6th Round of Concessions

Economic Regulation

30MAR2020

Juliano Noman - Director-President
Tiago Pereira – Director
ANAC

Dear Juliano, Dear Tiago,

IATA welcomes the opportunity to provide feedback to on the documentation related to the 6th concession round of Brazilian airports.

A detailed assessment of the documentation can be found in the enclosed annexes, of which the most important elements are summarised below:

- The current proposal of adopting a parametric approach to determine the "X" further distances the regulatory set-up from a cost related approach. We urge ANAC to reconsider the latest proposals for automatically setting the "X" factor and maintain a construct that better reflects the efficiency gains by airport operators.
- Prescriptive minimum sizing standards may not meet the needs of each airport and run the risk of becoming outdated. Reference to internationally recognised standards would best address this.
- Establishment of Peak Hour planning criteria and the application of Demand Triggers as written may not achieve the desired results

Separately, and given that aviation traffic has almost come to a standstill and that the recovery may take longer than initially anticipated, we recommend ANAC to review the concession auction timelines. With the current uncertainty and lack of liquidity in the system, it is most probable that there will be significantly low bids (compared to what have been offered in normal circumstances) and potentially a reduced number of interested parties. ANAC may wish to wait until there is consistent and robust market recovery and relaunch the concession program.

We remain available to discuss the contents of our submission.

Best Regards,

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Appendix 1: Comments on "Minuta de Contrato"

Reference	Comments
Chapter II: Subsection II – Phase IB	Section 2.25 specifies that the Concessionaire has 180 days from the effective date of the contract to forward the preliminary project and the execution schedule for the expansion investments and adequacy of the Airport's infrastructure, to meet the requirements of the PEA. If there is to be a good consultation process with users (Item 15.2), this will likely not be adequate time from the contract effective date to develop the Phase IB investment plan. Twelve (12) months is recommended given the smaller size of most of the airports being concessioned in this round. In later rounds, when dealing with airports above 10 MAP (million annual passengers) more time would be required for the same consultation.
Chapter II: Subsection III – Phase II	We are pleased to see that ANAC recommends the development of Service Level Agreements under Section 3.1.15 and pursuant to item 15.5 of the Contract. It is important to highlight to the concessionaire that the development of an SLA will take time and collaboration with its users.
Chapter II: Subsection IV – Contributions to the system	In the 5th round of concessions, the winning bids were significantly above the baseline contributions (Zurich offered 832% of the base value, Socicam-Sinnar paid 4743% for the central block and AENA paid 1011% for the North East Block. While this constitutes additional revenues for the government, it is extremely bad news for airlines (and their passengers) that will utilize these airports. This is because the level of base charges (and their trajectory) that will apply at these concessions could have been significantly lower. We would like to understand whether ANAC has analysed and determined the cause of the differentials between the bid and base values and incorporated that understanding in the 6th round.

Chapter II: Subsection V - Investments	Section 3.1.42. specifies to request prior authorization from ANAC to make investments, adaptations or airport infrastructure changes that significantly reduce the supply of infrastructure (pursuant to item 15.3 of this Agreement). What conditions could warrant the significant reduction of infrastructure?
Chapter III: Subsection III, paragraph 3.1.25	It may be prudent to clarify that the 30 days announcement of the tariffs should be preceded by a meaningful consultation with users on such changes. If possible, we request ANAC to consider that the minimum time between the announcement of the applicable tariffs and their implementation to be more than 30 days (e.g. 60), since airlines sell tickets in advance and cannot charge any new tariff until it is formally announced.
Chapter III: Subsection V: Financial information, paragraph 3.1.45.1	We fully support the publication of financial information in the concessionaire's website. In order to avoid misunderstandings, we recommend that ANAC include a provision that states: - The concessionaire should publish audited financial statements (Balance Sheet, Profit & Loss, cash flow changes in equity, etc) include all the notes to the accounts - Since the concession is a network of airports, the concessionaire should publish consolidated information as well as per airport
Chapter IV: Section I, paragraph 4.4	We would appreciate for ANAC to comment on the values used as tariffs restrictions (as included in Annex 4 part 3); and how these values relate to the costs of running the airports subject of the current concession.
Chapter IV: Section I, paragraph 4.4.2	While we understand that charges may vary according to service quality differences (which would therefore be justified by a cost difference), we cannot support modulation of charges on the basis of day, time or season. This is because there are no cost differentials that could justify such modulation. Modulation of charges in the basis of time deviate from the user pays principle, as certain users will be paying much more for the same service. We are also concerned about the modulation of charges on the basis of "availability" since this could imply that airports could raise their charges above costs on scarce infrastructure. And moreover, this could provide a perverse incentive towards to airport to limit that infrastructure to cause such scarcity.
Chapter IV: Section I: paragraph 4.4.4 & 4.5	Similar to the comments made for 3.1.25; ANAC may need to consider the possibility of change from 30 to 60 days the announcement of tariffs changes. Besides the previously mentioned argument on including the changes on the tickets it would also allow sufficient time for ANAC to process any potential appeal before the implementation of the new charge.
Chapter VI: Section I – Teto Tarifario, paragraph 6.4	It is unclear as to why tariffs that are subject to Teto Tarifario are automatically adjusted by inflation, without any apparent consideration of costs of those services.

