

[F.No. AERA /20019 /CGF-G/2010-11/Vol-II]  
Airports Economic Regulatory Authority of India

Order No. 12/2010-11

AERA Building,  
Administrative Complex,  
Safdarjung Airport,  
New Delhi -110 003

Date of Order: 5<sup>th</sup> January, 2011  
Date of Issue: 10<sup>th</sup> January, 2011

**In the matter 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, 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.

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 22nd December 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. These submissions were uploaded on the Authority’s website for general information.

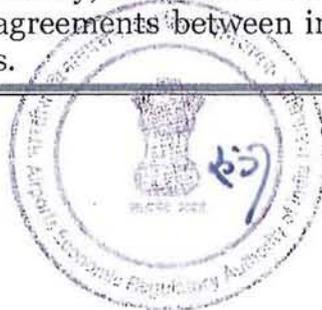


2.2 The Authority considered the views and opinions submitted in response to the White Paper and prepared a Consultation Paper listing out the major issues impacting formulation of its regulatory philosophy and approach and laying out its rationale for the positions / approach it was minded to take. The Consultation Paper (No. 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 16<sup>th</sup> March 2010 , the Authority also convened a meeting to elicit the views of the stakeholders in person.

2.3 The Authority received 21 written submissions containing suggestions and comments in respect of the Consultation Paper.

3. The Authority, on careful perusal of all the submissions, views and opinions expressed by stakeholders, issued an Order (Order No. 05 / 2010-11, dated 2<sup>nd</sup> August, 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, which is summarised hereunder:

- (a) The Authority recognises that services for the cargo facility, ground handling and supply of fuel to the aircraft are provided at major airports, by the cargo facility operators, ground handling service providers and fuel farm operators / fuel access providers who can either be the airport operators themselves or independent agencies / licensees (“independent service providers”). The Order lays down the regulatory philosophy and approach wherever aforesaid services are provided by the independent service providers. The Authority will set out its approach for airport operators, in respect of such services separately.
- (b) The Authority’s approach to regulation with respect to independent service providers for cargo facilities, ground handling, and fuel farm facilities / fuel access will comprise of two key steps: (i) materiality assessment; and (ii) competition assessment. Normally, the Authority shall undertake the assessment at the beginning of the Control Period. However, the Authority reserves the right to review the assessment within the Control Period.
- (c) Where the Authority determines that the service is material and where there is insufficient competition in provision of services at a major airport (‘material and not competitive’), it shall regulate such service through a price cap approach by setting a yield per unit and approval of tariffs annually.
- (d) Where the Authority determines that (i) the service is not material (‘not material’); or (ii) the service is material but there is sufficient competition in provision of service at a major airport (‘material but competitive’), it shall regulate through a light touch approach by approving tariffs annually, based on evidence of consultation on tariffs with users or user agreements between independent service providers and users of services.



- (e) The Authority shall determine tariff on the basis of a Multi Year Tariff Proposal made by the independent service providers for a control period of 5 years and would involve annual compliance process, tariff proposals, user consultation and compliance of relevant regulations/ guidelines by the service provider.
- (f) The Authority shall take into consideration payments required to be made by independent service providers of cargo facility, ground handling, fuel farm/ access facilities to the airport operators as part of the passenger yield cap calculation for airport operators.
- (g) As regards the quality of service provided by the ground handling service providers, the Authority notes that, normally, such services are covered by the service level agreements between the service provider and the airlines. Such service level agreements, inter-alia, lay down the performance/ quality of service parameters agreed to between the service provider and the user airline. The Authority considers such mechanism of service level agreements as reasonable safeguard to the airline users against under-performance or service levels that do not meet their requirement.
- (h) In respect of the services relating to the supply of fuel, the Authority considers that quality of service aspects relating to access to airside/ fuel supply infrastructure would be adequately covered under the commercially negotiated contracts between users and service providers.
- (i) The Authority considers that there are significant interdependencies between activities performed by multiple parties at air cargo facilities, including aspects like dwell time, quality of service and information requirement. In such a scenario, it may not be possible to attribute objective or subjective quality of service indicators solely to cargo facility operators and consider linkage of service quality performance to tariff determination process. However, the Authority is conscious of the need to evolve the systems/ procedures for monitoring performance standards and is minded to direct further analysis on the issue if deemed necessary during the first regulatory cycle.
- (j) Notwithstanding the position set out in (g), (h) and (i), the Authority shall monitor the relevant performance standards in respect of all three services as may be set by the Central Government or any authority authorized by it on its behalf.

4.1 In order to operationalize the regulatory philosophy and approach as indicated above, the Authority also issued 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. The last date for submission of comments was



03.09.2010 which was extended upto 15.09.2010 vide Public Notice no. 06/2010-11 dated 30.08.2010.

4.2 In response, the Authority received comments/feedback/submissions from following stakeholders:

Airport Operators & Associations

- (1) Delhi International Airport Pvt. Ltd.
- (2) Bengaluru International Airport Ltd.
- (3) Cochin International Airport Ltd.
- (4) Mumbai International Airport Pvt. Ltd.
- (5) GMR Hyderabad International Airport Ltd.
- (6) Fraport India
- (7) Association of Private Airport Operators

Airlines & Associations

- (8) Air India
- (9) Federation of Indian Airlines
- (10) International Air Transport Association Cargo Operators
- (11) Island Aviation Services Ltd. (Maldivian)
- (12) Hyderabad Menzies Air Cargo Pvt. Ltd.
- (13) Blue Dart Aviation Ltd.
- (14) Express Industry Council of India
- (15) Cargo Service Centre सत्यमेव जयते
- (16) Celebi Delhi Cargo Terminal Management India Pvt. Ltd.
- (17) Menzies Aviation (India) Pvt. Ltd.

Ground Handling Operators

- (18) Bird Worldwide Flight Service
- (19) Globe Ground India Pvt. Ltd.
- (20) Celebi Ground Handling Delhi Pvt. Ltd.
- (21) Cambata Aviation Pvt. Ltd.
- (22) Bhadra International India Ltd.
- (23) Menzies Bobba Ground Handling Services Pvt. Ltd.
- (24) Air India Sats

Fuel Supply Agencies

- (25) Indian Oil on behalf of PSU Oil Companies
- (26) Reliance Industries Limited Petroleum Business
- (27) Bharat Stars Services Pvt. Ltd.
- (28) Delhi Aviation Fuel Facility (P) Ltd.
- (29) Indian Oil Skytanking

Others

- (30) FICCI
- (31) Council for Leather Exports
- (32) Kerala State Industrial Enterprises Ltd.
- (33) Govt. of Kerala
- (34) Govt. of Tamil Nadu



The comments received within stipulated timeline were on the Authority's website for information of all concerned.

4.3 A stakeholder meeting was held on 18.8.2010, minutes whereof were also placed on the Authority's website.

5.1 The stakeholder responses have been considered by the Authority in its Twenty Sixth Meeting held on 04.01.2011 and in the Twenty Seventh Meeting held on 05.01.2011.

