

**Airports Economic Regulatory Authority of India**

**Order No. 15/2010-11**

**AERA Building,  
Administrative Complex,  
Safdarjung Airport,  
New Delhi-110003**

**Date of Order: 22<sup>nd</sup> March, 2011**

**Date of Issue: 24<sup>th</sup> March, 2011**

**In the matter of Economic Regulation of Services Provided by Airport Operators  
- Interim Arrangement for the Control Period Commencing 1<sup>st</sup> April, 2011**

Pursuant to enactment of the "The Airports Economic Regulatory Authority of India Act, 2008" (hereinafter referred as the 'Act') and establishment of the Airports Economic Regulatory Authority (hereinafter referred as the 'Authority'), the Authority is to perform the following functions in respect of major airports:

- (a) to determine the tariff for the aeronautical services;
- (b) to determine the amount of the development fees in respect of major airports;
- (c) to determine the amount of the passengers service fee levied under rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934; and
- (d) to monitor the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorised by it in this behalf.

2.1 As per Section 2 (a) of the Act, any service provided inter alia "for the landing, housing or parking of an aircraft or any other ground facility offered in connection with aircraft operations at an airport"; "for ground safety services at an airport"; "for ground handling services relating to aircraft, passengers and cargo at an airport"; "for the cargo facility at an airport"; and "for supplying fuel to the aircraft at an airport" are aeronautical services.

2.2 The Authority's mandate to determine the tariff for aeronautical services; to determine the rate of the Development Fee (DF) including User Development Fee (UDF); and to determine the amount of Passenger Service Fee (PSF), in respect of major airports, has been suitably incorporated in the Airports Authority of India Act, 1994, and the Aircraft Rules, 1937, as well.

2.3 To ensure transparency in the process leading up to the framing of appropriate procedures/systems for economic regulation, as required in terms of the Act, the Authority had issued a White Paper on 'Regulatory Objectives and Philosophy in Economic Regulation of Airports and Air Navigation Services' ('White Paper') on 22nd December 2009, highlighting various issues relating to economic regulation of airports; air navigation services; and cargo, ground handling and fuel supply services. The Authority received 28 submissions in response to the White Paper. The submissions were put up on the Authority's website for general information.





2.4 The Authority considered the views and opinions submitted in response to the White Paper and prepared a Consultation Paper listing out the major issues impacting formulation of its regulatory philosophy and approach and laying out its rationale for the positions/approach it was minded to take. The Consultation Paper (No. 3/2009-10) was issued on 26th February 2010 with the intention of providing a further opportunity to stakeholders to make relevant submissions to the Authority before the Regulatory Philosophy and Approach was finalized. On 16th March 2010 the Authority convened a consultation meeting with the stakeholders to elicit their views in person. The Authority received 21 written submissions containing suggestions and comments in respect to the Consultation Paper from stakeholders. These suggestions and comments together with the minutes of the meeting held on 16th March 2010 were uploaded on the Authority's website (<http://aera.gov.in>). The Authority also received two further submissions from APAO on the consultation protocol and the cost of equity.

3. After detailed consideration of the matter and stakeholder responses, the Authority finalized its regulatory approach and general framework for determination of tariffs for determination of tariffs for the aeronautical services provided by the airport operators, vide the Order (No.13/2010-11) issued on 12.01.2011. The Order stated that the Authority proposes to operationalise the regulatory philosophy and approach through detailed guidelines, which shall be issued separately for stakeholder consultation before being finalised.

4. The Authority had, thereafter, issued the Draft of the "Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011" for stakeholder consultation vide Consultation Paper No. 13/2010-11 dated 02.02.2011. All stakeholders were requested to submit their written evidence based feedback/comments and suggestions latest by 22.02.2011. A stakeholder consultation meeting was also held on 14.2.2011, the minutes of which were also uploaded on the AERA website.

