. If air fares are regulated, airlines will lose some of their ability to manage financial performance as well as to meet traveler needs.

The discussion above is applicable to any case where the regulation of prices is under consideration, within a competitive market setting. For the Indian domestic air travel market, the same principles apply. In this case, interestingly, a look at the evolution of air fares in India shows that there has been a notable decline over the past decade. This can be seen in the chart below. The red line represents an average, return domestic air fare in India, after adjustment for inflation. Given that this is the average fare, there would be domestic fares that are below this level, but the average is used to assess the evolution of fares in India. What this series shows is that the current air fare is 66% lower than it was in 2005. Moreover, the data shows that the trend in air fares has been relatively stable since 2013, and there have been no significant increases, after adjusting for seasonal factors.
India - Domestic Airfares
(seasonally adjusted, average return trip, Indian Rupee
Source: PaxIS, FRED, Datastream

Real Average Airfare (India CPI adjusted, base 2014)
6. 5/20 Rule,
7. Bilateral Traffic Rights,
10. Route Dispersal Guidelines (RDG),
13. Scheduled Commuter Airlines (SCA)

• Even though there is a clear linkage between the chapters related to 5/20 Rule, Bilateral Traffic Rights, Route Dispersal Guidelines, Regional Connectivity, and Scheduled Commuter Airlines, these are being addressed separately without a unifying thread or stated objective.

• On 5/20, IATA maintains its stated position that the government of India should do what it believes is in its long term best interests – and in the best interests of aviation growth in India.

• IATA maintains that the concept of DFCs (domestic flying credits) which is intended as one of 3 options that is being explored by the government to replace 5/20, is extremely burdensome and complicated. The DFCs will end up adding regulatory costs to an already over-regulated airline industry in India.

• RDGs are an example of requirements imposed on its carriers that are somewhat unique to India.
  - If the same policy objective to extend air connectivity to places that are unserved / under-served will be now achieved by the newly proposed Regional Connectivity Scheme (RCS) and Scheduled Commuter Airlines (SCA), then why is the RDG criteria being made more stringent by ‘adding more routes’?
  - Adding routes to the Category I as outlined in 10 (a) will lead to additional burden on Category II, IIA and III routes for the Indian scheduled carriers. Additional ASKMs will need to be deployed on other non-profitable routes and in a way punishing India’s scheduled airlines for their track-record in growing India’s air connectivity to a level where ‘capacity actually deployed on Cat II and III is in excess of the RDG threshold’.

• IATA welcomes the intent of liberalizing India’s bilateral traffic regime for and entering into ‘Open sky’ agreements and the intent to examine the increase of FDI in airlines. However, in the context of bilateral traffic regimes, it is important to note the principle of reciprocity in relation to the taxation of profits derived from international air transport, whereby such profits are taxable only in the jurisdiction of effective management of the airline. This principle is well established by means of Article 8 of the OECD and UN Model Taxation Conventions, Article 14 (Taxation) of the ICAO Template Air Services Agreement, as well as in the provisions of various Double Tax Treaties entered into between India and foreign territories. The vast majority of countries around the world, and particularly those with highly developed and efficient civil aviation markets, adhere and apply these principles with respect to the taxation of profits from international traffic. As such, IATA reiterates the importance of these agreements and treaties from a fair and efficient taxation standpoint and requests adherence to these agreements in order to ensure that the National Civil Aviation Policy’s mission to “provide...affordable and sustainable air travel” and to further develop the Indian civil aviation market is achieved.
• On the subject of FDI, it is recommended that the Ministry of Civil Aviation also pursue the modernization of India’s Air Service Agreements (ASAs) to ensure that the ASAs reflect waiver of ownership restrictions. In the absence of this, countries who do not waive ownership restrictions in their ASA, could refuse Indian carriers that are majority foreign owned. The 38th ICAO Assembly Resolutions “Urges Member States to continue to liberalize air carrier ownership and control, according to needs and circumstances, through various existing measures such as waivers of ownership and control restrictions in bilateral air services agreements.”

• The proposal to auction traffic rights among carriers raises very serious concerns; and the same are addressed in the below input prepared by IATA Economics:

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**AUCTIONING OF TRAFFIC RIGHTS**
**IATA ECONOMICS**

As far as IATA is aware, there is no precedent for States auctioning traffic rights among carriers. The proposal potentially raises important questions of compatibility with ICAO policies and guidance on the subject of air service agreements, with negative consequences for the industry and consumers.