6.1 The Authority noted that while there are several responses, there are a few issues/ concerns need to be dealt in detail. Authority discussed these issues and decided its position as under :

- (i) Competition Assessment: In the draft guidelines, Authority had indicated that where a regulated service is being provided by three or more service providers, it shall be deemed as competitive at that airport. A large number of service providers have stated that where two or more service providers are providing regulated services at airport, it should be deemed to be a competitive situation. IATA, the representative body of international airlines, has also supported this position. The Authority notes that the position of 3 or more service providers being considered as a competitive situation was kept in line with the Ground Handling Policy of the Central Government wherein it has been provided that there would be atleast three service providers providing third party ground handling services at each of the airports. However, keeping in view the general consensus amongst the stakeholders that even two service providers can be operating in a competitive situation, the Authority has decided to modify the relevant provisions in the guidelines to provide that wherever the regulated service is provided at an airport by two or more service providers, it shall be deemed as a competitive scenario at that airport. The clause (5) of the guidelines has been modified to this extent. However, it is clarified that the change in benchmark does not, in any way, sanction or contemplate any deviation from the Government policy, if any, on the issue.
- (ii) Reasonableness of User Agreements: A large number of service providers have stated that in the nature of services rendered, they have to enter into detailed agreements with users which not only lay down the charges, but also service levels. It is the case of the service providers that the user agreements executed after detailed negotiations and those mutually accepted should be respected by the Authority. After careful consideration, the Authority feels that there is some merit in this submission of the stakeholders. Accordingly, it has been decided 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.



Clause (6) has been added in Chapter I of the guidelines providing for assessment of the reasonableness of the user agreements. Pursuant to this modification, it is now contemplated that the Authority would adopt a three stage process in respect of a tariff proposal – (i) materiality assessment; (ii) Competition assessment; (iii) Assessment of reasonableness of the User Agreements between the service provider and the users of the regulated service. Upon assessment on the above three counts, following four scenarios may emerge:

- (a) Service is deemed to be non material - Light Touch Regulation
- (b) Service is deemed to be material but competitive - Light Touch Regulation
- (c) Service is deemed to be material and non competitive but the Authority is assured of the reasonableness of the user agreements – Light Touch Regulation
- (d) Service is deemed to be material and not competitive and the Authority is not assured of the reasonableness of the user agreements – Price Cap Determination

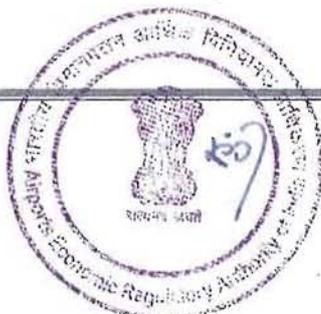
In short, the Authority would adopt a light touch approach in respect of situation at (a) to (c) above and price cap approach will be resorted to only in respect of situation at (d) above. The clause 3.2 of Chapter I and clause 7.2 of Chapter II have been modified accordingly. Consequential modifications/amendments have been made in other clauses as well.

- (iii) Materiality Index in respect of services provided for supplying fuel to an aircraft: In clause 4.1 of the draft guidelines, the Authority had indicated that it would assess the materiality in respect of the aforesaid service as per materiality index as follows:

**Materiality Index (MI<sub>F</sub>)**

$$= \frac{\text{Aircraft Movement at airport A}}{\text{Total Aircraft Movements at Major Airports}} \times 100$$

The stakeholders have represented that the uplift of the fuel or fuel throughput is a better indicator of the materiality as there may be cases where the aircraft movement at a particular airport may be high but airlines may not, as a part of their commercial policy, uplift fuel from the given airport. This submission of the stakeholders appears acceptable as the fuel throughput would be a more appropriate indicator of the materiality position. Accordingly, in the renumbered clause 4.2 it has been provided that the Materiality Index in respect of the subject service shall be as under:



**Materiality Index (MI<sub>F</sub>)**

$$= \frac{\text{Fuel Throughput in Kilolitres at a major airport A}}{\text{Total Fuel Throughput in Kilolitres at Major Airports}} \times 100$$

The illustration in Appendix III of the guidelines has also been changed.

- (iv) Threshold for Materiality Assessment: A few stakeholders have submitted that the threshold for materiality assessment viz. 5% in respect of fuel supply, 2.5% in respect of cargo and 5% in respect of ground handling services needs to be changed. However, after detailed deliberations, it is felt that on balance the thresholds indicated in the draft guidelines are appropriate and need not be changed.
- (v) Confidential Information: In terms of section 13(4) of the Act, the Authority is required to ensure transparency while exercising its powers and discharging its functions, inter-alia, by holding due consultation with all stakeholders at the airports. The Authority has been, accordingly, placing the proposals received from service providers and its draft position thereon for stakeholder consultation alongwith relevant information in public domain. A few stakeholders have pointed out that some information submitted by them may be of confidential nature disclosure whereof may adversely affect their business/commercial interest. It is observed that any meaningful stakeholder consultation presupposes relevant information to be placed in public domain. At the same time, it is important to ensure that, in this process, avoidable damage is not caused to the business interests of the service provider. Further, in the Authority's interaction with other regulators it is gathered that these regulators have been drawing a judgemental balance between above considerations by redacting confidential information from stakeholder consultation. After careful consideration, it has been decided that the Authority may also follow this practice. Accordingly, in clause 7.2 of the guidelines a provision has been added wherein it has been provided that the Authority would consider specific submissions from service providers for not putting certain information in the public domain on grounds of such information being confidential information. "Confidential Information" has also been separately defined in clause 2.12 of the guidelines.
- (vi) Based on the consultation responses, changes have also been made in the definition of the multi year tariff framework and multiyear tariff proposal in clause 2.17 and clause 2.19 of the guidelines.
- (vii) Discounts: It has been the view of the Authority that discounts given by the service providers on the tariff determined/approved by the



Authority is a commercial decision of the service provider and therefore, the Authority would not concern itself with the same. In effect, it means that if there is under recovery due to discounts the Authority would not compensate the service provider for the same. However, a number of service providers have indicated that in respect of subject services depending upon the volume of business and such other relevant factors, they have to many a times offer discounts. The Authority has reviewed the matter in detail. It is felt that the position adopted by it hitherto is appropriate and need not be changed. It is further observed that the formula for error correction term needs to be modified so that any under recovery due to discount, is not corrected. The formula contained in renumbered clause 10.20.3 has been suitably modified.

6.2 In addition to the changes made in responses to the consultation responses upon detailed review of the draft guidelines decided as under:

- (i) First Control Period: In the draft guidelines there was no indication regarding date of commencement of first control period. On a review, it is felt that it would be appropriate if the first control period could commence w.e.f. 01.4.2011. The clause 2.14 containing the definition of the "control period" has been modified, accordingly. While providing so, it is 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 has been 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.
- (ii) Scope of an asset in RAB not proposed by the service provider: In the draft guidelines, it was proposed that relevant RAB asset shall be all fixed assets proposed by the service provider after providing for such exclusions therefrom or inclusions therein as may be determined by the Authority. Detailed guidance in respect of assets excluded from RAB was indicated. However, the guidance in respect of a situation where an asset is required to be included in the scope of RAB, which has not been so proposed by service provider, remained to be indicated. This omission is now being corrected by including clause 9.2.1 (f) in the guidelines.
- (iii) Depreciation: Clauses 9.3.4 and 9.3.5 have been added in the provision regarding depreciation wherein it has been clarified that the minimum depreciated value of the asset shall be considered as 10% and depreciation shall be allowed upto 90% of the original cost of the asset. It has also been clarified that land is not a depreciable asset and its cost shall be excluded from the original cost while computing the depreciable value of the assets.