	As mentioned in previous submissions, IATA recommends not incorporating automatic increases based on inflation. At the very least, it should only be a fraction of inflation, not 100% of it.
Chapter VI: Section II – Receita Teto, paragraph 6.6	The provisions of this paragraph are a cause of concern. As mentioned, numerous times, IATA strongly believes that charges should be based on efficient costs. IATA also believes that when incentive regulation is applied, the most common methodology is the utilization of the RAB-based price cap methodology. We see that ANAC is proposing to continue with a non-cost related approach. However, we are even more concerned at the new proposals for calculating the X. The 5th round of concessions included provisions that the "X" would be based on the past efficiency, costs & productivity of the airport & the industry; so at least the evolution of charges would have been influenced by the evolution of costs (and included the pass on of efficiencies achieved towards users) ANAC in now proposing to fully parametrise the evolution of charges by implementing percentages linked to past traffic evolution. Even the percentage signs are always directionally correct (if traffic is between 0 and 2%, charges still increase, on top of the automatic inflation adjustment). As previously mentioned, divorcing tariffs from costs could lead to a situation in which concessionaire earn excessive charges or significant losses. The predetermination of X on as proposed will increase such the possibility to end up in such circumstances. Moreover, it significantly limits the usefulness of a consultation process and the possibility to reach any supported proposal. We urge ANAC to reconsider the implementation of such parametric approach and return to the adoption on productivity-based measures (If cost relatedness is off the table). In any case, we request ANAC to fully detail how it the percentages proposed in this paragraph were arrived at; and would welcome the opportunity to further discuss about this matter.
Chapter XI, Section II, 11.7.1	The current concession contracts separate aviation-related revenue streams into those that are under a revenue cap, such as landing, parking, lighting charges, and those revenues streams from contracts with third parties for the use of operational areas, as per Chapter XI, in which the prices are freely agreed between the airport and the third party. These are the so called "special prices". It is an IATA position that fees imposed on third party providers of aviation-related services (e.g. ground handlers, catering, fuel) should be directly related to the airport's cost of providing a specific service to these

	parties (e.g. storage room, centralised infrastructure, etc). Airports should not be allowed to charge a "royalty fee" for "the right of access to operational areas" based on a percentage of revenue, which does not have relation to the cost of providing such service. While this is still allowed in some parts of the world, it has already been explicitly forbidden in others, such as Europe. Since only certain tariffs are under a revenue cap, the concessionaires will have the perverse incentive to increase all non-regulated tariffs, including "royalty fees", in order to increase their profitability and "game the system". As widely accepted, any excessive tariffs, such as" royalty fees" charged to third parties like ground handlers, fuel providers and caterers will eventually be passed-through to airlines. In this regard, IATA would like ANAC to consider the following recommendations: 1) Ensure open access to third parties: disallow "royalty fees" to be imposed on third parties for the right to access an airport's operational area, i.e. avoid aviation being excessively charged. 2) Alternatively, include the revenues from these activities as part of the revenue cap: this way, the concessionaire will not be perversely incentivised to charge excessively.
Chapter XIV, Section I - Concessions' goods, paragraph 14.2	As highlighted in previous occasions, the fact that all assets need to be fully amortized over the concession period implies that users will have fully paid for certain assets which will have a useful life much longer than the duration of the concession contract, leading to higher than necessary charges. This situation is particularly acute for assets built closer to the end of the concession end or infrastructure with particularly long life. Concessionaire may also have the perverse incentive to not invest. In this regard, and as previously proposed, it may be prudent to implement a residual value of assets by the end of the concession, which could then be "bought" by a new concessionaire. We would welcome the opportunity to further discuss this item.
Chapter XV – Consultations with users, Section 15.2	In general, this section provides for a proactive effort from the concessionaire to undertake user consultation. We are very pleased to see this. However, there may be a loophole in Section 15.2 for some of the most important elements. This section provides guidelines about compulsory consultation ('must consult') with relevant parties in Section 15.1, which is worded clearly and will benefit the airport's operation.