5. The Authority after careful consideration of the submissions made by various stakeholders suitably modified the Draft Guidelines issued for stakeholder consultation on 02.02.2011. Further, the Authority issued the Order No.14/2010-11 dated 28.02.2011, vide which the stakeholder responses have been disposed off. The final Guidelines, titled "Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators), Guidelines, 2011", were also issued on 28.02.2011 with directions (Direction No.05/2010-11) to the concerned airport operator(s) to act in accordance with the Guidelines.

6.1 As per the Guidelines issued by the Authority:

- (i) The first Control period shall commence from 1st April 2011.
- (ii) All Airport Operator(s) shall, within four months of the date of issue of the Guidelines i.e., 28.02.2011, submit to the Authority for its consideration, a Multi Year Tariff Proposal (MYTP) for the first Control Period in the form and manner specified in the Guidelines. Accordingly, the cutoff date for submission of the MYTP is 01.07.2011
- (iii) After issuance of the Multi Year Tariff Order (MYTO), the concerned Airport Operator(s) shall submit to the Authority its Annual Tariff Proposal(s) which for the first Tariff Year of the first Control Period shall be submitted within 60 days of the issue of the MYTO.





- (iv) The Authority shall, after due consideration of the Annual Tariff Proposal and stakeholder consultations thereon, make an Annual Tariff Order for a Tariff Year, which shall become effective 30 days from the date of issue of such Annual Tariff Order.

6.2 Therefore, in the nature of the timelines specified in the Guidelines, it would not be possible to determine the tariff in respect of any of the major airports before 01.04.2011.

6.3.1 The Authority had in the Guidelines stated that these guidelines shall be applicable to the Indira Gandhi International Airport, New Delhi, Chhatrapati Shivaji International Airport, Mumbai in such form and manner as the Authority may by a separate order determine.

6.3.2 Further, appropriate views in respect of the said Civil Enclaves at Pune and Goa, will need to be taken by the Authority with the representation of the Ministry of Defence in accordance with the provisions of sub-section (1) of Section 4 of the Act, on a case to case basis.

6.3.3 As such, these Guidelines, as of now, are applicable only in respect of the major airports at Ahmedabad, Bengaluru, Chennai, Cochin, Calicut, Guwahati, Hyderabad, Jaipur, Kolkata and Trivandrum.

7. In view of the above, in order to avoid any regulatory vacuum in respect of the tariffs being levied at the 10 major airports (as referred to in paragraph 6.3.3 above), the Authority had proposed to permit the concerned airport operators to continue charging the tariffs for all aeronautical services provided by them, at the existing approved rates (as on 28.02.2011), in the interim period, i.e. from 01.04.2011 and upto the date the new tariff, as may be approved by the Authority, after following the process indicated in the Guidelines become effective.

8.1 Accordingly, the Authority issued a Consultation Paper No. 14/2010-11 dated 01.03.2011 soliciting feedback, comments and suggestions from stakeholders on the proposal contained in paragraph 7 above. Last date of the submission of the Comments/submissions was 15.03.2010. The comments/suggestions received from different stakeholders are as under:

8.2 Airports Authority of India (AAI) have submitted that they are of the view that during the period of interim arrangement, agreement, if any, already entered into with the parties may be honored including annual escalation in charges/rates, for various services provided at AAI airports.

8.3 Bangalore International Airport Pvt Ltd (BIAL), have submitted that they have preferred an appeal against the Order No.13/2010-11 dated 12.01.2011 before the Hon'ble AERA Appellate Tribunal and have requested that the Authority to keep the Consultation Paper No. 14/2010-11 in abeyance till the Appeal is decided. As the matter is subjudice, BIAL have not expressed any views/comments on the consultation paper.

8.4 Hyderabad International Airport Pvt Ltd (HIAL, have submitted that they have filed an appeal against Order No. 13/2010-11 before the Hon'ble AERA Appellate Tribunal, and the matter being subjudice, they are unable to offer any comments on the Consultation Paper.