**A fair and equal approach?** Appendix A Section 1 of Resolutions from the 38th ICAO Assembly states “the basic principles of sovereignty, fair and equal opportunity, non-discrimination, interdependence, harmonization and cooperation set out in the Convention have served international air transport well and continue to provide the basis for its future development.” In addition, the vision for liberalization adopted by ICAO in July 2015 states “We will be guided by the need to ensure respect for the highest levels of safety and security and the principle of fair and equal opportunity for all States and their stakeholders.” A policy decision by the Indian government to auction traffic rights for certain markets – namely those under 5,000 km distance from the capital - but not for others – raises questions about whether India is pursuing a fair and equal, non-discriminatory approach. Such auctioning also could create unequal treatment between incumbent carriers and new entrant carriers and between domestic and foreign airlines, as explained in more detail below.

**The potential for market distortions.** In addition, Appendix A Section 2 of Resolutions from the 38th ICAO Assembly states “certain economic, financial and operational constraints unilaterally introduced at the national level affect the stability of, and tend to create unfair discriminatory trading practices in, international air transport and might be incompatible with the basic principles of the Convention and the orderly and harmonious development of international air transport.” As auctioning would only apply to additional frequencies to be operated by foreign carriers, the proposal would create a potentially important distortion between:

a) Incumbents and entrants - with entrants (or existing operators who seek to increase frequencies) paying for rights that incumbents acquired free of charge;

b) Foreign entrant carriers and all Indian carriers – again, for the same reason.
Higher fares for consumers. Carriers that acquired additional frequencies through an auction process would therefore be at a disadvantage relative to incumbents and foreign carriers. Ultimately, the cost of this distortion would be borne by consumers through a higher cost of flying. This would increase the cost of flying to and from India, harming Indian consumers and making it more complex for Indian firms to do business abroad. IATA is concerned that the proposal would ultimately undermine the Indian government’s policy objectives of expanding connectivity, regional and otherwise.

Removing market flexibility. The proposal states that traffic rights would be auctioned for a 3-year period, presumably on the basis that the bilateral agreement would not be renegotiated during this period. If the auction process allocated all available rights, this would mean that the market would be constrained for the remainder of the 3-year period, with neither Indian nor foreign carriers able to add capacity. Artificially constraining growth in this way would limit India’s air connectivity, running counter to the objectives of the aviation policy. Once again, the costs of this constraint would be borne by Indian consumers and businesses.

Implementation concerns. Finally, it is unclear how auctions would be carried out in practice. The policy does not provide any information about the rules and processes that would be put in place to ensure that auctions are fair and transparent. How would the government accommodate new entrants or avoid monopolies, for example?

For the reasons outlined above, we respectfully urge the Indian government to reconsider its decision to auction traffic rights, and would welcome a dialogue with the Ministry of Civil Aviation to enhance regional connectivity via other policy instruments.
8. Code Share Agreements

- The reinstatement of the freedom for airlines to enter into code-share agreements (CSA) without pre-approvals from MoCA, is a welcome proposal. It is recommended that the same freedom be also accorded to airlines to enter or exit from airline alliances.

- Moreover, adherence to standard taxation principles with respect to profits from international air traffic should also be respected under CSAs and not just where a foreign carrier operates as an administering airline. To the extent a foreign carrier enters into CSA with an administering airline with its place of effective management in India and in relation to international journeys that depart from/arrive in India, the associated profits derived by both the marketing airline and administering airline for such journeys are derived solely from international air traffic and should be taxed in the home jurisdiction of each respective airline according to accepted taxation principles. As previously noted, these principles of taxation are applied by those countries around the world with the most developed and advanced civil aviation markets. Adherence to such principles in India would only further the MoCA’s goal to enhance regional connectivity and connectivity to remote parts of the country. Non-adherence to such taxation principles as detailed by the OECD, UN, and ICAO and contained within the provisions of applicable Double Tax Treaties risks limiting the scale and scope of CSAs entered into by foreign airlines with Indian carriers, with negative economic consequences for the development of the civil aviation market.
9. Maintenance, Repair and Overhaul (MRO)

IATA welcomes the proposal to zero-rate MRO services from Service Tax (ST), exempting maintenance tools and tool-kits from Customs Duty, and the recognition that MRO services should be zero-rated under the forthcoming GST regime. Such policies, as well as the proposal to simplify the clearance of parts by allowing self-attestation by MROs, will have a positive impact in terms of the attractiveness of India as a MRO hub in the region. They will also ensure that the related costs are not passed on to passengers and thus avoiding an unnecessary increase in the cost of air travel and the resulting detrimental impact on the Indian economy.

IATA would further submit that in-line with standard VAT/GST principles, all exports (including air travel services) should be zero-rated under the forthcoming GST regime. This is explicitly noted in the OECD’s International VAT/GST Guidelines (April 2014)\(^2\), which states the following:

“The application of the destination principle in VAT achieves neutrality in international trade. Under the destination principle, exports are not subject to tax with refund of input taxes (that is, “free of VAT” or “zero-rated”).”

