

[F.No. AERA /20019 /CGF-G/2010-11]

Airports Economic Regulatory Authority of India
Order No. 05/2010-11

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

Date of Order: 30th July, 2010
Date of Issue: 2nd August, 2010

**In the matter of Regulatory Philosophy and Approach in Economic
Regulation of the services provided for Cargo Facility, Ground Handling
and Supply of Fuel to the aircraft at the major airports**

1. BACKGROUND

1.1 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. PROCESS ON STAKEHOLDER CONSULTATION

2.1 To ensure transparency in the process leading up to the framing of appropriate procedures / systems for economic regulations, as required in terms of 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 in context to the proposed terms and conditions for determination of tariff. 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. The submissions were put up on the Authority's website for general information.

- 2.2 The Authority considered various 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.
- 2.3 On 16th March 2010 the Authority convened a consultation meeting to elicit the views of the stakeholders in person.
- 2.4 The Authority received 21 written submission 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 may be accessed on the Authority's website (<http://aera.gov.in>).
- 2.5 The Authority has considered views and responses submitted by stakeholders on various aspects of the Consultation Paper. The issues relevant to cargo facility, fuel supply and ground handling services are broadly discussed in the following paragraphs.

3. APPLICABILITY OF REGULATORY APPROACH

- 3.1 The Authority received several consultation responses on the applicability of the proposed regulatory approach.
- 3.2 As highlighted in the Consultation Paper, where Airport Operators are also the providers of cargo facilities, ground handling services and fuel farm/ fuel access, associated tariff and end user charges shall be regulated as per the regulatory approach and framework to economic regulation of Airport Operators. Within such an overall framework of economic regulation, the Authority may consider separately regulating the tariffs for each of these services.
- 3.3 The regulatory approach outlined, in the order below, shall apply to all independent service providers who directly charge users for the use of the cargo facilities, and/ or ground handling services and/ or fuel farm/ fuel access.
- 3.4 The Consultation Paper had also highlighted that the position discussed therein may not apply, *ipso facto*, to the two Civil Enclaves (at present, Goa and Pune) under the regulatory ambit of the Authority. Appropriate views in respect of the said Civil Enclaves would 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.

4. STAKEHOLDER RESPONSES TO REGULATORY APPROACH AND PHILOSOPHY

4.1 In general, respondents expressed support for the Authority's proposals in relation to how it should interpret its regulatory objectives.

4.2 However, IATA raised a substantive comment in relation to ICAO principles of non-discrimination and non-cross subsidization. IATA argued that there should be no discrimination between the different categories of users, and in particular revenues from international traffic should not be used to subsidise services to domestic traffic, and vice versa. It argued that such discrimination would contravene the spirit of Article 15 of the Chicago Convention.

4.3 Article 15 of the Chicago Convention states:

Every airport in a contracting State which is open to public use by its national aircraft shall likewise, subject to the provisions of Article 68, be open under uniform conditions to the aircraft of all the other contracting States. The like uniform conditions shall apply to the use, by aircraft of every contracting State, of all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation.

Any charges that may be imposed or permitted to be imposed by a contracting State for the use of such airports and air navigation facilities by the aircraft of any other contracting State shall not be higher,

- a) *As to aircraft not engaged in scheduled international air services, than those that would be paid by national aircraft of the same class engaged in similar operations, and*
- b) *As to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services*

All such charges shall be published and communicated to the International Civil Aviation Organization, provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council, which shall report and make recommendations thereon for the consideration of the State or States concerned. No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon.