- (iv) Operation and Maintenance Expenditure: In clause 9.4 of the draft guidelines, the Authority had indicated its approach regarding assessment of operating expenditure. During review, it has been found that it would be more appropriate to explicitly include maintenance expenditure in this head. Therefore, the guidelines have been modified to indicate "operation and maintenance expenditure" in place of "operating expenditure". In the renumbered clause 9.4.2. and 9.4.3, clarity has also been given in respect of treatment of short term loans and any other payments made by the service provider.
- (v) Deposits: Treatment of deposits made by the service provider to the Airport operator for the purposes of carrying on business is also provided in the guidelines. Clause 9.4.3 has been added in the guidelines to this effect.

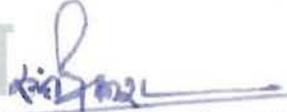
7 Having perused the records and upon due consideration of all facts, circumstances and submissions made by the stakeholders, the Authority approved the "Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Services provided for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft) Guidelines, 2011" which are being issued separately. All relevant service providers have been directed to ensure compliance of the Guidelines issued and act in accordance with the Guidelines. The stakeholder comments are disposed of in terms herein above and the detailed comments of the Authority is placed at **Annexure-I.** सत्यमेव जयते

## ORDER

8. Ordered Accordingly.

By the Order of and in the name of the Authority

भा.वि.आ.वि.प्रा  
AERA

  
(Sandeep Prakash)  
Secretary

To,

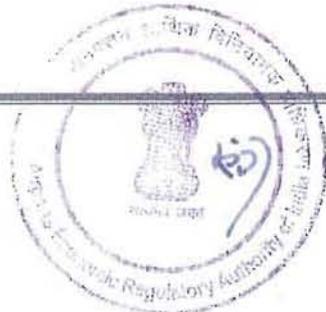
1. Airports Authority of India,  
Rajiv Gandhi Bhawan,  
New Delhi -110 003  
(Through: Shri V.P Agrawal, Chairman)
2. Cochin International Airport Pvt.Ltd,  
Nedumbassery, Pvt Ltd,  
Cochin, Kerala  
(Through: Dr.Krishnadas Nair, Managing Director)



3. Delhi International Airport Pvt.Ltd,  
Uran Bhawan,  
IGI Airport,  
New Delhi – 110 037  
(Through: Shri.Kiran Kumar Grandhi, Managing Director)
4. Hyderabad International Airport Pvt.Ltd,  
GMR HIAL Airport Office  
Shamshabad,  
Hyderabad -500 409  
(Through: Shri.Kiran Kumar Grandhi, Managing Director)
5. Mumbai International Airport Pvt Ltd,  
CSI Airport,  
Mumbai  
(Through: Shri.G.V.Sanjay Reddy, Managing Director)
6. Bangalore International Airport Pvt.Ltd,  
Administration Block,  
Devanahalli, Bangalore- 560300  
(Through: Shri.G.V.Sanjay Reddy, Managing Director)
7. M/s Kerala State Industrial Enterprises Ltd.,  
Trivandrum Air Cargo Terminal,  
Trivandrum -695008
8. M/s Kerala state Industrial Enterprises Ltd.,  
Calicut Air Cargo Complex,  
Karipur-673 647.
9. M/s. Central Warehousing Corporation,  
Warehousing Bhawan,  
4/1, Siri Institutional Area,  
August Kranti Marg,  
New Delhi – 110 016.  
(Through: Shri B.B. Pattanaik, Managing Director)
10. M/s Rajasthan Small Scale Industries Corporation Ltd.,  
Udyog Bhavan, Tilak Marg,  
'C' Scheme,  
Jaipur



11. M/s GSEC Limited, Air Cargo Complex,  
Old Airport, Ahmedabad,  
Regd. Office: 2<sup>nd</sup> Floor,  
Gujarat Chambers,  
Ashram Road, Ahmedabad-380 009
12. Air India SATS Airfreight services  
Cargo Warehouse 2,  
Bengaluru International Airport,  
Devanahalli, Bangalore-560300  
(Through : Mr.Henry Christopher, AVP)
13. Menzies Aviation Bobba (Bangalore) Limited.  
Cargo Warehouse 1,  
Bengaluru International Airport,  
Devanahalli, Bangalore- 560300  
(Through : Mr.Andy Brant, CEO)
14. Celebi Delhi Cargo Terminal Management (I) Private Limited  
Import III, Cargo Terminal  
IGI Airport, New Delhi – 110037 सत्यमेव जयते  
(Through: Shri .Sanjay Khanna,CEO)
15. Delhi Cargo Service Center Private Limited,  
A-294/1, Road No. 6, NH-8,  
Mahipalpur Extension, New Delhi-110037  
(Through: Shri. Radharamanan Panicker, Director)
16. M/s Hyderabad Menzies Airport Cargo Pvt.Ltd.  
Air Cargo International Airport,  
Shamshabad,  
Hyderabad -500409  
(Through: Mr.Paul Smith,CEO)
17. Express Industry Council of India  
501,Crystal Centre, Raheja Vihar,  
Off. Chandivali Farm Road, Powai,  
Mumbai 400 072
18. M/s Bhadra International (India)Ltd.,  
B-4/62, Safdarjung Enclave,  
New Delhi-110029  
(Through: Shri Prem Bajaj,Director)



19. M/s NAS Aviation Services India Pvt. Ltd.,  
903-905, SAGAR TECH Plaza,  
A-Wing, Andheri Kurla Road,  
Mumbai -400 072  
(Through: Shri.Hosi Charna, VP-BD & Admin)
20. M/s Indo Thai Airport Management Services Pvt.Ltd.,  
5, JBS Harden Avenue, Silver Arcade,  
Room No.S-2, Second Floor, Kolkata-700 005  
(Through: Shri Rakesh Jain, Director)
21. Globe Ground India Pvt. Limited  
GSE 2, Bengaluru International Airport, Devanahalli,  
Bangalore 560300
22. Bird-Worldwide Flight Service (I) Private Limited  
Bird Consultancy Services Pvt. Ltd., E-Block,  
Connaught House, Connaught Place,  
New Delhi -110001  
(Through: Shri. Gaurav Bhatia, Director)
23. Cambata Aviation Private Limited  
IGI Airport Terminal 2  
Line Maintenance  
Block A, New Delhi – 110037  
(Through : Mr. Yezdi Cooper, Airport Manager)
24. M/s Air India SATS Airport Services  
Maintainence centre, Gate No. 02  
Rajiv Gandhi International Airport,  
Shamshabad-500 409  
R R District-AP(India)  
(Through : Shri.Gopi Bala, Vice President)
25. Indian Oil Corporation Ltd.  
(Navy Land)),  
Indian Oil Bhawan,  
G-9m Ali Yavar Jung Marg, Bandra(E),  
Mumbai-400 051  
(Through: Shri R Sareen, Executive Director (Aviation))
26. M/s. Essar Oil Ltd.  
Essar Techno Park Building II,  
Swan Mill Compound,  
L.B.S.Marg, Kurla(W),  
Mumbai-400 070.  
(Through : Mr. Winford Joseph, DGM Aviation Marketing)



