

CUTS’ COMMENTS ON THE DRAFT CIVIL AVIATION POLICY
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The comments of CUTS on the draft civil aviation policy are in three parts. The first part (section I) covers the general opening remarks that briefly touch upon the need, efforts already made that are not taken on board and the need to develop a phase-wise policy. Part two (sections II to VII) are comments on the specific issues mentioned in the draft civil aviation policy and, finally part three (section VIII, subsections 8.1 to 8.7) mentions such of the policy issues that are either not covered at all in the draft or ought to be explained in greater detail.

I. Opening remarks

- 1.1 The need for a well-articulated Civil Aviation Policy in India has been acknowledged for a number of years. In 2012 a detailed stakeholder feedback on the critical elements of such a policy were sought by the Ministry of Civil Aviation (MoCA), Government of India (GoI)¹. Eminently relevant feedback was received from a wide range of 15 important stakeholders covering at least 11 major issues: infrastructure; air connectivity; air operation regulations; sub-policies; HR and training; passenger and user-related; safety, security and sovereign powers; economic regulations; air traffic management; environmental issues and research and development and miscellaneous.
- 1.2 Despite availability of the results of this exercise, the instant draft Civil Aviation Policy falls short of expectations. It would help the Ministry hugely if the earlier recommendations are dusted out and revisited. The extant draft policy rightly but briefly focuses on infrastructure of civil aviation by identifying development of airports, rationalising the cost of aviation turbine fuel (ATF), cargo sub-sector, regional connectivity, maintenance repair and overhaul (MRO), modernisation of air navigation services, development of helicopter aviation, etc. While a brief policy document is welcome, it should not be at the cost of ignoring other critical policy issues such as safety and security, economic and air operation regulations, environmental issues and research and development, competition in the sector, grievance redressal mechanisms, mention of how the prevailing opaque air fares would be addressed, air charter services, etc.
- 1.3 The need of the hour is to have a policy that is holistic and practical clearly specifying deadlines to measure its implementation and efficacy. Prime Minister Modi’s thrust on clear timelines is not exhibited in the draft policy. Given the existing diversities and complexities in the aviation sector today, the policy should ideally be in two phases. In the draft policy, there is a reference to ‘first phase’ in section 4 (C) but nothing more, e.g., the second or subsequent phases. This

¹ www.civilaviation.gov.in/cs/groups/public/documents/newsandupdates/moca_001393.pdf accessed on November 14, 2014

drafting error needs to be elaborated. One way of doing so is to concentrate on initial policies over a period of the first phase of say 4-5 years where the inherent bottlenecks such as a level playing field, establishing relevant legal and fiscal systems, capacity building of regulators, etc. is addressed paving the way for a more liberal and efficient aviation sector in the second or subsequent phases with realistic timelines.

II. Development of Airports

- 2.1 There is merit in considering development of 'no frills airports' with adequate functional infrastructure in addition to those listed in the policy document. This would lower costs and ensure viability – both of which have come under stress. Announcement of the Government some time back to build 200 low-cost airports over the next 20 years does not find mention in the draft policy.
- 2.2 Alongside, there is need to address the funding constraints and to strengthen the PPP mode. The ongoing debate in respect of the Mumbai and Delhi airports expose the absence of a well-defined and robust economic regulatory system. For this to happen, the first phase will necessarily have to deal with a stable, predictable and investor friendly policies and to revisit FDI in the aviation sector coupled with relevant and flanking legal and fiscal policies.
- 2.3 The draft policy, as noted above, focuses on infrastructure development yet it stays clear of addressing the demand for granting the status of infrastructure industry to airports/aviation.
- 2.4 Another thorny issue pertains to land use as far as airports are concerned. The draft policy is silent on proposed measures. The land for aviation purposes ought to be provided by the Government to the concessionaire on unambiguous terms through a special purpose vehicle which would have obtained all clearances and at the same time leave scope for expansion and needs of cargo and maintenance, repair and overhaul facilities.
- 2.5 Airports Authority of India (AAI) has been voicing the need for better marketing of the major international airports to give a fillip to both aeronautical and non-aeronautical revenue. The policy should address this concern.
- 2.6 The policy should also address the security phobia which leads to waste of security manpower and paper for hand baggage tags and the security stamping on tags and boarding cards and another layer examining the same before boarding. This wasteful practice does not exist in most countries of the world, except in very few developing countries.
- 2.7 Ground handling services at airports should be hived off to third party operators and airlines could save on capital and revenue costs considerably. In many developing and developed countries ground handling services are handled by third parties and not airlines

