

Legislative Brief

Airports Economic Regulatory Authority of India Bill, 2007

The Bill was introduced in the Lok Sabha on 5th September, 2007 and was referred to the Standing Committee on Transport, Tourism and Culture (Chairperson: Shri Sitaram Yechury).

The Standing Committee is scheduled to submit its report by 28 March 2008.

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Highlights of the Bill

- ◆ The Airports Economic Regulatory Authority of India Bill, 2007 establishes an independent regulator to determine tariffs charged by all major airports – those with annual passenger traffic higher than 15 lakh and any other airport notified by the government.
- ◆ The AERA shall consist of a chairperson and two other members. An additional member shall be nominated by the Ministry of Defence for matters involving a civil airport in a defence airfield.
- ◆ The AERA will be responsible for determining the tariff for aeronautical services at different airports every five years, the amount of development fees of major airports, the passengers service fee, and monitor performance standards of services.
- ◆ The Bill also establishes an Airports Economic Regulatory Authority Appellate Tribunal to adjudicate disputes among or between service providers and/or consumer groups. No civil court may entertain any suit over which the Tribunal has jurisdiction.
- ◆ Fines for non-compliance of orders of AERA or the Tribunal will be up to one lakh rupees for a first time offence, two lakh for subsequent offences, and up to two lakh per day for a continuing contravention.

Key Issues and Analysis

- ◆ AERA has the purview to regulate tariffs for only major airports. Of the 125 airports in India, 11 had over 15 lakh passengers in 2006-07.
- ◆ AERA has the power to regulate tariffs for 'aeronautical services', and not for other services. For some of these services, the airport may have monopolistic power, which is not being regulated.
- ◆ AERA will set tariffs for airports every five years. Unlike some other countries, the Bill does not propose a mechanism to automatically adjust tariffs in the intermediate period to factor inflation etc.
- ◆ This Bill allows the Central Government to remove the chairperson or any member from office based on an inquiry by the government. In this case, the power to remove is much broader than in the case of some other regulators, such as the Telecom Regulatory Authority of India.
- ◆ AERA is given the power to determine development fees. However, the Bill does not define the term 'development fees'.

PART A: HIGHLIGHTS OF THE BILL¹

Context

In India, there are 125 airports, of which 11 are international.² Till recently, all airports were owned and operated by the Airports Authority of India (AAI). The Airport Infrastructure Policy, formulated in 1997, allowed for private sector participation and has led to a number of existing and new airports being owned or managed by the private sector, including those at Kochi, Delhi, Mumbai, Bengaluru and Hyderabad.

Currently, the Airports Authority of India (AAI) owns and operates most airports in India, as well as plays the role of regulator, which results in conflict of interest. The Committee on a Road Map for the Civil Aviation Sector (Naresh Chandra Committee) which submitted its report in 2003 recommended creating an independent regulatory authority.

The Bill seeks to establish the Airports Economic Regulatory Authority, an independent regulator to regulate tariff and other charges for the aeronautical services rendered at airports and to monitor performance standards of airports.

Key Features

Regulatory Authority

- The Bill establishes the Airports Economic Regulatory Authority (AERA) to regulate tariffs for civilian airports with annual passenger traffic over 15 lakh, and other airports notified as major airports.
- The AERA shall consist of a chairperson and two members, selected by a selection committee. An additional Member shall be nominated by the Ministry of Defence for matters involving a civil enclave in a defence airfield.
- The powers of the AERA will be to: (a) determine the tariff for aeronautical services at different airports every five years; (b) determine the amount of development fees of major airports; (c) determine the passengers service fee; (d) monitor performance standards of services; (e) call for necessary information to determine tariffs and (f) perform any other tariff-related functions, including amending the tariffs if necessary in the interim periods.
- While setting tariffs, the AERA is to consider (a) capital expenditures incurred and timely investment in improvement of airport facilities; (b) service provided and its quality; (c) cost for improving efficiency; (d) economic and viable operation of major airports; (e) any concession agreement which has already been signed³; and (f) any other relevant factor.
- The AERA may make inquiry into the functioning of any service provider (i.e. company managing an airport), including non-major airports. The AERA has the right of search and seizure under section 100 of the Code of Criminal Procedure, 1973. The AERA may issue directions to monitor the performance of the service providers.
- The central government may supersede the powers of AERA for up to six months in cases of emergency, if AERA consistently fails to comply with orders or the Act, or if it is in the public interest to do so.