27. Indian Oil Sky Tanking Limited.  
Fuel Farm 1, Bengaluru international Airport,  
Devanahalli, Bangalore-560300  
(Through: Shri T.S. Dupare, Chief Executive Officer)
28. Delhi Aviation Fuel Facility (P) Ltd.  
New Udaan Bhawan, Terminal 3,  
Opp.ATC Complex, International Terminal,  
IGI Airport, New Delhi-110037  
(Through: . Shri.Pradeep Panicker, Director)
29. Shell MRPL Aviation Fuels & Services Ltd  
No.72/4, Cunningham Road  
Opp: Cottage industries Exposition  
Bangalore  
(Through: Shri.Sanjay Varkey, CEO)
30. Reliance Industries Limited  
Reliance Corporate Park,  
Block-6, D-Wing, 2<sup>nd</sup> floor,  
5-TTC Industrial Area, Thane-Belapur Road,  
Ghansoli, Navy Mumbai.  
(Through: Shri. P. Raghavendran, President (Petroleum Business) )
31. Bharat Petroleum Corporation Ltd.  
Bharat Bhavan, 4&6 Currimbhoy Road,  
Ballard Estate,  
Mumbai 400 001.  
(Through: Shri.S.P.Mathur, Executive Director (Aviation))
32. Hindustan Petroleum Corporation Ltd.  
17, Petroleum House,  
Jamshedji Tata Road,  
Mumbai 400 020  
(Through: . Shri.K.Srinivas, Head,Aviation SBU)
33. CELEBI NAS Airport Services India Pvt Ltd.  
B407, Citi Point,  
Andheri Kurla Road,  
Andheri (E),  
Mumbai -400 059.  
(Through: Shri Sahil Mehta, Managing Director)



**AERA Responses to stakeholder comments and observations on the Draft 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**

S. No	Comments given by Stakeholder	Authority Response
1.	Air India SATS Airport Services Pvt. Ltd., DIAL and APAO have submitted that reporting requirement under the guidelines would be onerous and involve disclosure of materially sensitive information which could be treated as "business secrets" and requested the Authority to consider and specify steps for safeguarding the information provided and ensuring confidentiality.	The concerns raised by the stakeholders have been addressed in Clause 7.2 of the guidelines and a proviso has been added therein which enables the Authority to not put certain information in the public domain upon consideration of the submission made by the relevant service provider in this behalf. "Confidential Information" has also been defined (in clause 2.12 of the Guidelines)
2.	<p>Stakeholders including APAO and FICCI have requested the Authority to reconsider the requirement of a 10 year business plan and replace it with a five year business plan keeping in mind that the tenure of agreements of ISPs are for a limited period and Ground Handling policy is yet to be implemented.</p> <p>APAO further sought clarity on whether the business plan is one time requirement or has to be updated on a rolling basis.</p>	<p>Accepted. Section A1.4.1 has been suitably amended</p> <p>Business Plan shall be submitted prior to commencement of every Control Period and shall have reference to Business Plan submitted in respect of the previous Control period.</p>
3.	Certain Airport Operators and ISPs have submitted that services offered under SLA have a direct relationship with the manpower cost and in view of the co-relation between high service standards and costs; <i>the Authority needs to consider the existing contractual agreements with airport operators as grandfathered in terms of service levels as well as corresponding prices.</i>	Authority will require the service providers to justify their operation and maintenance costs, inter-alia, based on service standards and shall review such costs at time of review of operation and maintenance costs as mentioned in the Multi Year Tariff Proposal, if applicable to that service provider.
4.	<p>CDCTMIPL has pointed out that "as per Section 13 (1) (d), the Authority ought to monitor the set standard of quality, but it is making a disconnect in timing between control of pricing and monitoring the services quality."</p> <p>IATA and FIA have further stated that guidelines should also account for incentives and disincentives based on the service level / performance to ensure better services to users and that AERA should leave itself the option of stepping in to set service</p>	Issue has already been addressed in Authority's Order No. 05/2010-11

S. No	Comments given by Stakeholder	Authority Response
	quality targets in situations where a comprehensive SLA could not be effectively negotiated.	
5.	NACIL has submitted that "... the offering of basic third party services should also be taken into account and accordingly a different tariff structure and price cap should be applicable for services rendered to low cost airlines."	<p>The Authority has now decided to, normally, adopt a light touch approach in following cases :</p> <ul style="list-style-type: none"> <li>i) service provider deemed "not material".</li> <li>ii) service provider deemed "material but competitive" and;</li> <li>iii) service provider deemed "material and not competitive" but where user agreements are reasonable.</li> </ul> <p>Therefore, this submission appears to be relevant to a situation of "material and not competitive" and where user agreements are assessed to be not reasonable. Even in this situation, the Authority shall review the tariff structures and all the relevant factors having reference to such tariffs as submitted by the Service Providers at the time of submission of Annual Tariff Proposal.</p>
6.	<p>Respondents have submitted that guidelines should be applicable uniformly to all the ground handling agencies without any discrimination amongst the players in the level playing field be that a National carrier or its Subsidiary and that any special arrangement in this regard could be construed as anti-competitive.</p> <p>Respondents also state that where airport operators compete with other service providers, a system has to be put in place to ensure they are acting in the commercial arena without any special financial considerations.</p>	<p>Authority is required to determine tariffs for aeronautical services taking into consideration, inter-alia, the service provided, its quality and other relevant factors. The Authority shall determine tariffs for the services provided by a service provider with reference to the regulatory philosophy and approach as per orders and guidelines of the Authority. The Authority may also have reference to any guidelines such as Ground Handling Policy etc. issued by Ministry of Civil Aviation or competent authority in this regard.</p> <p>The Authority will set out its approach for airport operators, in respect of such services, separately.</p>
7.	Bhadra International India Ltd. submitted that keeping the provisions contained in clause 4 of the AAI Ground Handling Regulations, 2007 for engagement of whole time bonafide employees by the agencies authorised in terms of clause 3 of the said regulations, level playing field can only be established with the discontinuance of non-entitled entities and thereby taking into	The issue relates to the implementation of the Government policy on the subject.



S. No	Comments given by Stakeholder	Authority Response
	account the applicable cost of manpower for such whole time bonafide employees.	
8.	<p><b>Impact on Airport Operators</b>            MIAL, DIAL and APAO have derived an implication of the Guidelines for Airport Operators and have submitted that considering the three revenue streams as aeronautical will erode their financial viability as the treatment would not be as per the concession agreement in their case.</p>	<p>Section 2(a) of the Airports Economic Regulatory Authority of India Act, 2008 defines aeronautical services as inter alia services provided (i) for ground handling services relating to aircraft, passengers and cargo at an airport; (ii) for the cargo facility at an airport; and (iii) for supplying fuel to the aircraft at an airport". Authority's mandate is to determine tariffs for aeronautical services taking into consideration, inter-alia, the concessions offered by the Central Government in any agreement or memorandum of understanding or otherwise. The Authority would, therefore, give due consideration to this aspect in the relevant cases.</p> <p>It has been stated in the Order No. 05/2010-11 that the Authority will consider the provisions and the effect of concession agreements for the concerned airports when determining tariffs for airport operators as service provider for the first tariff cycle.</p>
9.	<p><b>Honouring the existing contracts</b>            ISPs have submitted that they had participated and have been selected through competitive bids and that their investments have been made based on considering the provisions of concession agreements and long term contracts and market conditions which offered free price mechanism with a top ceiling. They have submitted that such contracts should be honoured and seem to suggest that the regulation approach proposed by the Authority may adversely affect their business plan as also other players.</p> <p>Government of Kerala, CIAL have submitted that AERA may consider agreements entered into and business plans made even before AERA originated and they should not be subject to regulation and should be left to the agreement between the parties.</p>	<p>Authority's mandate is to determine tariffs for aeronautical services taking into consideration, inter-alia, the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise. It is important to understand here that the reference to concession agreements offered by Central Government is given in the Act for determining tariff and not to decide whether a service provider or an aeronautical service shall be regulated or not.</p> <p>The Authority is required to regulate tariff for aeronautical services as mandated by the AERA Act. However, the Authority shall give due consideration to the User Agreements in the process of tariff determination.</p>