8.5 Association of Private Airport Operators (APAO) has stated that their member operators have preferred appeal against Order No. 13/2011-11 dated 12.01.2011 passed by the Authority before Hon'ble AERA Appellate Tribunal. As the matter is subjudice APAO has not expressed any views/comments on the consultation paper.

8.6 Federation of Indian Airlines (FIA) has submitted the following:

8.6.1 The proposed schedule for determination of the multi-year tariff order triggers with a multi-year tariff proposal filing for each airport by 01.07.2011. Given the fact that this is the first time that a regulatory regime is being developed and that some airport operators have stated at the recent stakeholder consultation that they are in the process of challenging the order dated 12.01.2011, it is possible that the filings may not be complete in time.

8.6.2 There is no proposed or indicative timelines proposed for issuing the multi-year tariff order. Further, given the fact that this is the first time that a regulatory regime is being developed, it is imminently likely that the stakeholder consultation and the consequent determination of the multi-year tariff order for each airport would require some time.

8.6.3 The airport operators are then expected to file their annual tariff proposal within 60 days of issue of the multi-year tariff order.

8.6.4 This would again go through a stakeholder consultation process followed by issue of the order which shall be implemented after 30 days of its issue.

8.6.5 It is reasonable to expect that with 14 airports to handle, the process of determination of multi-year tariff order, would require some sequencing since there are capacity constraints in handling 14 proceedings in parallel and that it might be advisable to forthwith consider seeking an appropriate order from the Govt. of India under Section 55 of the AERA Act to-

- a. Stagger the implementation of this regime across all major airports. The sequencing suggested by FIA is as under:
  - i. Mumbai and Delhi .... December 2011
  - ii. Second batch of airports ... March 2012
  - iii. Third batch of airports ... June 2012
  - iv. Fourth batch of airports ... September 2012
- b. Further FIA have also submitted that the 5 years may also be reckoned with from the date of commencement of the first MYT regime so that the bunching of multiple proceedings does not constrain the functioning of the Authority and the ability of the Stakeholders to meaningfully engage in the process.
- c. The existing tariffs (in particular the fuel throughput and similar charges that have gone through multiple increases over the last couple of years) charged by the airport operators are already on a higher side. As such, it is important that the Authority puts in place a suitable truing-up mechanism whereby the operators are held to account for refund of any windfall or excess charges found to have been recovered by them since the enforcement of the AERA Act so that the time taken to bring a prudent and robust regime in place is not at the cost of the airlines and in turn to the passengers, especially in the case of low cost carriers.

8.6.6 In view of the above, FIA has submitted as below :

- i. The Authority may provide for a time frame within which, it shall determine the tariffs that may be charged by the airport operators in the above mentioned major





airports. Absence of indication of any time frame may lead to confusion and lack of clarity for the airlines.

- ii. An opportunity of being heard should be provided to the airlines during the consultation process i.e. tariff fixation for Mumbai and Delhi airports.

8.7 Air India have supported the proposal. It has also been suggested that as far as possible, the Authority should consider application of uniformity in tariff at all major airports including IGI Airport, New Delhi and CSI Airport, Mumbai. The principle of uniformity in tariff may also be considered at all Civil Enclaves which may include both Pune and Goa Airports.

9. The stakeholder comments have been considered in detail by the Authority and it was observed that:

9.1 AAI have submitted that during the period of interim arrangement, agreements, if any, already entered into with the parties may be honored, including annual escalation charges/rates for various services provide at AAI airports. While stating so, AAI have not identified any tariff which are subject to annual escalation on contractual basis. Presumably, AAI's comment is relevant to the Fuel Throughput Charges, where as per records available with the Authority, an escalation has been agreed to with the Oil companies. The Authority had vide Order No.07/2010-11 dated 04.11.2010 dealt with this issue and had decided to permit an increase w.e.f. 01.04.2010 on the basis of contractual arrangements as the matter was taken up for ad hoc determination. The tariffs for aeronautical services, including Fuel Throughput charges, would, now be decided finally in terms of the framework specified by the Authority at which stage due consideration would be given to the submissions of AAI in this regard. Hence, for the purpose of interim arrangement, it would not be feasible to accede to the proposal of AAI.