Consequently, the majority of VAT/GST jurisdictions around the world adhere to this principle and zero-rate international air transport of passengers and cargo, as well as related services.

14. Airports developed by State government, private sector or in PPP mode

There are a whole host of concerns that emanate from the provisions listed in the draft Civil Aviation Policy.

1. The Independence & the Relevance of the Airport Economic Regulator (AERA) seems to have been diluted.

- Economic Regulation of Airports is an extensive field and cannot be looked at piecemeal. The Draft Policy maintains a narrow focus on ‘Till’ and mandates ‘hybrid till’ as basis for tariff alone, while being silent on other critical aspects of Regulation like the rate of return, regulatory asset base, separation of airport assets and costs etc. Enshrining ‘Hybrid Till’ in the Civil Aviation Policy even though the Ministry of Finance in 2014 recommended to MOCA & AERA, the adoption of single-till approach for tariff setting for airports in India; & AERA’s own extensive study with similar views, will make air travel more expensive for the Indian passenger. The AERA Act passed by the Union Parliament empowers the independent regulator to regulate aeronautical tariffs for major airports in India. In its capacity, AERA set in process a very comprehensive and thorough study of the philosophy for economic regulation of Indian airports which involved extensive consultation with all industry stakeholders, including consumers, airports and airlines. This resulted in an appropriate philosophy for economic regulation in the context of India which guarantees regulated airports a fair rate of return on their investment, while also safeguarding consumer interest.

- The NCAP should not hinder AERA from fulfilling its duties (i.e. setting the framework for calculating charges, determining an efficient level of charges, the till to be used, etc.).

- AERA has opined in great depth on the technical matter of single till versus dual/hybrid till and arrived at the conclusion that single till is the most appropriate approach in the Indian context.

- Investors are already guaranteed a fair rate of return under the current regulatory framework. It is unclear what rationale would support a move away from the single till approach. The likely outcome of doing so would be excessive returns for the airport and this would be neither in the public interest nor in the interest of the consumers.

- The Civil Aviation Policy should record the position arrived at by the Independent Regulator as the consistent guiding regulatory philosophy for Indian airports, both brownfield and greenfield ones. If this is not done, then clause 14 (e) of the draft Civil Aviation Policy will bring it in conflict with the rules for tariff determination outlined by AERA.

- There is evidence from the Indian context itself which now robustly demonstrates how ‘Single Till’ is more beneficial to the consumer / passenger interest. In the recent case of Hyderabad airport, AERA in 2014 determined tariff on the basis of single till and ruled that the UDF charge be made ‘0’, which still allowed the airport operator to achieve its targeted Annual Revenue Requirement (ARR). This position was robustly defended on behalf of MOCA/AERA by the Additional Solicitor General of India in the High Court where the private airport operator had filed a Writ petition. In 2015 however, MoCA and AERA seem to have chosen not to defend the
relevant AERA Order in this regard; and a ‘policy directive’ issued by MOCA on 10 June 2015 instructed that hybrid till be used for tariff determination for HYD – resulting in the UDF charges prevalent before the said Order to be reinstated. The reinstated UDF (an added burden of Rs 1938 per international departing passengers & Rs. 491 per domestic passengers) seems to have no correlation to what is the targeted Annual Revenue Requirement for the airport, with no commensurate decrease in airport charges. The Hyderabad Airport episode thus convincingly establishes that Single Till is in the best interest of the Indian passenger; and any movement away from the Single Till principle outlined by AERA, only adds to charges that the passenger has to bear.

- Various proponents of Dual/Hybrid till in India have argued that charges at London Heathrow are among the highest in the world and since the airport is regulated on Single Till, it then follows that Single Till does not bring about lower charges. This is a flawed argument which conveniently ignores the fact that airport charges at London Heathrow would have been even higher if Dual/Hybrid Till had been applied.

2. The briefing below sets out the rationale on the need for regulatory intervention in the airport sector and explains why the single till approach delivers better outcomes from a consumer and public interest perspective.

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**ECONOMIC REGULATION OF AIRPORTS IS NEEDED TO PREVENT AIRPORTS FROM EXPLOITING THEIR MARKET POWER**

Many airports have monopolistic powers that prohibits effective competition. They behave and price independently of other airports and may not adequately cater to the needs of their customers. Under such circumstances the market will not deliver competitive outcomes. Airports would capture excess returns or not be driven to improve efficiency. Regulation can be used to mimic competition to ensure fair and efficient outcomes.