S. No	Comments given by Stakeholder	Authority Response
10.	<p><b>Self Sufficiency of the contracts</b>            Certain stakeholders like Celebi Ground Handling Delhi Pvt. Ltd. (CGHDPL) and AI SATS have submitted that their selection had inbuilt clauses to prevent any exploitation of market situation and that the airport operator has itself set a ceiling rate for domestic and international flight handling tariffs.</p> <p>DIAL states that "Based on the evaluation of the Financial Bids and the independent due diligence, the Facility Charge quoted by consortium of IOCL and IOSL was found to be lowest amongst all the bidding participants. The capping of the infrastructure charge, over the period of concession, by choosing the bidder with the least Return expectation is in the interest of the users / airlines and meets the objectives of AERA".</p>	<p>The Authority has already specified a Light Touch Approach for service providers deemed competitive. It has also, now, specified that even where a service provider is deemed to be "not competitive" but where the Authority is assured of the reasonableness of the user agreements, a light touch approach would be adopted. However, for the service providers deemed "material and non-competitive" and where the service providers are unable to justify the reasonableness of existing user agreements, the Authority has specified a price-cap approach.</p> <p>The Authority has no way of ascertaining that the bidding process ensured the attributes as claimed and that the process meets the objective of the Authority.</p>
11.	<p><b>Impact and Need of Regulation</b>            CGHDPL, HMA CPL, MBGHSPL, DCSC and DIAL have submitted that regulation of ground handling service will discourage the participation of the private sector which goes against the objectives of Civil Aviation Policy. CGHDPL further submits that handling services across the globe are generally offered in openly competitive market conditions.</p>	<p>As per S.2(a) of the Act, the ground handling services are aeronautical services. The tariff for aeronautical services is required to be determined by the Authority in terms of S.13(1)(a) of the Act. At the same time, the Authority has with a view to foster healthy competition among the service providers specified a Light Touch Approach for service providers deemed competitive.</p>
12.	<p><b>Main Airport Concession Agreements</b>            ISPs have submitted that they had executed their agreements based on the provision under the Concession Agreement granted by airport operators that cargo facilities, cargo handling facilities and ground handling services would be treated as non-aeronautical and do not come under the definition of Regulated Charges.</p> <p>GHIAL, NACIL, DIAL and APAO have also submitted that such</p>	<p>Authority is required to determine tariffs for aeronautical services taking into consideration, inter-alia, the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise. It is important to understand here that the reference to concession agreements offered by Central Government is given in the Act for determining tariff and not to decide whether a service provider or an aeronautical service shall be regulated or not.</p>



S. No	Comments given by Stakeholder	Authority Response
	contracts derive their authority from the main concession agreement of the airport operators where such services have been treated as non-aeronautical.	
13.	<p><b>Indian Oil Skytanking</b>            Indian Oil Skytanking have gone as far as suggesting that "This is a covert method of nationalising private enterprise like us, after securing investments on representation of free enterprise on commercial business model.", and have taken a stand that the entire exercise is illegal and unconstitutional.</p> <p>Indian Oil Skytanking have also suggested that "The policy as framed contemplates, a factoring of the loss of value of money by the rate of inflation. However the policy contemplates that the rate of inflation will be discounted by AERA, at its discretion for the purpose of fostering 'competitiveness'. ... The factor of discounting vests in AERA an absolute discretion to subjectively fix and / or harass Service Providers and to deny them their just entitlement year on year."</p>	<p>The Authority is extremely surprised at the tone and tenor of the response and the interpretation put forth by the respondent. The services provided for supplying fuel to an aircraft have been brought under the purview of the economic regulation by an Act of Parliament. The response and the interpretation put by the respondent, which is an entity with 50% stake of a PSU, namely, Indian Oil, tantamounts to ascribing motives to an act of legislature. The Authority is, therefore, constrained to deprecate this response.</p>
14.	<p><b>Payments made to Airport Operator</b>            Authority received several responses for consideration in regard to the cost to the service providers in light of the concession fees/ royalty payable by service providers to airport operators and large amounts of deposits made to the various airport operators as a condition of the tender award. Respondents gave multiple suggestions for treatment of such costs including, taking such payments into passenger yield cap for the respective airports, considering the interest-free Deposit as part of the total asset base for the purpose of calculating returns, considering such payments in the operating cost of the service provider and allowing such costs as a "pass through" for the service provider.</p>	<p>The concerns raised by the stakeholders have been addressed in Clause 9.4 of the guidelines.</p> <p>The Authority has decided to take into consideration payments required to be made by independent service providers of cargo facility, ground handling, fuel farm / access facilities to the airport operators as part of the passenger yield cap calculation for airport operators.</p>
15.	<p><b>Demurrage revenues</b>            Authority has received multiple views regarding the treatment of demurrage revenues.</p> <p>GMR Hyderabad International Airport Pvt. Ltd., HMAACPL, DCSC and DIAL submits that demurrage charges are in the form of</p>	<p>Demurrage charge is levied on the goods, which are cleared beyond the "free period". This charge is, therefore, in respect of service provided for cargo facility. As such, Demurrage charge is an aeronautical charge.</p>

S. No	Comments given by Stakeholder	Authority Response
	<p>rental income for the facility provided by the service providers. These being non-aeronautical in nature should not be part of the regulations.</p> <p>CDCTMIPL states that demurrage revenue should neither be treated as Non Cargo Revenue nor Cargo revenue, but should rather be outside the regulatory purview of the Authority.</p> <p>CSC states that demurrage is covered under the Custom's Act, which authorizes collection of demurrage charges and is not related to cargo handling and is primarily related to storage activities of import custom's cargo as custodian to customs.</p>	
16.	<p><b>CAPM Model</b></p> <p>1. Certain respondents have objected to the use of CAPM as well as the Authority's review of the reasonableness of sources, procedures and methods of raising finance while considering its cost of debt on grounds that the financing arrangements were legally binding on ISPs. They have also proposed looking at other parameters like Return on Capital Employed after tax (ROCE) on the grounds that it guarantees fair return to investors and have further submitted that use of CAPM in a (proposed) modified form be considered and that CAPM is an outdated model and many multifactor models like Fama French, Arbitrage Pricing Theory are now in use to estimate expected return.</p> <p>2. One substantive point was raised by MBGHSPL on including asystematic risks (alpha) and country risk premium in the cost of equity estimate to capture the specific asystematic risks that service providers face.</p>	<p>1. The Authority believes that it is appropriate to consider CAPM model for estimating the cost of equity and has explained its position in detail in paragraph 3.35 in Part II of the Consultation Paper No.3/ 2009-10.</p> <p>The Authority's review of the reasonableness of sources, procedures and methods of raising finance shall be to ensure that such transactions are at arm's length.</p> <p>The Authority had also studied various aspects relevant to consideration of normative cost of debt and optimal capital structure that would be required for adopting an ROCE approach and had enunciated its positions on the same in the above referred Consultation Paper.</p> <p>2. As explained in the Consultation Paper No.3/ 2009-10, various estimates of Equity Market Risk Premium suggest that there is an additional premium in the Indian context compared to the estimates of the EMRP in developed markets. Hence, the Authority does not support the inclusion of country risk premium in the cost of equity. The Authority also does not support the inclusion of specific risks in the cost of equity, which should be captured in the</p>