9.2.1 Comments of FIA relate to sequencing of MYTP and ATP of various airports. The Authority had already considered these issues and had addressed them as under :

- (i) As clause 3.1 of the Guidelines, the airport operators have been given a time period of 4 months to submit the MYTP.
- (ii) The Authority can permit extension of time for submission of various proposals (clause 3.8).
- (iii) After receiving MYTPs, the Authority may, for administrative exigencies, notify a separate schedule for making Multi Year Tariff Orders vis-à-vis different proposals (Proviso to clause 3.3).
- (iv) The Annual Tariff Proposal for the first tariff year of the first Control Period is required to be submitted within 60 days of the issue of Multi Year Tariff Order (Clause 3.4). Therefore, as and when the Authority notifies the schedule for Multi Year Tariff Orders, the schedule for Annual Tariff Proposal and Orders would automatically get sequenced.

9.2.2 Going forward any further issues on this count can also be addressed and resolved by the Authority in accordance with the provisions of the Act. At present, therefore, there appears to be no difficulty in giving effect to the provisions of the Act requiring recourse to the provisions of Section 55. It was also observed that the Central Government can make an order under Section 55 only within 2 years from the date of commencement of the Act. The Act was given effect on 1.1.2009.



9.3 The Appeals filed by the private airport operators namely, DIAL, MIAL, BIAL, HIAL and CIAL, against the Authority's Order No.13/2010-11 dated 12.01.2011, were listed for consideration of Hon'ble AERA Appellate Tribunal on 16.03.2011. It was observed that the Appeal No. 1/2011 filed by MIAL and Appeal No. 5/2011 filed by DIAL were disposed off by the Hon'ble Tribunal without a notice to the Authority whereas Appeal Nos. 2/2011, 3/2011 and 4/2011 filed by BIAL, CIAL and HIAL, respectively, have been ordered to be listed for 04.05.2011. Therefore, there is no communication or order from the Hon'ble Tribunal which would require the Authority to keep the matter in abeyance as suggested by APAO, HIAL and BIAL.

## ORDER

10. After careful consideration of all material available on records, stakeholder comments and the observations made hereinabove, the Authority hereby orders that in respect of 10 major airports namely, Kolkata, Chennai Hyderabad, Bangalore, Cochin, Ahmedabad, Trivandrum, Calicut, Guwahati and Jaipur, the concerned airport operators be permitted to continue charging the tariffs/charges for all aeronautical services provided by them, at the existing approved rates (as on 28.2.2011), in the interim period i.e. from 1.4.2011 up to date the new tariffs as may be approved by the Authority become effective.

By the Order of and in the  
Name of the Authority

  
(Sandeep Prakash)  
Secretary

1. Airports Authority of India,  
Rajiv Gandhi Bhawan,  
New Delhi.  
(Through Shri V.P. Agrawal, Chairman)
2. Cochin International Airport Ltd,  
Nedumbassery, Kochi Airport P.O.,  
Ernakulam -683 111,  
Kerala  
(Through Dr. Krishnadas Nair, Managing Director,)
3. GMR Hyderabad International Airport Limited  
Rajiv Gandhi International Airport,  
Shamshabad, Hyderabad – 500 409  
(Through Shri Kiran Kumar Grandhi, Managing Director)
4. Bangalore International Airport Limited  
Alpha-2, Administration Block,  
Bengaluru International Airport,  
Devanahalli, Bangalore – 560 300  
(Through Shri G.V. Sanjay Reddy, Managing Director)