Several characteristics of airports explain why they have market power:

- **Locational preference:** Most trip choices are fixed, especially for passengers travelling on business or those visiting friends and relatives. Even within the same city, evidence points to a strong preference of passengers to travel from or to a local airport avoiding long surface transport journeys.
- **Economies of scale:** Economies of large airports are different from those of small ones. At the local level it is often too costly or economically unviable to have duplicate airport and supporting infrastructure – making new entry not viable.
- **Market dynamics:** Travelers and shippers may not in practice have realistic alternatives to using a particular airport. For airlines it’s often too costly to switch airports, even within the same catchment area, as airlines have high unrecoverable costs (such as on-site investments, relocation and marketing costs).
Single till has clear advantages

One of the key decisions a regulator faces is whether to regulate on the basis of a single till (as one business) or hybrid/dual till (split the airport into different businesses). It is IATA’s view that regulation of airports on a single till basis (as one business) provides the most fair and efficient outcomes for consumers, investors and the wider economy.

IATA supports implementation of single till for the following reasons:

- **Interdependency:** There is a strong symbiotic relationship between airlines and airports as each needs the services provided by the other. Economic activities at airports are generated by the presence of airlines. It is reasonable to assume that in the absence of aeronautical services there would be no market for non-aeronautical services such as retail concessions and car parking.

- **Simplicity:** The single till has long been recognized as a simple system to administer, as there are no complex or contentious cost allocation issues between aeronautical and non-aeronautical activities to deal with. A hybrid/dual till system will need a lot of oversight by a regulator to ensure that aeronautical activities are not unjustly burdened with costs that are not attributable to the services provided and to ensure that the costs of common use space and resources are allocated reasonably. Under a hybrid/dual till approach there is greater scope for the airport to engage in regulatory gaming by allocating higher costs and risks to the aeronautical till.

- **Avoids distortions in investment incentives:** Evidence suggests no underinvestment on aeronautical activities under single till. In contrast, under a hybrid/dual till approach over-investment in non-aeronautical activities may be incentivized. In pursuit of excess returns airports may over-invest in non-aeronautical activities or engage in undue risk taking.

- **Ensures a fair return:** The single till approaches ensures the airport operators earn a fair rate of return. The hybrid/dual till approach could provide airports a return that is higher than what an investor would obtain in a competitive market as a consequence of the airport capturing (through the non-aeronautical till) the locational benefits created at the airport at the expense of the aeronautical activities.

- **Improves utilization of aeronautical resources:** Where single till regulation leads to lower charges at an airport with excess capacity it will ensure better utilization of aeronautical infrastructure.

IATA views on the advantages of the single till approach are shared by AERA and the UK Competition Commission, which at length analyzed the merits of the different approaches. In this context it is also useful to note the UK Competition Commission’s findings, which states “Against those, at most, limited benefits, we see significant disadvantages from the dual-till approach. We believe it is difficult sensibly to separate commercial and aeronautical activities. BAA’s rental and other commercial revenues at the three London airports would not be generated without aeronautical facilities-commercial and aeronautical facilities are better, therefore, in our view, and more realistically regarded as one business. Since the successful development of commercial revenues requires airlines to attract passengers to the airport, the benefits of commercial activities should also in our view be shared with airlines and airline users.”
3. **IATA supports the need for close monitoring on capital expenditure and airport project costs.**

   - Capital Investment: Capital investments by airports or ANSPs have a significant impact on users and costs to passengers. Without effective open communication between all parties, there is a real danger that individual strategies will result in unnecessary and expensive investments, resulting in over-capacity issues and unnecessary cost increases for airlines and passengers. It is important that airlines are consulted early in order to share the same vision with the airport/ANSP regarding investment planning. The Civil Aviation Policy should institutionalize such a consultative forum.

4. **The policy does not seek to moderate or control the Non-regulated charges like space-rentals & charges passed-through to the airlines (like royalties on flight catering, fuel throughput fee etc). These are a source of significant increases levied by the monopoly infrastructure providers and add to the cost of air travel.**
15. Airport Authority of India (AAI)

- Compensation: It is unclear as to why AAI needs to be compensated for a Greenfield airport within a 150 km radius. The Ministry has also deliberated over the past few years on relaxing this criteria of no airports within 150 km, which has been laid out in airport concession agreements.

Quality of Service
- The civil aviation policy seems to advocate qualitative measurement of airport performance and service delivery. At 15 (d), IATA would recommend quantitative, rather than qualitative measurement wherever possible so that airport performance can be objectively measured. This would ensure a clear cost-relatedness between service and cost that meets airport user’s needs.