S. No	Comments given by Stakeholder	Authority Response
		forecasts of the various regulatory building blocks.
17.	<p><b>Depreciation Cash</b>            CDCTMIPL submitted that the Authority should consider the un-depreciated Capital Cost as part of the total Asset Base for the purpose of calculating returns. It and HMA CPL, MBGHSPL submitted that depreciation cash retained in the business is never distributed to shareholders under normal continuous business operation and hence deserved returns to compensate for opportunity cost.</p>	<p>The Authority shall include in tariff determination the cost of provision of assets deployed for provision of aeronautical services. Utilization of depreciation cash for loan repayment purposes, distributing such cash to shareholders or putting such cash to any other use is purely a business decision taken by an entity and the Authority is not persuaded to change its regulatory principles for such decision.</p>
18.	<p><b>Replacement Assets</b>            HMA CPL, MBGHSPL – AERA allows ISPs to take newly commissioned assets in estimating ARR but these newly commissioned assets are not always procured for providing new services, sometime these assets are merely replacement of existing assets. ISPs generally would use internal cash generated from operations to make such capital expenditure.</p>	<p>The Authority is unable to appreciate the validity of the response because it has already specified in the order and guidelines that new capital assets will be included in the RAB. However, it may be clarified that the Authority has no intention to provide returns on internal cash generation in the interim period till such assets are commissioned.</p>
19.	<p><b>Depreciation rate</b>            CDCTMIPL, HMA CPL, MBGHSPL submitted that they depreciate assets as per the concession period or actual useful life whichever is lower and that the Authority should take the real useful life of the assets rather than book depreciation arrived at using the Companies Act.</p>	<p>The Authority recognizes the concerns raised by the respondents. Normally, the Authority shall consider the useful economic life of the asset for determination of the depreciation rate. However, the Authority will also review the depreciation rates based on terms and conditions of the concession agreements entered and will give reference to the accounting treatment given by the service provider.</p>
20.	<p><b>Annual Process</b>            1. Bird Worldwide Flight Services and Globe Ground India Pvt. Ltd. and APAO have submitted that the annual review and truing up mechanism specified may be changed to one or two reviews in a Control Period. Government of Kerala and CIAL have further stated that the annual tariff proposal and approval process is not in line with the directives of AERA Act.             2. Certain stakeholders have also submitted that the duration of the regulation and the tariff review process, should take into account the industry practice to have multi-year agreements</p>	<p>1. Annual review and error correction mechanism is integral to regulatory process in case of a price-cap approach.             2. AERA Act requires the Authority to determine tariffs for aeronautical services for a period of 5 years. The Authority recognizes the industry practice of having multi-year</p>

S. No	Comments given by Stakeholder	Authority Response
	<p>between service providers and the users, so as not to conflict with the ground realities.</p> <p>3. APAO have sought clarity on a scenario when an agreement gets terminated within the control period and the corresponding treatment of error correction</p>	<p>agreements and is conscious of the need for the industry to evolve overtime on the basis of regulatory environment being setup in the sector. The Authority will observe the developments in the sector and may direct further analysis on the issue if deemed necessary.</p> <p>3. The Authority recognizes the issue and will decide on case to case basis as and when such a case arises.</p>
21.	<p><b>Tariff Bracket</b></p> <p>1. Government of Kerala, CIAL have suggested indicating the tariff brackets within which the service providers should be allowed to levy tariffs, instead of the Authority approving individual tariffs of each airport &amp; service provider separately.</p> <p>HMACPL, MBGHSPL and NACIL have further proposed that AERA should protect the interest of ISPs by allowing the minimum yield that ISPs can charge which would also ensure that services are not offered at prohibitively low prices in order to eliminate competition and hence eventually leading to degradation of service quality and security standards.</p> <p>2. Government of Kerala, KSIE and NACIL submitted that while fixing a ceiling by AERA for the tariffs, the service providers may be given the flexibility to fix competitive rates within the ceiling fixed by AERA and also to have different agreements with different users based on factors like the scale of operations, provision of services at numerous airports in India by the same service provider, etc.</p>	<p>1. The Authority has specified a Light Touch Approach for the service providers deemed 'not material' or 'material but competitive'. Such approach is contemplated even where the service provider is deemed to be 'material and not competitive' but where in Authority's assessment the User Agreements are reasonable. Therefore, there is no requirement for setting a price band in such cases. However, where the service providers are deemed 'material and not competitive' and the User Agreements are assessed to be not reasonable, the Authority will have reference to several factors including level of investments, operating cost efficiencies, fair rate of return for the service provider while determining tariff. Therefore, it is not possible to specify a minimum or maximum tariff bracket applicable to all the service providers</p> <p>2. On determination of the maximum yield, wherever applicable, the flexibility lies with the service providers to fix tariffs within the ceiling as determined by the Authority and have different agreements with different users based on the principles as specified in the guidelines, subject to approval of the Authority.</p>
22.	<p><b>Maximum Operating Expenditure</b></p> <p>Government of Kerala and CIAL have submitted that AERA has</p>	<p>AERA Act requires the Authority to determine tariffs for</p>



S. No	Comments given by Stakeholder	Authority Response
	to devise before tariff determination, the maximum permissible operating expenditure bracket for service provider, depending upon level of operations.	aeronautical services having reference to specific factors. Therefore, the Authority will require the service providers to justify their operating expenditure, inter-alia, based on service standards and shall review such costs at time of review of operation and maintenance costs as mentioned in the Multi Year Tariff Proposal, if applicable to that service provider.
23.	<p><b>Throughput Fees</b></p> <p>IndianOil Skytanking have interpreted the draft guidelines and submitted that "It may please be noted that the Throughput fees being charged comprises of Airport Operator Fees, Recovery of Capital Costs, Operating Costs, Operating Margin and reserves. The Operators costs which are being proposed to be capped are very small compared to other components leaving the other major components untouched."</p>	<p>The Authority understands that charges related to service provided for supplying fuel to the aircraft at an airport were not regulated earlier. This also contributed to multiple nomenclatures and practices (like bundled and unbundled charges) in the industry related to such charges.</p> <p>The Authority while regulating such charges shall keep in mind the practice prevalent in the industry. Charges being levied by the independent service providers shall be regulated according to the provisions of subject guidelines. The Authority will set out its approach for airport operators, levying such charges, in respect of such services, separately.</p>
24.	<p><b>Non Aeronautical Revenues</b></p> <p>1. On the issue of aggregate revenue for regulated service(s) being determined taking into account revenue from services other than Regulated Service(s), certain stakeholders have stated that the service providers for Cargo, Fuel Facilities and Ground Handling services would have little or no scope for generation of revenues from outside their core areas of operation.</p> <p>2. There has also been misunderstanding on the approach taken by Authority that in ARR estimation, assets relating to non aeronautical revenue shall be removed from RAB at the discretion of AERA but contribution from non aeronautical</p>	<p>1. The Authority will consider the projections of revenues from outside the core areas of operation of the service providers and will take a view at the time of ARR estimation. Further, the Authority expects service providers to make significant efforts to exceed the projected revenues from services other than aeronautical services and retain the out performance during the control period.</p> <p>2. It is clarified that for all such assets, revenues arising wherefrom are considered in ARR estimation, cost associated with such assets, if any, shall also be considered in ARR estimation.</p>