Appellate Tribunal

- The Bill establishes the Airports Economic Regulatory Authority Appellate Tribunal to adjudicate disputes among or between service providers and/or consumer groups. The government shall, in consultation with the Chief Justice of India appoint a Chairperson and two Members for 3-year terms. The Tribunal will not adjudicate on any dispute subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission, the Competition Act, 2002, consumer courts or the Airports Authority of India Act, 1994. No civil court may entertain any suit over which the Tribunal has jurisdiction.
- The government or any person may make an application for adjudication or an appeal to the Appellate Tribunal. Every appeal must be filed within 30 days and be disposed of within 90 days to the extent possible.
- Applicants or appellants may either appear in person or authorise one or more chartered accountants, company secretaries, cost accountants, or legal practitioners to present his case to the Tribunal. Decisions or orders given by the Appellate Tribunal may be appealed to the Supreme Court within 90 days of the decision.

Penalties

- Fines for non-compliance of orders of AERA or the Tribunal will be up to one lakh rupees for a first time offence, two lakh for subsequent offences, and up to two lakh per day for a continuing contravention.

PART B: KEY ISSUES AND ANALYSIS

Authority’s Purview

Major Airports

Clause 13 (1) Whereas the Bill itself applies to all airports where air transport services are operated (including private, leased, civil enclaves and major airports), AERA has the authority to regulate tariffs only for major airports. Major airports are defined as those having or designated to have an annual passenger turnover of 15 lakh or more and any other airports as notified by the central government. Based on 2006-07 data, only 11 of the 125 airports in India would come under the jurisdiction of AERA for setting tariffs.⁴

Monopoly Pricing Power

Clause 13 (1) (a) In the Bill, AERA only regulates tariffs for ‘aeronautical services’, and not for other services such as lease to airlines for check-in counters, car parking fee etc. For some of these services, the airport may have monopolistic power which is not being regulated. Global data indicates that non-aeronautical revenue formed 47% of all revenues in 2005. 25% of all non-aeronautical revenue was from retail concessions, 17% from car parking and 15% from property income/rent.⁵

Clause 17 (a) (3) The Bill states that matters that fall under the purview of the Competition Act, 2002 (which establishes the Competition Commission of India (CCI) and the Competition Appellate Tribunal) will not come under the purview of Appellate Tribunal established by this Bill. The AERA’s main role is to determine tariffs in order to ‘create a level playing field and foster healthy competition amongst all major airports.’ However, the Bill does not require AERA to coordinate with CCI to determine which areas need regulated pricing, and which can be priced by competitive market forces.

Fees

Clause 13 (1) (b) AERA has the power to determine ‘development fees’. The Bill does not define this term.

Tariff Setting

Clause 13 (2) AERA shall set tariffs for airports every five years. Some countries automatically adjust tariffs in the interim period based on inflation indices, passenger traffic, efficiency requirements etc.⁶ This Bill only enables AERA to amend the tariff in the interim period if it is ‘considered appropriate and in public interest’.

Removal of Chairperson or Member

Clause 8 (3) This Bill allows the Central Government to remove the chairperson or any member from office based on an inquiry by the government. In this case, the power to remove is much broader than in the case of some other regulators. For instance, the removal of the chairperson or member of the Telecom Regulatory Authority of India may be done only after an inquiry by the Supreme Court.

Tariff Authority for Major Ports

When setting up a new regulatory body, it may be helpful to compare it to similar bodies, such as the Tariff Authority for Major Ports (TAMP), the regulatory body for shipping ports.

Table 1: Comparison with AERA with TAMP

	TAMP	AERA
Established	Ports Laws Amendment Act (1997)	AERA Bill 2007 (pending)
Membership	Chairman and two members appointed by central government	Chairman and two members appointed by selection committee, plus additional member from Ministry of Defence
Jurisdiction	Major port trusts and private terminals therein	Major airports
Responsibilities	Prescribe rates for services provided and facilities extended by them and also rates for lease of port trust properties	Determine tariffs for aeronautical service, development fees, passengers service fee, monitor performance standards of services
Orders of the Authority	Every notification, declaration, order and regulation of the Authority made under the MPT Act is published in the Gazette of India	Must make all decisions of the authority fully documented and explained; no specific provision for notification in Gazette
Grievance Redressal	No provision for appeal within the system; aggrieved parties must approach the High Court for Redressal	Establishes Airports Economic Regulatory Authority Appellate Tribunal to adjudicate disputes among or between service providers and/or consumer groups

Sources: Tariff Authority for Major Ports (tariffauthority.gov.in); AERA Bill; PRS.

