

Consultation Paper No.16/2010-11



Airports Economic Regulatory Authority of India

**The Airports Economic Regulatory Authority of
India (Terms and Conditions for Determination of
Tariff for Services Provided for Cargo Facility,
Ground Handling and Supply of Fuel to the
Aircraft) Guidelines, 2011 – Interim Arrangement
for the 1st Control Period commencing on
1st April'2011**

New Delhi: 17th March, 2011

**AERA Building
Administrative Complex
Safdarjung Airport
New Delhi – 110 003**

Pursuant to enactment of the “The Airports Economic Regulatory Authority of India Act, 2008” (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.

1.2 As per Section 2 (a) of the Act, any service provided “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.

2.1 To ensure transparency in the process leading up to the framing of appropriate procedures/systems for economic regulation, as required under the Act, the Authority issued a White Paper on ‘Regulatory Objectives and Philosophy in Economic Regulation of Airports and Air Navigation Services’ (‘White Paper’) on 22.12.2009. The White Paper provided stakeholders an opportunity to consider the issues highlighted therein and submit evidence-based feedback, comments and suggestions. The Authority received 28 submissions in response to the White Paper which were **uploaded on the Authority’s website** for general information.

2.2 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.03/2009-10) was issued on 26.02.2010 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 16.03.2010, the Authority also convened a meeting to elicit the views of the stakeholders in person. The Authority received 21 written submissions containing suggestions and comments in respect of the Consultation Paper. The minutes of the stakeholder consultation meeting as also the comments received on the Consultation Paper were uploaded on the **Authority’s website**.

3.1 The Authority, on careful perusal of all the submissions, views and opinions expressed by stakeholders, issued an Order (No. 05 / 2010-11, dated 02.08.2010) laying down its philosophy and approach for economic regulation of the services provided for Cargo Facility, Ground Handling and Supply of Fuel to the aircraft at the major airports.

3.2 The overall approach and framework specified in the Order No.05/2010-11 does not apply, ipso facto, to the two Civil Enclaves (at present, Goa and Pune) within the regulatory ambit of the Authority and appropriate views in respect of the said Civil Enclaves would 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.

4. In order to operationalize the regulatory philosophy and approach, the Authority also issued a **draft of “The Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Services Provided for Cargo Facility, Ground**

Handling and Supply of Fuel to the Aircraft) Guidelines, 2010” for stakeholder consultation vide Consultation Paper No. 05/2010-11 dated 2.08.2010.

5. The Authority, having perused the records and upon due consideration of all facts, **circumstances and submissions made by the stakeholders, approved the “Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Services provided for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft) Guidelines, 2011”** and issued the same along with the Direction No.04/21010-11 dated 10.01.2011. All relevant service providers were directed to act in accordance with the Guidelines. Further, the stakeholder comments were also disposed off vide Order No.12/2010-11 dated 10.01.2011.

6.1 As stipulated in the Guidelines, the Authority shall follow a three stage process for determining its approach to the regulation of a regulated service –

(i) Materiality Assessment;

(ii) Competition Assessment;

(iii) Assessment of reasonableness of the User Agreements between the service providers and the users of the regulated services.

Based on the outcome of the aforesaid assessment, the Authority would either decide to apply light touch regulation or an intrusive price cap approach to the concerned service provider.

6.2 The procedure outlined in Chapter II of the Guidelines for submission and review of the tariff proposals lays down that all service provider(s) shall within two months of the date of issue of these guidelines 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 appendices to the Guidelines. The Authority shall put in public domain for stakeholder consultations, the information received from the service provider(s) as part of the MYTP. Further, the Authority upon due consideration of the MYTP and stakeholder consultations thereon and after obtaining such additional information, as it may consider necessary, make a Multi Year Tariff Order (MYTO) for a Control Period.

6.3 Thereafter, the service provider shall submit to the Authority an Annual Tariff Proposal within 75 days from the date of issue of the MYTO.

6.4 The Guidelines were issued on 10.01.2011 and the Authority had stipulated that the first Control period shall commence from 01.04.2011. In terms of clause 7.1 of the Guidelines, all service providers were required to submit MYTP within two months of the date of issue of the Guidelines. Therefore, the cutoff date for submission of the MYTP by the Independent Service Providers was 10.03.2011.

6.5 Further, in order to assist the service providers in filing a comprehensive MYTP, a checklist was prepared and vide DO letter dated 21.02.2011, all the independent service providers (of the above mentioned regulated services) were requested to ensure that the MYTP is prepared in accordance with the Guidelines and cross checked with the checklist before submission. All the service providers were also requested to kindly ensure that necessary proposals are submitted to the Authority within the specified timelines.