S. No	Comments given by Stakeholder	Authority Response
	revenue shall be taken as credit thereby giving a double hit to ARR calculation.	
25.	<b>Form of Light Touch</b> DIAL has submitted that the form of Light Touch Regulation envisaged by AERA is not in line with national and international practices of light touch regulation. Annual tariff approval in light touch regulation needs be avoided and the regulator should have the right to intervene only in case of complaints and evidence of abuse of market power.	AERA Act requires the Authority's to "determine" tariffs for aeronautical services and the Authority has given its regulatory philosophy and approach including the Light Touch approach based on this requirement of the Act.
26.	<b>Variation in foreign exchange rate.</b> APAO have proposed the effect of variation in foreign exchange rates to be a pass through cost	Authority expects that the composition of Regulatory Building Blocks as projected by the service provider will also include service providers' estimate of variation in foreign exchange costs and any change impacting the Regulatory Building Blocks shall be reviewed by the Authority at the time of analysis of the Multi Year tariff Proposal.
27.	<b>Discounts</b> DCSC has submitted that handling companies need to give discounts to customers having higher volume of cargo and a regulatory yield will make it difficult for them to charge higher price to other customers resulting in a lower average yield than calculated by AERA.	The Authority has carefully considered the concerns raised by the respondents. However, the Authority is not persuaded to accept this suggestion. It is reiterated that giving of discounts is purely a commercial decision of the service provider and the Authority would not like to involve itself with such decisions.
28.	<b>Definition of tax</b> The paper only talks about the corporate tax on profits from assets and services. Clarity needed on the issue of whether cess and surcharge on taxes and dividend distribution tax are included in the tax structure.	Tax structure on corporate income as specified by Government of India, from time to time, shall be taken into account while estimating the ARR.
29.	<b>WIP Carrying cost</b> The WIP should be carried at WACC instead of cost of debt.	The Authority finds it appropriate to consider the return on WIP assets at the cost of debt, as has been outlined in paragraph 5.35 in Part II of the Consultation Paper No.3/2009-10. This is because, if the Weighted Average Cost of Capital is allowed on WIP assets, then it is equivalent to including such assets in RAB itself. The Authority also expects that its present approach would ensure timely



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30.	<p><b>Number of Players for competition</b></p> <p>The Authority has received multiple responses on the issue of competition. The majority of the responses received by the Authority submitted that the presence of even two service providers ensures competition at airports due to active competitive forces especially given the bargaining power of customers like airlines in a business to business interaction, thereby ensuring that the price is appropriately determined in terms of the scope and level of service.</p> <p>Respondents have also proposed linking the level of competitiveness at a particular airport on other factors like market size, market share, resources, projected business growth, economic power, barriers to effective competition, etc.</p> <p>Cambata Aviation Pvt. Ltd. and MIAL have stated examples demonstrating the commercial pressures of competition at Delhi and Mumbai airports.</p>	<p>completion of asset creation. Hence the Authority's decision to include the WIP assets in RAB only on completion.</p> <p>The Authority has reviewed the position keeping in view the concerns raised by stakeholders and has agreed to consider "two or more service provider(s)" as a deemed competitive scenario. Clause 5.1 of the guidelines has been modified suitably. However, the Authority shall also consider submissions of evidence related to competition through the user consultation process as specified in Clause 7.2 of the guidelines. It is clarified that the change in benchmark does not, in any way, sanction or contemplate any deviation from the Government policy, if any, on the issue.</p>
31.	<p><b>Redundancy due to 3 players</b></p> <p>GMR Hyderabad International Airport Pvt. Ltd., Celebi Delhi Cargo Terminal Management India Pvt. Ltd. (CDCTMIPL), HMAOPL, MIAL, MBGHSPL, APAO have stated that it will not be financially viable to have three or more service providers for cargo service at every airport due to varying market and investment considerations. More players for the sake of competition shall create redundant capacity, which will make it impossible for any handler to have positive returns, thus making them sick. <i>The past and current volumes do not justify more than two service providers given the level of investment associated with such operations.</i></p>	<p>The Authority has only enunciated an approach to regulation and has specified that in case the service providers are deemed competitive, the Authority is minded to adopt a light touch approach. Adoption of any regulatory approach should not be construed as a direction and or requirement for a minimum number of service providers. This criteria would continue to be governed by the Government Policy, if any, on this issue.</p>
32.	<p><b>Competition from other modes and airports</b></p> <p>GMR Hyderabad International Airport Pvt. Ltd., HMAOPL, MIAL, DCSC, DIAL - Competition from other transport modes like road</p>	<p>Authority views that the choice of mode of transport such as road, rail, sea and air for transfer of cargo is based on</p>



S. No	Comments given by Stakeholder	Authority Response
	rail and sea ports. Domestically, both rail and road sectors offer formidable competition to air cargo operators.	several factors such as time sensitivity of cargo etc. and such choice is not merely dependent upon the price being charged by the respective mode. Hence, the Authority does not find merit in the submission. .
33.	<p><b>Scope of Regulation</b></p> <p>1. HMA CPL have contented that cargo facility and the tariff charged comprises only 3-7% of the total shipping cost incurred by the shipper and that regulation should also extend to the complete logistics chain for the ultimate benefit of shipper.</p> <p>2. Express Industry Council of India (EICI) have submitted that Airport Operators need to be included within the scope of Regulated Service Providers with respect to Cargo Facilities.</p> <p>3. EICI have also submitted that dedicated express cargo facilities licensed by airport operators as bare shells and developed for self use by express cargo companies should also be considered for regulation as a new category. EICI is, therefore, of the view that License fees and charges (such as for paved area on the airside and warehouse space; X-ray screening charges) levied on such facilities by the Airport Operators should also be regulated.</p>	<p>1) The Authority's mandate under the Airports Economic Regulatory Authority of India Act, 2008 is limited to determination of tariffs for any service provided "for the cargo facility at an airport".</p> <p>2) Airport operators providing subject services shall also be subject to regulation. The Authority will set out its approach for airport operators, in respect of such services, separately.</p> <p>3) The Authority shall address this issue while setting out its approach in respect of charges levied by the airport operators.</p>
34.	<p><b>Self Sufficiency in Existing Contracts</b></p> <p>Service providers have also highlighted that the airport operators, in view of available volumes and to protect economic vitality of service providers, have already included clauses for entry of third service providers after volumes cross a certain threshold.</p> <p>Certain service providers have also cited that their respective Concession Agreements also prevent them from charging rates higher than those prevailing at neighbouring airports.</p>	<p>The Authority has specified a regulated service to be deemed 'competitive' if it is provided by 2 or more service providers and has also specified a Light Touch Approach for the service providers deemed 'not material' or 'material but competitive' or 'material and not competitive' but where the Authority is assured of the reasonableness of the User Agreements. However, where the service providers are deemed 'material and not competitive' and the User Agreements are assessed to be not reasonable, the Authority will follow a price cap approach having reference to factors including level of investments, operating cost efficiencies, fair rate of return for the service provider.</p>