	However, Section 15.2 only suggests that the concessionaire 'may' consult interested parties It is not clear why the following items are only at the discretion of the concessionaire ('may consult'): 15.2.1. Its proposals to fulfil the obligations provided for in the SAP, in particular in regard to investment projects and the preparation of the Management Plan for Infrastructure - PGI and the Concessionaire's Action Plan; 15.2.2. Its proposals for remuneration for the use of Operational Areas and Activities, under Section II of Chapter XI; 15.2.3. Your pricing proposals, under Section I of Chapter IV. The above are three key areas which must have user consultation with stakeholders as an integral part of their development. We do not support the wording 'may' in Section 15.2. User consultation is a 'must' here as well.
Chapter XV – Consultations with users, Section15.3	Why would the concessionaire be allowed to significantly reduce the supply of infrastructure? Under which scenarios would there be a significant reduction in the supply of infrastructure? See also comment for Chapter II: Subsection V – Investments Section 3.1.42, above.
Chapter XV – Consultations with users, Section 15.6	We would appreciate the opportunity to work with ANAC in developing such guidelines.

<u>Comments on: Justificativa 14Fev20</u>

Paragraph 10e	The necessity for having boarding bridges are all Class III and IV airports (airports serving 1MAP and more) is not something that should be predetermined. It is strongly advised that this decision is one that is consulted between airlines and concessionaire on an airport by airport basis. See also comments for Annex 2, below.
Section III 2.3 Phase IB and Phase II Section 49.	We are very pleased to read that the concessionaire has the opportunity to maintain the service level via management actions, operation improvements or investments.
III 2.4 Investment Triggers Sections 51-56	We are pleased to see the inclusion of this section. The target is to meet the service levels and that the concessionaire can present a plan of action to meet the service levels which are not necessarily capital investments.

Section III 2.14 Service Quality	Sections 109 - 112 seem very reasonable revisions to the service quality baseline, to simplify the measurement, encourage availability when they are needed, and some becoming the general obligations of the concessionaire.
Chapter III 3.3 Passenger Boarding Bridges (PBB) Paragraph 186	The standard for PBB section is now set at 70% for domestic and 85% for international passengers. In previous rounds this was 65% and 90% respectively. We strongly feel that this target should not be predetermined for all airports (Track 3 and 4 airports), but needs to be determined on an airport by airport basis between airlines and the concessionaire. The standard is not a reflection of the operations at each airport nor a universal standard. Paragraph 188 states that this will allow room to accommodate new airline business models, including low cost models, to provide flexible services for passenger boarding/disembarking from remote positions. However. the determination of 70% and 85% PBBs would imply that new airline business models (low cost airlines) wanting to operate or expand operations at such an airport, using only remote positions, would be limited to a maximum passenger market share of 30% and 15% for domestic and international respectively due to the concessionaire's service standard limitation. This scenario would be economically detrimental and not make any sense. There is no foundation or benefit from prescribing these standards. Paragraph 189 does, however, leave some room for a Supported Proposal between the concessionaire and airlines to change the PBB service standards, which is good. Since the concessionaire will be consulting with the airline users, there is no need to predetermine the PBB standard for all airports.

Comments to Annex 2 Airport Exploration Plan (PEA)

6 Service Level of Passenger Terminals	It is very unfortunate that the decision has been taken to prescribe the minimum sizing parameters. As previous recommended, the "Minimum Sizing Parameters" section should not include detailed planning figures. This could be easily resolved by directly referencing internationally recognized standards such ICAO Annexes / Manuals, the Airport Development Reference Manual (ADRM) jointly produced by IATA/ACI, and other recognized standards when establishing sizing parameters and Level of Service requirements. By doing this, the risk of sizing parameters becoming outdated would be removed as references would always refer to the latest available version of such international standards.

	As defined in Annex 2, there are values defined which are considered 'Over Design' based on the ADRM. Also, for the check in space definition, we would assume that check in desks can be used for either domestic or international passengers, but the defined standards are different. The table also does not consider self service technologies. Section 6.6 Passenger Processing in boarding bridges for Track 2 and 3 airports (over 1 MAP) from the beginning of Phase II. It is highly advised to not have predefined percentages for PBB usage. This should be developed in agreement between the concessionaire and the users. Please also see discussion under Chapter III 3.3 Passenger Boarding Bridges (PBB) Paragraph 186 of the Justificativa 14Fev20 document. Section 6.7.2 We are pleased that there is a provision in Section 6.7.2 which allows for the Concessionaire and users to review the level of service parameters
7. Improvements to Airport Infrastructure	In Annex 2 to the Contract (PEA), the investments required for Phase IB are also partially defined. <u>Taking the example of Curitiba Airport:</u> Peak Hour Calculation: In Section 7.1.1 the concessionaire is required to calculate the demand for passengers in the Peak Hour calculated in the 12 (twelve) months between the 23rd (twenty-third) and the 34th (thirty-fourth) month of the concession. If this guideline is to be used for investments delivered by the end of 36 months (Phase IB), then the peak hour will already have been exceeded when the infrastructure investments to process passengers and baggage at the airport are completed. The infrastructure will already be at its capacity at opening day. It would be much more prudent to develop a forecast for a 12 month period between the 49th and 60th month of the concession. Using this method when the infrastructure investments are completed at the 36th month there should be an estimated 2 years of available capacity in the terminal (two years after opening the new infrastructure). In 7.1.2 the concessionaire is required to make available an aircraft apron to accommodate, simultaneously and independently, 24 (twenty four) code "C" positions, 2 (two) code "D" positions and 2 (two) positions