7.1 The Authority has received the MYTP from the following service providers as on 10.03.2011, i.e., the cutoff date:

S.No.	Name of service provider	service Rendered	Airport	MYTP for approval
1	Bharat Stars Services (P) Ltd. (BSSPL)	ITP Services	IGI Airport Delhi and Bangalore	Submitted in respect of IGI Airport only
2	Delhi Aviation Fuel Facility Pvt. Ltd. (DAFFL)	Fuel Farm Facility	IGI Airport Delhi	Fuel Farm Infrastructure Charges
3	Indian Oil Sky Tanking Limited (IOSL)	ITP Services	IGI Airport Delhi and Bangalore	Submitted in respect of ITP services at IGI Airport and Bangalore Airport
4	Indian Oil Sky Tanking Limited (IOSL)	Fuel Farm Facility	Bangalore	Fuel Farm Infrastructure Charges

7.2 The Authority is also in receipt of letters from the following service providers requesting for extension of time for submission of the MYTP:

S.No.	Name of service provider	Service Rendered	Airport	Extension sought for filing the MYTP - upto
1	M/s Kerala State Industrial Enterprises Ltd.	Cargo facility	Trivandrum & Calicut	End of March, 2011
2	Menzies Aviation Bobba (Bangalore) Ltd.	Cargo facility	Bangalore	10th May 2011
3	Menzies Aviation Bobba Ground Handling Services Pvt Ltd	Ground Handling	Shamsahabad, Hyderabad	Extension of 2 months
4	Hyderabad Menzies Air Cargo Pvt Ltd	Cargo Facility	Shamsahabad, Hyderabad	Extension of 2 months
5	NASPORT Handling India Pvt Ltd	Ground Handling	CSIA Mumbai	10 th May'2011
6	Celebi Delhi Cargo Terminal Management (I) Pvt.Ltd.	Cargo facility	IGI Airport Delhi	10th June 2011
7	Delhi Cargo Service Centre Private Limited.	Cargo facility	IGI Airport Delhi	3 months
8	Globe Ground India Pvt. Ltd.	Ground Handling	Bangalore	30th April, 2011
9	Bird-Worldwide Flight Service (I) Private Ltd.	Ground Handling	IGI Airport Delhi	30th April, 2011
10	Cambata Aviation Private Limited	Ground Handling	Delhi	End April 2011
11	CELEBI NAS Airport Services India Pvt Ltd.	Ground Handling	Mumbai	30th April, 2011
12	Bharat Stars Services (P) Ltd.	ITP Services	Bangalore	31st March, 2011 in respect of BIAL
13	Bhadra International	Ground Handling	Chennai and Kolkata	90 days
14	Air India SATS	Ground Handling	Bangalore	end April 2011
15	Central warehousing Corporation	Cargo Facility		21 st March'2011
16	Celebi Ground Handling Delhi Pvt.Ltd.	Ground Handling	Delhi	30 th April'2011

7.3 The remaining independent service providers numbering 7 (as per the Authority's records), at the major airports (excluding the Civil Enclaves at Goa and Pune) have neither submitted the MYTP as per the guidelines nor have requested for an extension of time for submission of the MYTP.

8.1 As per Section 2 (a) of the Act, any service provided "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 and the tariff for these services is to be determined by the Authority in terms of Sec 13 (1) (a) of the Act. However, as observed above, a number of services providers have sought for an extension of time for submission of the MYTP while a larger number of the service providers have not even approached the Authority seeking time for extension nor have submitted the MYTP. The levy of fee in respect of aeronautical services w.e.f 01.04.2011, i.e., the start of the control period, without the previous approval of this Authority, would be a contravention of the provisions of the Act, which is punishable under Section 38 of the Act.

8.2 Considering the nature of services being rendered, and the availability of detailed agreements with users which lay down the charges and the service level agreements which have been executed after detailed negotiations, the Authority had decided in the Order No.12/2010-11 dated 10.01.2011, that wherever the user agreements are in existence with all the users and the Authority is assured of their reasonableness, they should normally be respected and a Light Touch approach should be adopted even if the service is being rendered in a non competitive scenario. In other words, the Authority has decided to pre-dominantly apply a light touch approach to the regulation of the aforesaid services.

8.3 The Authority had also, while stipulating the date of commencement of the Control Period (Clause 6.2 (i) of Order No.12/2010-11 dated 10.01.2011), observed that keeping in view the timelines contemplated in the guidelines, it may not be possible to issue the tariff determination orders well in time before 01.4.2011. It was also decided that wherever the Authority, after filing of the requisite proposals by the concerned stakeholders is not in a position to issue the annual tariff orders before 01.4.2011, it would issue appropriate orders for regulating the tariffs during the interim period.