III. Rationalising the cost of Aviation Turbine Fuel (ATF)

- 3.1 The draft policy acknowledges that the cost of ATF (which is a major cost component) in India is 40-50 percent higher than the international costs but only suggests that it will take steps in association with the Ministry of Finance and State Governments to rationalise the rates of taxes so that the costs remain competitive. In most cases, the tax on ATF constitutes a negligible portion of the total sales taxes collected by states. ATF should be covered under the proposed GST as a declared good and uniform rate be applied throughout the country.
- 3.2 The adverse impact of high ATF pricing on revenues of carriers in India restricts entry of new players. Moreover, there are only four suppliers of ATF in India, three of which are state-owned entities creating a market structure conducive to cartelisation.
- 3.3 Perhaps the policy could address some more not-so-obvious policy steps that could be considered. One such issue is that the GoI had permitted in 2012 direct import of ATF by and on behalf of Indian carriers as actual users and on actual basis, yet there are bottlenecks being faced by the carriers such as storage and how this could be resolved.
- 3.4 During 2012, both the oil and aviation ministries came together to jointly pursue the long outstanding demand for giving ATF a 'declared goods' status. Its implementation should be made a part of the civil aviation policy.
- 3.5 The above situation underlines the need for periodic review of policy decisions taken and implemented so that mid-term corrections can be carried out.

IV. Development of the air cargo sector

- 4.1 While the brief discussion in the draft policy covers most of the major issues, yet encashing the 'open skies' policy for air cargo in force since 1990s by bringing in more competition is conspicuous by its absence. This despite the fact that small steps have been taken on this in India (in Mumbai from ETV warehouse) on the lines of Frankfurt, Singapore and Hong Kong airports through the concept of dual agencies performing cargo terminal functions.
- 4.2 The draft policy proposes to reduce congestion of cargo at airports. It would be more specific to include certain suggestions already made such as to reduce the free period to 72 hours from the existing five days granted to importers, exporters and airlines to clear their cargo.

V. Institutional reforms

- 5.1 The first effort at finalising a draft civil aviation policy should deal with this issue of institutional reforms in detail. The draft policy, however, mentions only the national carrier, Air India, corporatisation of AAI, its listing in the Stock Exchanges with that of Pawan Hans and to make organisations under the Ministry competitive.
- 5.2 Yet another 'expert committee' has been proposed for revival of Air India at a time when the national airline is being criticised for mammoth losses even in the face of preferential treatment by way of bailouts, etc. it gets from the government. This only creates disincentives for it to become more efficient besides violating the norm of a level playing field. An estimate reveals accumulated losses of US\$5bn which is about 60 percent of the US\$8bn losses for the entire sector. In case its outstanding loans are included, the state carrier is US\$12bn in losses. It is in existence due to US\$5bn bailout announced in 2012. The 'essentiality' to ensure full potential of the national carrier stated in the draft policy is a retrograde step and calls for review. The work culture in Air India has sunk so badly that recovery will be nigh impossible. It would be good to privatise Air India as has been done in the case of national carriers in many countries. For example, AirAsia was established in 1994 and began operations on November 18, 1996. It was originally founded by a government-owned conglomerate, DRB-Hicom. On December 02, 2001, the heavily-indebted airline was bought by former Time Warner executive Tony Fernandes' company for the token sum of one ringgit (about USD 0.26 at the time) with USD 11mn (MYR40mn) worth of debt. Fernandes turned the company around, producing a profit in 2002. For the quarter ending December 31, 2012, the airline's net profit stood at 350.65mn ringgit (US\$114.08mn). Despite a 1 percent rise in the average fuel price, the airline recorded profits of 1.88bn ringgit for its full 2012 fiscal year.
- 5.3 Relevant legal, fiscal and governance measures are the planks on which the civil aviation policy should be based.

VI. Enhancing regional connectivity

- 6.1 The regional connectivity issue (route dispersal guidelines) continues to be governed by the guidelines of the Director General of Civil Aviation (DGCA) since 1994. The draft policy does not help when it merely states that these would be reviewed. Regulatory impact assessments² should be carried out to lower the regulatory burden. This falls in line with the Modi government's resolve to make it easier for business to do business. Over the years, there have been many policy-related recommendations that ought to have been mentioned as a way forward.

² Regulatory Impact Analysis (RIA) is a systemic approach to critically assessing the positive and negative effects of proposed and existing regulations and non-regulatory alternatives. It encompasses a range of methods and it is an important element of an evidence-based approach to policy making. Undertaking RIA within an appropriate systematic framework can underpin the capacity of governments to ensure that regulations are efficient and effective in a changing and complex world.

6.2 The scheduled carriers have individually carried the burden of servicing areas falling under category II and III since 1994. This adversely affects the entry of potential carriers and their ability to compete.

6.3 While it is a fact that since then some areas falling in category II might have moved upwards to category I (like Pune and Goa), it is also a fact that the state governments benefit the most from these operational guidelines and should, therefore, contribute by way of waiving landing and route navigation charges, underwriting of seats and reduction of taxes on ATF, etc. The code sharing concept could be introduced between regional, non-scheduled operators and scheduled airlines.

6.4 Creation of an Essential Air Services Fund (EASF) to be contributed jointly by the centre, the state, the carrier and the user (in all three categories) was mooted many years back and deserves consideration as it is intended to be used on unviable routes for a period of 3-5 years when such routes become viable.

VII. Maintenance, Repair and Overhaul

7.1 The problem and its cause have been rightly identified in the draft policy without expounding on the ways to tackle the same. Here again, no reference is made of the numerous suggestions on policy review before the MoCA.