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35.	<p><b>Materiality Assessment</b>  HMACPL, MBGHSPL - In our opinion materiality assessment should consider following aspects: Size of market, Investment levels, Timing of investment, License period for recovery.</p> <p>Multiple respondents have also presented other views in respect of materiality assessment including asking the Authority to consider fixing absolute numbers to denote materiality rather than fixing percentage.</p> <p>Several stakeholders like Government of Kerala, GMR Hyderabad International Airport Pvt. Ltd., FICCI, Bird Worldwide Flight Services, Globe Ground India Pvt. Ltd. and IndianOil Skytanking, HMACPL, MBGHSPL, DIAL, CIAL, APAO, AI-SATS have submitted that materiality threshold for services provided for cargo facility, ground handling and supply of fuel should be increased and have suggested different threshold limits varying from 7.5% to 20% for different services.</p> <p>NACIL has suggested lowering of thresholds to 1-2% across the three services.</p>	<p>Materiality index values have been specified based on the evidence and facts available to the Authority at present and the Authority has decided to continue with the threshold index values.</p>
36.	<p><b>Materiality Formula for Fuel</b>  FICCI, MIAL, DIAL, APAO, GHIAL have submitted that ATMs may not be an accurate predictor for materiality of fuel supply at an airport. ATMs may be dependent on several factors other than demand such as traffic mix, discretion in fuelling due to prices, taxes etc. A large number of small and/or GA aircraft could still amount to considerable ATMs which would not necessarily lead to substantial fuel consumption volumes. A better indicator would be fuel throughputs (fuel off take) measured in metric tons, kilo litres or some other suitable unit of measurement.</p>	<p>Accepted. Clause 4.2 of the Guidelines has been suitably modified.</p>
37.	<p><b>Approach to Regulation</b>  1. NACIL – “Even for ‘not material’ assets, a price cap approach should be followed in airports where there is sufficient competition. A light touch approach might lead to prohibitively</p>	<p>1. Where the regulated services are deemed ‘not material’, the Authority’s position is to adopt a light touch approach that regulates only when necessary and keeps protections</p>



S. No	Comments given by Stakeholder	Authority Response
	<p>high prices quoted by the service providers in those airports.”</p> <p>2. Bird Worldwide Flight Services and GMR Hyderabad International Airport Pvt. Ltd. have submitted that cost-plus-return approach could impact tariffs for 2 service providers at an airport, in competition with each other, differently with reference to their pricing and competitive position.</p> <p>3. Government of Kerala also stated that – “as AERA regulates only economic factors, it cannot ensure equal or justified competition in regulated service like GH or cargo service, as service agreements are reached on non-price and non-economic factors”.</p>	<p>high, whilst minimizing the cost of regulation for the service providers.</p> <p>2. Authority has specified in Clause 5.1 of the guidelines that 2 or more service providers shall be deemed competitive and the Authority will follow a Light Touch approach in such scenario.</p> <p>3. Authority is unable to appreciate this argument. It is Authority’s understanding that user agreements in respect of GH services, normally, cover price and service level on a composite basis.</p>
38.	<p><b>Mechanism</b></p> <p>Certain respondents have stated ISP are not allowed to levy UDF and hence cannot be termed as Service Provider as per definition of the Act</p>	<p>The Authority has been advised that-</p> <p><i>“Keeping in view the language employed in the definition of Aeronautical Services in Section 2[a] of the Act “and” occurring in Section 2[n] of the Act will be required to be read as “or” in the definition of Service Provider to make the Act meaningful and workable.”</i>Therefore, the Authority is well within its right to lay down the guidelines for such service providers of aeronautical services who do not have the power to levy and charge user development fee.</p>
39.	<p><b>Mechanism</b></p> <p>1.) NACIL – “In the event of an existing service provider ceasing to provide service at an airport, the scenario should be reassessed by AERA within a month, rather than continuing with the previous policy till the end of the Control Period.” APAO also submits that continuing tariff regulations for the existing players in case of new entry would not be appropriate</p>	<p>1. The Authority believes that the approach to regulation and fixation of charges before entry or exit of a service provider would reflect a reasonable assessment of the service provider’s position and hence does not find it appropriate to reinstate the process upon such an event. However, incase the Authority receives evidence to the contrary; it is open to considering such issues on a case to case basis.</p>



S. No	Comments given by Stakeholder	Authority Response
	<p>2.) Even in case of 'material' and 'not competitive' if the service provider demonstrates user agreements, a threshold needs to be specified with respect to how many users have such agreements</p> <p>3.) For 'not material' or 'material but competitive' users may have to agree in absence of alternatives</p> <p>4.) It is imperative that the Service Provider is required to submit documented evidence to show that stakeholder consultations have taken place prior to submitting the Tariff Proposal</p> <p>5.) HMA CPL and MBGH SPL have submitted that how can business decisions on deliberate losses in one year on expectations of higher profits in other years be taken into account in the regulatory framework, especially in view of a competitive scenario with 2 players.</p> <p>6.) IATA have submitted that the Authority should carry out an exercise to solicit evidential inputs from industry stakeholders for markets with two or more players that are deemed to be 'not</p>	<p>2. User agreements need to be in place with all the users of the regulated service and should be reasonable.</p> <p>3. Authority has specified a user consultation process in Clause 7.2 and Clause 11.2 of the guidelines at the time of Multi Year Tariff Proposal and Annual Tariff Proposal respectively and expects such issues to be highlighted through those consultations.</p> <p>4. Authority has specified submissions on user consultation process in Clause 11.2 of the guidelines at the time of Annual Tariff Proposal.</p> <p>5. As mentioned earlier, the Authority has reviewed the position keeping in view the concerns raised by stakeholders and has, now, decided to consider "two or more service provider(s)" as a deemed competitive scenario. Clause 5.1 of the guidelines has been modified suitably. Also, in cases where the Authority follows a price-cap approach, the Authority shall consider and review any submissions made by the service provider at the time of Annual Tariff Proposal in regard to discounts, which are offered to the customers on non-discriminatory basis, with reference to volume of the discount, rationale behind giving the discount and such other factors as may be relevant. However, the Authority shall not consider any shortfall in revenue at the time of error correction on account of discounts not approved by the Authority.</p> <p>6. Authority has specified a user consultation process in Clause 7.2 of the guidelines for submissions on Competition and User Agreements.</p>



S. No	Comments given by Stakeholder	Authority Response
	<p>competitive'.</p> <p>7.) Reliance Industries Ltd. have sought a clarification that "if the Airlines are not paying or not being billed separately for the charges being collected at Airport, then how would AERA regulate these charges / tariffs?"</p>	<p>7. Authority would regulate fuel related charges including throughput fees, infrastructure fees etc. pursuant to these guidelines or the separate guidelines for the airport operators, as the case may be.</p>
40.	<p>IATA on the other hand has suggested that the Authority "should put a strong recommendation to the entities that have the power to improve the competitive landscape (e.g. airports, government ministries) to take corrective action to open up the market."</p>	<p>The suggestion is beyond the mandate of the Authority.</p>

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