Naresh Chandra Committee Report

According to the Bill's Statement of Objects and Reasons, the recommendation to create an independent regulatory body for the aviation sector was made by the Committee on a Road Map for the Civil Aviation Sector (the Naresh Chandra Committee), which submitted its report in November 2003. While this Bill sets up an independent economic regulatory authority, it may be useful to look at this recommendation in the context of the full report. Some of the key recommendations of the Naresh Chandra are listed in Table 2.

Table 2: Some recommendations of the Naresh Chandra Committee

Major Focus Area	Key Recommendations
Lowering system costs of civil aviation sector/ liberal fiscal regime	<ul style="list-style-type: none"> ▪ Allow airlines to source aviation turbine fuel (ATF) from the supplier of their choice ▪ Consider categorising ATF as a "declared good" under the Central Sales Tax Act so sales tax on ATF does not exceed 4% ▪ Bring down airport charges to levels comparable with neighbouring South East Asian and Gulf countries
Encouraging private participation and competition in air transport services to enhance affordability	<ul style="list-style-type: none"> ▪ Abolish route dispersal guidelines and allow airlines to service routes of their choice based on commercial considerations ▪ Lower entry barriers (such as requirements of fleet size and equity capital) ▪ Liberalise investment norms for foreign equity and foreign airlines ▪ Allow domestic private airlines to operate international services ▪ Privatised Indian Airlines, Air India and Pawan Hans Helicopters Ltd (PHHL) ▪ Concessions to regional air services
Air Traffic Control (ATC) services	<ul style="list-style-type: none"> ▪ Unbundle ATC services from Airport Authority of India and vest them with a government-owned corporation ▪ Establish independent Aviation Economic Regulatory Authority for economic regulation of airports and to avoid monopoly of airport operator; vest safety regulations and monitoring and enforcement of quality standards to DGCA
Essential but uneconomical services	<ul style="list-style-type: none"> ▪ Establish an Essential Air Services Fund to provide explicit subsidy support to commercially unviable airports, etc

Sources: Naresh Chandra Committee Report; PRS

Notes

1. This Brief has been written on the basis of the Airports Economic Regulatory Bill, 2007, which was introduced in the Lok Sabha on 5th September, 2007 and referred to the Standing Committee on Transport, Tourism, & Culture (Chairperson: Shri Sitaram Yechury). The Standing Committee is scheduled to submit its report within three months.
2. "Airports: Initiatives," Committee on Infrastructure. See <http://infrastructure.gov.in/airports.htm>
3. Recently, joint ventures were formed to develop two airports - Delhi and Mumbai. The GMR group won the bid to develop the Delhi airport with an offer of an upfront payment of Rs 150 crore and a 45.99% revenue-share with the Airports Authority of India, and GVK Industries Ltd. for the Mumbai airport with an upfront payment of Rs 150 crore and a 38.7% revenue-share. See http://www.airportsindia.org.in/righttoinformation/OMDA_DIAL.pdf and http://www.airportsindia.org.in/righttoinformation/OMDA_MIAI.pdf.
4. The 11 airports with more than 15 lakh passengers in 2006-07 include Mumbai, Delhi, Chennai, Bangalore, Kolkata, Hyderabad, Cochin (CIAL), Ahmedabad, Goa, Trivandrum, and Pune. Two airports reported passenger traffic over 10 lakh –Calicut with 11.3 lakh and Guwahati with 10.8 lakh. See Annual Review of Traffic 2006-07, Table 1.3: Passenger Traffic Trends During 2006-07 VS 2005-06, page 7.
5. ACI Airports Economic Survey 2006. Table 5: Revenue by Source and Table 6: Non-Aeronautical Revenue by Region. Airports Council International, December 2006. See www.aci.aero.
6. For example, the United Kingdom revises tariffs every five years. In the interim period, it resets tariffs using the 'RPI-X' formula. That is, the tariff is increased annually by an inflation factor (measured by the Retail Price Index or RPI) less an efficiency factor (X, decided by the regulator). See J. Luis Guasch and Pablo Spiller, 'Managing the Regulatory Process: Design, Concepts, Issues, and the Latin America and Caribbean Story', World Bank, (1999), page 92.

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