7.2 The draft policy ought to flesh out the details of permitting and facilitating airlines to set up their dedicated MRO hubs through joint ventures between the MRO service providers; reducing/scrapping import duties on spares; investment in skills and training; etc.

VIII. Should the proposed policy not address the following missing links?

8.1 *Re-organisation of various agencies in civil aviation:* At the moment, besides the MoCA, the AAI, AERA, DGCA, etc. are dealing with various aspects of aviation. The AAI, for instance, has drawn flak for its complex business model investing massive capex into loss making airports. Should these entities not be aligned for a better structural and commercial reorientation? Similarly AERA has been criticized for faulty implementation of signed concession/project agreements. Prime Minister Modi's recent emphasis on inter-ministerial coordination in connectivity-linked infrastructure sectors is not reflected in the draft policy.

8.2.1 *Regulatory philosophy:* Policy should ensure setting up of independent regulatory mechanism to position between legislature, executive and judiciary on the one hand and market on the other. Such an institution should be independent and autonomous with a focus on fostering competition. The policy should aim at an investor friendly regulatory

environment and ensure a level playing field. The present set up has two regulatory mechanisms: AERA that regulates tariffs for aeronautical services and other fees and DGCA that looks into safety, airworthiness, licensing, etc. Perhaps, the lapsed Bill to set up a Civil Aviation Authority, (CAA) 2013 is a way forward with such modifications as a round of consultations may suggest.

8.2.2 The proposed regulatory authority should be hosted in a different ministry than Civil Aviation so that it can function truly independently. For example the Commission on Railway Safety is housed under the Ministry of Civil Aviation and not the Railways Ministry to ensure independence. While the staff of the CRS is drawn from Railways, they are insulated from their parent ministry by ensuring that they do not have to return to Railways after serving in the CRS. It should also be examined if AERA Act could not be amended to perform the role of the CAA rather than creating more organisations and creating jobs for retirees. The then Planning Commission of India has been scrapped due to inter alia because it had become a parking place for bureaucrats rather than engaging domain experts.

8.3 Competition issues: While the draft civil aviation policy mentions review of the 5/20 guideline, it fails to address the issue of competition holistically. The issue of entry barriers arising out of the **Indian Civil Aviation Requirement** which mandates that a scheduled service operator that applies to provide services using aircraft with a take-off mass of 40,000 kg or more must purchase or lease a minimum of five aircrafts with start-up equity of Rs50 crore. This creates a barrier to enter the market. Undermining competition and creation of entry barriers is also evident in the **route dispersal guidelines** (please refer to 6.2 above) as are the **high prices of ATF** and limited number of suppliers thereof (please see 3.2 above). Surprisingly, **Slot Allocation** does not find mention in the draft policy despite the fact that it is referred to as grandfathering. The IATA slot allocation guideline of restricting new entrants to access only 50 percent of the pool of available slots coupled with the provision that slots cannot be withdrawn from an existing carrier in order to accommodate new entrants, besides being archaic in today's environment, impedes the number and range of air-carrier service providers. Finally, **both the high prices and low prices** indicate presence of a different kind of anti-competitive behaviour on the part of airline companies: cartelisation in case of high prices and predatory pricing in the other case. Further, the Charter Business in India is one the sectors that has huge potential especially since many companies now want to either enter the commercial aviation sector or else want to expand their current business. However, empathy of the DGCA and the bureaucratic hurdles (delay in securing permits, repetitive/irrelevant checks, etc) has not allowed the business and entrepreneurs to proliferate resulting in limiting competition.

8.4 Investment issues: The draft policy makes a passing reference to develop more airports in the PPP mode (4 E), but does not address the issue of FDI limit of 49 percent in scheduled air transportation services in the country which ultimately limits the number and range of suppliers.

8.5 Consumer welfare: Airlines is a consumer-centric industry along with the likes of railways, banking and power. The draft policy while speaking about providing ‘the best possible conveniences to passengers’ does not address the issue of grievance redressal. The issue is of such importance that a day after announcement of the draft civil aviation policy on November 10, 2014, the Aviation Minister has gone on record on planning for an ombudsman for aviation-related organisations. The aviation ministry has called many meetings during the last four years as private airlines and airports have opposed the scheme. Clearly the issue is one that needs to be an integral part of the civil aviation policy.

8.6 Environmental issues: Ensuring implementation of coherent and well-articulated environmental should necessarily be a part of the civil aviation policy – not just concerns arising out of flight operations but also attendant issues of energy, water, waste, etc. There is no mention of this important aspect in the draft policy.

8.7 Safety and security: Other than modernisation of air navigation services and maintenance and overhaul, the draft policy does not include flanking necessities such as HR and training and research and development. The US Federal Aviation Administration lowered India’s aviation security ranking in January this year. The decision reduced India to a category that includes Ghana, Indonesia, etc.

IX. Conclusion

The draft civil aviation policy not only lacks substance but has also not taken on board detailed and rich information/feedback/suggestions that are available. It calls for more work to expand the intent that it spells out and also take on board the missing but important policy issues and options.

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