IATA recommends that the Civil Aviation Policy should carry a mention of establishment of a framework for quantitative measurement of airport performance for a number of areas. This will encourage consistently applied best-practice standards in a culture of continuous improvement, thereby benefiting passengers. This should in particular include:
  - Queuing
  - Asset Availability
  - Passenger Experience

Moreover, the type of indicators and their minimum levels should be defined in agreement with airlines with an independent regulator making a final decision.
16. Air Navigation Services (ANS)

- GAGAN / SBAS (Satellite Based Augmentation System): The Civil Aviation Policy proposes mandating GAGAN (SBAS) on all Indian registered aircraft effective Apr 2017. This proposal provides no tangible operational benefits to the scheduled carriers’ aircraft since the aircraft operated by the scheduled carriers are already equipped with Aircraft Based Augmentation System (ABAS). The proposal will add to cost on an already over-burdened airline industry.

- The policy also states that it will explore incentives to airlines through concession in ANS charges for getting their existing aircraft equipped with GAGAN receivers. Such selective concessions in ANS charges for the GAGAN enabled aircraft would be discriminatory and not in line with established ICAO principles. As in the case of Satellite based augmentation, ABAS certified aircraft also do not need any ground based Navigational Aid for meeting the required navigation performance.

- The Civil Aviation policy should also address the lack of progress in implementation of the ICAO Assembly resolution 37-11 which calls for APV approaches (Approach procedure with Vertical guidance) to be implemented at all instrument runways by 2016. India has so far implemented APV only at 1 of its 54 instrument runways. IATA also recommends that the Policy establish a deadline for AAI to put into operation Baro-VNAV procedures to all instrument runways in India in order to enhance the safety of aircraft approach operations.
17. Air Cargo

- IATA Cargo has recommended that the below mentioned (italics/underline) changes be incorporated in the Air Cargo section of the Civil Aviation Policy:

  “Promotion of both domestic and international Air cargo is a key objective of the government, given its importance from a ‘Make in India’, domestic e-Commerce and exports perspective. Revenue from air cargo helps airlines to optimize route profitability and expand their frequencies and route network. Air cargo, particularly domestic, has a high employment potential, especially for semi-skilled workers. With the impending growth of the manufacturing sector/merchandise exports, the air cargo volumes could grow exponentially if the key foundations are put in place – competitive charges at the cargo terminals; world benchmark dwell times; and leveraging e-freight initiatives. The following framework is expected to ensure growth of air cargo business:

a) Air cargo will be accorded ‘infrastructure’ status if co-located with an airport and will be eligible for Sec 80IA benefits.

b) The Air Cargo Logistics Promotion Board (ACLPB) has been constituted to promote growth in air cargo by way of cost reduction, efficiency improvement and better inter-ministerial coordination. The Board and the industry will submit a detailed action plan after stakeholder consultation, with the objective of reducing dwell time of air cargo from ‘aircraft to truck’ (for imports) to below 24 hours by 31 December 2016 and to 6 hours by 31 December 2017. Similarly, the export dwell times will be brought to below 24 hours by 31 December 2016.

e) The government will streamline and simplify Customs procedures. Pan India implementation of the Customs Single Window by July 2016 is imperative.

f) BCAS will continuously review and simplify security procedures for air cargo in light of the changing business dynamics and evolving technology, while ensuring adequate checks and balances. **BCAS will also adopt the paperless way of working e.g. e-Consignment Security Declaration.**

  ➢ As part of this review, IATA suggests that BCAS considers a system of supply chain security with the creation of Regulated Agents and Known Consignors outside of the airport. This system can be more effective than the current 100% physical cargo screening, which is limited by technology. On that basis, BCAS should consider adopting the ICAO standard Consignment Security Declaration or, better, gradually introduce its electronic equivalent (eCSD) to serve as audit trail between air cargo stakeholders. Finally, BCAS should consider recognizing the secure cargo processes in place in other countries; many countries in Asia and beyond are following ICAO standards for cargo security, so screening before uplift to India should not be required in these countries.

  “g) Advanced Cargo Information (ACI) system will be implemented by 1 April 2016 to facilitate faster processing by Customs, security agencies and terminal operators. “

  ➢ Advanced Cargo Information (ACI) is welcome and in April 2016, India would be one of the first countries to introduce it. We recommend a thorough consultation process, testing (similar to what EU, US and Canada are doing currently) and phased introduction, to avoid confusion and operational issues.
“j) The government will endeavour that all relevant central government authorities are available under one roof, at the cargo terminals. These include MoF (Customs), MoEF (wild life clearance for handicrafts etc), MoCF (Drug Controller), MoA (Plant and Animal Quarantine), MoC (Archaeological Survey of India) etc. Clearances will be given promptly and online after necessary checks. Implementation of the Customs Single window platform by July 2016 will be an objective.

l) ACLPB will promote global good practices like Free-Trade Warehousing Zones (FTWZ), Air Freight Stations, Bonded trucking, dedicated cargo airports etc."

- Also, with regard to user charges at Indian airports which is addressed in 17 (o), it is recommended that the lease and other fixed charges levied on air cargo facility at non-metro airports be kept low. The metro airports are key export/import gateways for India; and ensuring that the same approach be extended to these key gateway airports will also be critical for India’s long term competitiveness.