	"E" code. What is the basis for this apron sizing (aircraft stands)? It is our recommendation that the apron sizing should also be based on the forecast. It is very good that concessionaire will be able to calculate the forecast peak hour planning parameters. It is important to note that the forecast calculations also need to be consulted with users. Section 7.2.3 refers to the runway with Code 3C aircraft. Could you please clarify what the reference to Code 3C is in this case? <u>Taking the examples of Joinville Airport</u> Peak Hour Calculation Section 7.13.1 describes that for Phase IB, infrastructure needs to be provided for airport passenger demand equivalent to 1.3 times the number of seats offered by the aircraft representative of greater passenger capacity to have operated commercial flights at the airport, for a period of 12 (twelve) months between the 23rd (twenty-third) and the 34th (thirty-fourth) month of the concession, on board and in landing, or 1.3 (one and three tenths) times the total number of seats offered simultaneously. As above, we recommend to develop a forecast for a 12 month period between the 49th and 60th month of the concession. Using this method when the infrastructure investments are completed at the 36th month there should be an estimated 2 years of available capacity in the terminal (two years after opening the new infrastructure). Could you clarify why a buffer of 30% (1.3) is considered? If the airport had a single aircraft during its peak, this approach would provide too much seating for a single plane. If there were multiple planes during the peak, would 1.3 times the total number of seats of all the aircraft be required? This would be a dramatic oversizing of the boarding gates. In any case the factor of 1.3 times the number of seats for the largest aircraft operating at the airport should not be used to size other areas of the terminal building such as check in, security, immigration and baggage claim. These would result in oversized facilities. Section 7.13.2 calls for four Code C parking positions. The determination of aircraft parking positions should be based on the forecast as well, ideally the peak hour forecast and not using a factor of 1.3.

	The above issues apply to all of the airports listed under Section 7 of Annex 2.
8 Infrastructure Management Plan	The framework under 8.2 to have 12 months to submit the PGI and under 8.3 to have the PGI Review every 5 years are great guidelines. 8.4 The Concessionaire must submit the PGI Advance Review whenever: 8.4.1 the effective passenger demand at Hora Pico exceeds by 30% (thirty percent) the Demand Expected in the PGI in force for the same period; 8.4.2 the effective movement of aircraft measured annually exceeds 10% (ten percent) the Expected Demand in the PGI in force for the same period. These guidelines outlined under Section 8.4 can be used in principle for comparing growth in demand with forecast demand. However, if traffic demand is growing at a very fast rate, then there would not be enough time to conduct the planning, design and construction of new infrastructure. A better approach would be to use the guidelines outlined in IATA's Demand Triggers for Airport Investment – Best Practice document. In addition, if the concessionaire is driven by the service standard requirements would there not be a clear incentive to conduct their PGI review in a timely manner and take action long before capacity is reached. 8.10 Evaluation of Facilities Conditions Would there be a need to take the measures under 8.10.2 if the concessionaire is expected to meet the service standards? Would it not only be beneficial only for Phase IA? 8.11 Infrastructure Improvement Program It is very good that the concessionaire must present a forecast for demand for 20 years even if it goes beyond the term of the contract and that the demand forecast is to be updated for each PGI Review (8.11.2.2) 8.11.3 Investment Triggers 85% of Passenger terminal in the peak hour (1.1.31 of Concession Agreement) Section 8.11 Infrastructure Improvement Program For the investment triggers described in Sections 8.11.3.1 and 8.11.3.2 there is an inconsistency. Section 8.11.3.1 says that the trigger needs to be defined taking into consideration the time required to expand the terminal. While Section 8.11.3.2 says it should be defined at 85% in the terminal capacity. As described

	above, there is no reason why a measure of 85% should provide enough time to plan, consult and invest. For example, in a situation with a 20% passenger increase per year the terminal would actually be full even before planning could be completed.
Annex B	As mentioned on previous occasions, we do not see the need for offering bonuses in the proposed quality regime. Users are paying a fee for the certain level of service, no more, no less. If a bonus is implemented, users may end up in a situation in which they are paying more for something they don't need. We therefore request ANAC to reconsider the utilization of bonuses in the Quality regime. We would also appreciate to receive further explanation on how the targets were arrived at, and the current airport performance for each KPI.