8.4 The MYTP submitted by the services providers as per para 7.1 above are presently being examined. Pending issue of the MYTO and approval of the Annual Tariff Order in respect of the proposals and to avoid any regulatory vacuum in respect of the tariffs being levied by these service providers, the Authority has to consider and issue appropriate orders for regulating the tariffs during the interim period.

8.5 As regards the independent service providers who have sought time for extension of deadline for submission of the MYTP (para 7.2) as also the remaining independent service providers who have not approached the Authority for extension of deadline, the Authority has to issue appropriate directions.

9. Upon careful consideration of the matter, the Authority has observed and tentatively decided as under:

- (i) The three independent service providers namely BSSPL, DAFFL, IOSL have submitted the MYTP as on 10.3.2011.
- (ii) IOSL and BSSPL have submitted the MYTP for ITP services provided by them in respect of Delhi airport.

- (iii) IOSL have submitted the MYTP for ITP services and in respect of the Fuel Farm facility at Bangalore airport. It appears **from Authority's records that** IOSL and BSSPL have been providing ITP services at Bangalore airport from 2008 onwards and the charges thereof were also fixed prior to 01.09.2009, i.e., the date when provisions of the Act regarding determination of tariff by the Authority were made effective. Similar position exists in respect of IOSL in so far as the fuel farm facility at Bangalore airport is concerned.
- (iv) In respect of IGIA, Delhi, both BSSPL and IOSL started providing ITP services in July, 2010 and the charges thereof have not been determined by the Authority. Therefore, presently, they are not charging any fee in respect of service provided by them at IGIA, Delhi. Similar position exists in respect of fuel farm facility of DAFFL.
- (v) Keeping in view the position discussed at (i) to (iv) above, it is felt that the proposals submitted by IOSL in respect of ITP services and fuel farm facility at Bangalore airport; and by IOSL and BSSPL for ITP services and DAFFL for fuel farm facility at IGI Airport be immediately taken up for examination. In the interim, the IOSL, may be allowed to continue charging the fee/tariff at Bangalore airport as was in existence on 01.09.2009 w.e.f. 01.04.2011 till the tariffs (for the first control period) are decided by the Authority and become applicable.
- (vi) As regards the IGIA, Delhi, the Authority notes that no approved tariff is in existence and therefore, an interim arrangement w.e.f. 01.04.11 is not possible. The Authority, therefore, proposes to take up these proposals for consideration on priority so that they could be finalized as soon as possible and tariffs so approved may be made applicable w.e.f. 01.04.2011.
- (vii) As regards the sixteen (16) service providers who have requested for extension of time for filing the MYTP, the requests for extension vary from 3 weeks to 3 months. It is felt that this being the first control period some flexibility should be permitted.
- (viii) A number of service providers have also not responded to the guidelines and the directions issued on 10.1.2011, i.e., they have neither filed MYTP nor have sought extension of time. This being the first control period, the Authority intends to give such service providers one more chance to comply with statutory/regulatory requirements.
- (ix) Keeping in view the position at points (vii) and (viii) above, it is proposed that the last date for filing of MYTP for the control period commencing 01.04.2011 may be extended upto 30.4.2011.
- (x) Subject services were brought in the regulatory ambit for the first time under the Act. As indicated earlier, the powers contained in section 13 for determination of tariff were made effective on 01.09.2009. Thereafter, Authority has not approved tariffs in respect of any of the independent service providers for these services. As such, in respect of the independent service providers who have either sought extension of time or who have not responded, the tariffs as effective on 01.09.2009 may be allowed to continue beyond 01.04.2011 also and upto the date when the new tariff as may be approved by the Authority upon receiving their submissions would become applicable. This interim arrangement would be subject to the condition that the concerned independent service providers submit the MYTP latest by the 30.4.2011. In case any service provider(s) fails to

submit MYTP on or before 30.4.2011, the interim arrangement in respect of such service provider(s) would cease to be effective.

10. As indicated hereinabove, the first control period is commencing w.e.f. 01.04.2011. Therefore, the interim arrangement as proposed above has to be finalized expeditiously and in any case before 01.04.2011 so as to avoid any regulatory vacuum. In this light a short consultation period of 7 days is being proposed.

11. The Authority solicits feedback, comments and suggestions from stakeholders on the proposals contained in paragraph 9 above. Comments/submissions may please be furnished to the Authority, **latest by 24th March, 2011** at the following address:

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