- Given the fledging nature of the Indian air cargo industry, flexible solutions are needed to ensure growth for Indian carriers. The current ACMI/wet lease requirements can be restrictive and prevent mixed-use, flexible partnerships (e.g. hours, sectors or capacity-based leases) between carriers. This flexibility is now commonplace in Europe, United States and key south-east Asian hubs. It is recommended that the Civil Aviation policy take into consideration, the current / emerging international air cargo leasing practices to improve its regulatory system and India’s supply chain efficiency.
19. Ground handling

- IATA supports the thrust of the policy to address the confusion that currently exists in the area of ground handling in India. The multiplicity of the circulars related to ground handling and their differing interpretations contributes to the focus being taken away from a safe and secure airside environment.

- IATA strongly welcomes the move to allow airlines the right to self-handle. IATA has long recommended that the ability of airlines to self-handle cannot be denied to the carriers.

- The same rights should be accorded to domestic and international carriers through a non-discriminatory and transparent process.

- Access to centralized infrastructure must be open and fees for such infrastructure should be cost justified and established through a transparent process in consultation with the airlines and GHAs.

- No fees, concessions or royalties should be allowed to be charged for access of the ground handling market.

- IATA would recommend that the following be clarified explicitly in the Civil Aviation Policy:
  - Ground handling is an essential part of the overall product airlines offer to their passengers, and the possibility to integrate code-share partners and/or franchise operators shouldn’t be limited to contracts with third party handlers.
  - Airlines should always have the possibility to self-handle, and this should include its code-share partners as well as franchising.
  - Self-handlers should also have the same right to subcontract services or activities as any other handlers.

- Ground Handling Companies should comply with essential global quality benchmarks, e.g. ISAGO, which will ensure a periodic and consistent quality standards through auditing and IGOM for global standardized processes and procedures being followed by Indian ground handling entities.
20. Sustainable aviation

- IATA welcomes the commitment of the MoCA to develop a sustainable Indian aviation industry and to pursue the limitation of CO2 emission in Indian aviation in coordination with ICAO.

- We would like to underline that the industry believes a global approach to the issue is fundamental and that we call on ICAO Member States to agree at the 39th ICAO Assembly to the implementation of a simple, global offsetting scheme which will stabilise air transport carbon emissions growth. We are very concerned that a delay in the adoption of a global market-based measure for aviation will harm our sector, which relies on a high degree in uniformity in regulations and standards.

- In that respect, we would urge the MoCA to ensure that any CO2 reporting requirement be compatible and aligned with ICAO’s methodologies. In particular, it will be critical for aircraft operators that any national or regional methodology used to determine fuel consumption and CO2 emissions be based on the same rules as those used for the future global market-based measure.

- The lack of alignment between methodologies would indeed create an unnecessary administrative burden for both operators and implementing authorities. We would also suggest that it be clarified in the policy that the reporting of CO2 emissions would be limited to Indian aircraft operators.

- While we recognize that CO2 emissions are high on the political agenda, we believe it is equally important that a strategy aimed at fostering the sustainable development of aviation includes appropriate policies on local environment issues. We therefore regret the absence of any references to the management of noise at Indian airports. The Civil Aviation Policy should reiterate the importance of the ICAO Balanced Approach to Aircraft Noise Management. It should underline that all measures available must be evaluated prior to the introduction of noise-related measures in order to identify the most cost-effective means to mitigate a specific noise problem.

- It should also emphasize the fact that in view of the impact that operating restrictions may have on airlines, passengers and local economies, operating restrictions should not be introduced as a first resort. The Civil Aviation Policy should also call on local authorities, airports and air navigation services providers to work with airlines to identify and implement environmental best practices and noise abatement operational procedures when appropriate.

- IATA supports the Civil Aviation policy thrust to ensure Flexible Use of Airspace (FUA) by 1 April 2016; and to roll out Airport Collaborative decision Making (ACDM) by 1 April 2016.
21. Aviation Security, Immigration and Customs

With reference to 21 a) “Government will develop performance norms for these agencies in terms of speed of passenger processing and grievance handling. Accordingly, MoCA will develop ‘service delivery modules’ for aviation security, Immigration, Customs, quarantine officers etc. in consultations with respective Ministries/Departments”.

- IATA welcomes India’s move to introducing KPIs and standards for passenger handling. One part of this exercise should be “soft regulation” through guidance, training and providing efficient layouts and queuing systems at security and border checks; and another part could be “hard regulation” making screening operators accountable to a target. For example, the UK implements a security queue target which measures the time passengers spend in queues between ticket presentation and security search. Two targets are set for each airport, that queuing time should be no more than 5 minutes for 95% of occasions sampled and less than 10 minutes on 99% of occasions. Targets are set separately at each terminal at the airport, i.e. Heathrow Terminals 1, 3, 4 and 5 at Heathrow and Gatwick North and South Terminals. Under the price control settlement the airport makes penalty payments to airlines if these targets are not met. Of course, handling times should not be at the detriment of effective security screening.

With reference to 21 b) “Global best practices in IT, passenger check-in, baggage handling, mobile boarding passes, security checking procedures, immigration and customs etc will be introduced with due security vetting keeping the Indian context in mind”.

- IATA strongly recommends that India accelerate introduction of Fast Travel initiatives at airports with a detailed roadmap to roll-out – and clear regulatory positions. With strong traffic growth and an innovative mindset, India is best placed to be a leader in Asia championing self-service solutions for passenger facilitation – for example self-service check-in, mobile boarding passes, home-printed bag tags, electronic bag tags and self-boarding.

- We understand that testing has started at a few airports but that regulatory obstacles to mobile boarding passes remain (e.g. stamping of boarding passes). IATA is available to assist to find adequate solutions to address regulatory concerns, taking into account the Indian context and its risk assessment, and drawing from our experience working with airports and regulators around the world.

- In addition, we encourage BCAS to consider one-stop security and recognition of equivalence, in effect applying a targeted, risk-based approach to passenger and hold baggage screening. This should start with granting screening exemptions to passengers and/or hold baggage arriving from another Indian international airport, and later extending this to like-minded foreign States with at least equivalent levels of security. This approach has recently been detailed in new ICAO Guidance Material and IATA stands ready to assist BCAS with its experience working with the EU and Japan.
• **Advance Passenger Information (API):** The draft Civil Aviation Policy in 17 (g) addresses the need to implement an Advance Cargo Information (ACI) system by 1 April 2016. In 2008, the Government of India had notified the Advance Passenger Information (API) system, and the airline industry has since struggled to come to terms with the non-standard processes implemented by India’s Immigration Service in respect of its Advance Passenger Information (API) requirement. Even after 7 long years since the implementation of India’s API requirement, the Ministry of Home / Bureau of Immigration has not yet developed and implemented processes that comply with international standards agreed both by the World Customs Organization (WCO) and by ICAO. There has also been no movement to implement a single data portal, through which all carriers serving the Indian market can transmit their passenger data for flights to or from any Indian airport. In the lead-up to the implementation of APIS in 2008, MoCA had convened meetings attended by both the airlines and the Ministry of Home Affairs, and it had been agreed that a standard UN/EDIFACT-based system will be put in place in India within a 1-year timeframe. The ICAO Secretary General had earlier written to the Ministry of Civil Aviation reiterating ICAO’s Annex 9 (Facilitation, Standard 3.47) which reads: *Each Contracting State that introduces an Advance Passenger Information (API) system under its national legislation shall adhere to international recognized standards for the transmission of Advance Passenger Information.*

1 April 2016 [referred to in 17 (g) of the draft Civil Aviation Policy] should be the date for implementation of both a standard UN/EDIFACT-based system for API, as well as implementation of the new Advance Cargo Information (ACI) system.
22. Ancillary Revenue

- IATA welcomes MoCA’s acknowledgement that airlines should be free to charge any amount for additional services.

- However, we would request clarification as to why such a provision is not afforded to check-in luggage, where charges for such services are communicated clearly to passengers.

- Moreover, and in the context of the forthcoming national GST regime in India, it is important to consider that under the destination principle in a standard GST/VAT regime and as detailed by the OECD, all exports should be zero-rated. As a result, and to the extent that such ancillary revenue is derived from services associated with the international air transport of passengers and/or goods, such ancillary services should be zero-rated under the future GST regime. In addition, the taxation of income generated from ancillary services that are associated with the international air transport of passengers and/or goods should comply with standard and accepted taxation principles and be subject to tax only in the jurisdiction of effective management of the airline.
Miscellaneous / Additional items
(currently not covered in the draft Civil Aviation policy)

The following sections should be added to the Civil Aviation Policy:

I. AVIATION TURBINE FUEL (ATF)

➢ Provision of ATF is a key aspect of aviation and can impact the viability and sustainability of airline operations. Having a clear policy on provision of ATF is important and hence the Civil Aviation Policy should address that. The key points to consider in the Civil Aviation Policy document with regards to provision of ATF are as follows:

• Effective competition in ATF supply at airports should be promoted. This can be achieved through:
  o putting in place open-access, common-use fuel infrastructure at the airports
  o ensuring key infrastructure off-airport such as pipelines for supplying ATF to airports are declared as common-use infrastructure and made accessible to all suppliers at reasonable rates.

• Effective competition in into-plane service provision should be promoted at major airports where the volume of fuel uplifted is able to support more than one into-plane service provider.

• Fuel throughput charges levied by airports are concession fees that have no cost basis. In line with best practices around the world (e.g. the European Council Directive on access to the ground-handling market at Community airports), market access fees or concession fees for supply of fuel should be scrapped.

➢ The price of ATF comprises the product cost and all other costs associated with the delivery of the fuel into the aircraft. This price is exempted from tax in accordance with The Foreign Aircraft (Exemption from Taxes and Duties on Fuel and Lubricants) Act, 2002. Currently, airport fuel throughput charge, fuel infrastructure fee and into-plane fee which are constituents of the fuel price that airlines pay are subject to service tax. Exemption from service tax for these ATF price components should be granted to align the pricing situation with the Act.
II. Unruly/Disruptive Passengers:

- Section 4 of the draft NCAP highlights DGCA’s focus on pre-empting and preventing incidents. It also states that safety violations will be treated with zero-tolerance.
- Unruly passenger incident onboard aircraft in flight has become a significant issue in recent years. These incidents compromise safety, impact the travel experience for other passengers, cause huge operational disruption and lead to costs that are borne by airlines. IATA is advocating for a comprehensive, multi-stakeholder approach to tackling this issue based on two elements, namely prevention and management of incidents and enhancing the legal deterrent.
- IATA commends the Indian DGCA for implementing requirements on the handling of unruly/disruptive passengers in November 2014. India also signed the Montreal Protocol 2014 (MP14) which amends the Tokyo Convention 1963. IATA urges that the draft Civil Aviation Policy prioritize the ratification of MP14, so that there is a more effective deterrent against unruly behavior. India’s leadership on this matter will also encourage other States to become Parties to MP14. When MP14 enters force and is widely ratified, this will provide greater protection to Indian airlines that have to deal with unruly passenger incidents at destinations in foreign countries.
III. Passenger Facilitation & Self-service:

- It is recommended that a specific section titled ‘Passenger Facilitation’ be added.
- The section should focus on the roll-out of Fast Travel and self-service initiatives, as mentioned below:
  - IATA strongly recommends that India accelerate introduction of Fast Travel initiatives at airports with a detailed roadmap to roll-out – and clear regulatory positions. With strong traffic growth and an innovative mindset, India is best placed to be a leader in Asia championing self-service solutions for passenger facilitation – for example self-service check-in, mobile boarding passes, home-printed bag tags, electronic bag tags and self-boarding.
  - We understand that testing has started at a few airports but that regulatory obstacles to mobile boarding passes remain (e.g. stamping of boarding passes). IATA is available to assist to find adequate solutions to address regulatory concerns, taking into account the Indian context and its risk assessment, and drawing from our experience working with airports and regulators around the world.
- The focus on accessibility for People with Reduced Mobility (PRM) could also be covered in this section.
IV. Effective and Efficient Taxation:

It is important to note that well designed tax policies and an efficient tax regime will enable the development of India’s civil aviation market and ensure that affordable and sustainable air travel throughout the various parts of India and the world is achieved. As such, the development of: 1) a National Civil Aviation Policy; and 2) well-designed tax policies should not be seen as mutually exclusive initiatives, but rather as the latter complimenting the former.

IATA thus strongly recommends that the Ministry of Civil Aviation directly liaise with the Indian Ministry of Finance to ensure the draft National Civil Aviation Policy is aligned with the work currently conducted as part of the implementation of the national GST regime. IATA is supportive of the move to a national GST regime in India and would request that the Indian Government pass the respective GST legislation as soon as possible. However, within this context, IATA would also request that the Indian Government considers postponing the implementation date of the national GST regime beyond 1 April 2016 in order to allow for sufficient industry consultation, adaption, and alignment of the GST regime with other policy initiatives (including the National Civil Aviation Policy) prior to introduction.

The experience of our member airlines in relation to the implementation of GST/VAT regimes in various jurisdictions indicates that an efficient GST regime includes the following elements:

- A structured and effective taxpayer consultation process (including the dissemination of relevant information)
- The adoption of transitional rules to assist taxpayers in the changeover to a GST regime;
- The adherence to standard and accepted VAT/GST principles (including the zero-rating of international air transport and related services); and
- Ensuring an efficient and not overly burdensome compliance regime for taxpayers and Indian tax authorities.

The attached submission (including appendices) recently filed by IATA with the Indian Ministry of Finance outlines our recommendations on the effective and efficient implementation of a national GST regime in India. IATA would be happy to meet with officials from the Indian Government (including the Ministries of Finance and Civil Aviation) to discuss the information provided herein and answer any questions you may have to ensure that taxation supports the growth and development of the civil aviation market as opposed to limiting it.