- 4.4 A plain reading of Article 15 makes it clear that it is specific to the question of equal treatment between national aircraft and aircraft from other contracting states and appears to be designed to secure that national aircraft do not obtain an unfair advantage in competition with aircraft from other contracting states.
- 4.5 It is apparent that the application of Article 15 of the Chicago Convention, 1944 requires that India, as a contracting state, establish non discriminatory tariff, for service provided to aircrafts of all contracting state, engaged in international civil aviation.
- 4.6 It is also clear that Article 15 does not extend its application to tariff for domestic civil aviation.
- 4.7 In substance, ICAO principle is that there is no discrimination between the aircrafts on account of their nationality. The Authority fully supports the principle of non discrimination and is minded to have due regard to this principle in respect of similarly placed aircraft.
- 4.8 However, the Authority believes that in some circumstances there may be sound economic rationales for an element of price discrimination between different categories of customers. For instance, the work of economist Frank Ramsey in the 1920s shows that social welfare could be maximised in a regulated revenue setting by setting prices for different categories of customers with reference to the price elasticity of demand of those customers. Such pricing may be rational, welfare maximising and not therefore unduly discriminating. Equally, there may be legitimate social or wider public policy objectives that some price discrimination would benefit.

5. CONSULTATION PAPER RESPONSES: CARGO FACILITY OPERATORS, GROUND HANDLING OPERATORS AND FUEL FARM OPERATORS / FUEL ACCESS PROVIDERS

- 5.1 The Authority received general support for the competition and materiality assessment proposed by it, although some responses noted that even where there are two or more operators, the structure of the market may not result in effective competition. The Authority recognizes this issue and would expect it to be dealt with through submission of evidence relating to competition assessment in such cases.
- 5.2 The Authority also recognizes concerns raised by airlines and cargo operators regarding cost relatedness of airport access fees and non-discrimination in respect thereto. The Authority would expect any access fees related to cargo facility operators, ground handling operators and fuel farm operators / fuel access providers to be treated under the yield per passenger approach for airports. Under such an approach, all revenues from such services would be included as part of the yield per passenger cap and would be subject to regulation.



- 5.3 Airport Operators submitted that the competitive selection of a service provider should be taken into account in the competition assessment of respective services. The understanding of the Authority is that, in general, the basis for selection of service operators has been a revenue share payable to Airport Operators and not tariffs imposed on end users. On the basis of information presently available to it, the Authority does not consider such a basis for the selection of a service operator as being sufficient evidence of effective competition and its resulting impact on tariffs imposed on end users. The competition assessment by the Authority shall consider the competition for provision of services at the airport, including the number of service providers among other evidence, and its impact on tariffs to end users.
- 5.4 Airport Operators also highlighted differences in the definition of *aeronautical services* contemplated in the Act and the absence of such a definition in the concession agreements relating to the IGI airport, New Delhi and CSI airport, Mumbai, particularly in respect of cargo facilities and ground handling. In view of the explicit provisions of the Act, the tariff determination for these services would have to be made as required under Section 13 (1) (a) of the Act. However as noted in the Consultation Paper, 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.

6. **ORDER**

सत्यमेव जयते

- 6.1 In this view of the matter and on careful perusal of all the submissions, views and opinions expressed by stakeholders, the Authority makes the following Order in relation to the approach and framework for economic regulation of services provided at major airports for Cargo Facility, Ground Handling and Fuel Supply to the aircraft.

6.2 **Regulatory Objectives**

The Authority hereby sets the following objectives which shall guide it in discharging its functions under the Act:

- (a) Facilitating wider policy aims for the aviation sector through the regulation of major airports, recognising their role in the sector and economy;
- (b) Protecting and promoting the interests of existing and future users of aeronautical services at major airports by providing quality services commensurate with the respective tariffs/ charges, keeping in particular focus the interests of passengers and cargo facility users and the user expectations;
- (c) Promoting investment in airports and air navigation services and their effective management so that all reasonable demands for airport services are met efficiently.



6.3 The Authority will operationalise these broader regulatory objectives through the following three key parameters:

- (a) Viable operations of airports in terms of maintaining investor confidence of a fair rate of return on 'net investment' in those airports. For this purpose it will attempt to incentivise efficient airport investment and operations while ensuring fair remuneration.
- (b) Specification of a framework and qualitative and quantitative parameters to ensure that the quality of service provided at airports while determining tariffs is consistent with the net investment in those airports and the user expectations.
- (c) Ensuring efficiency, adequacy and consistency in provision of cargo facility, ground handling and fuel supply to an aircraft by encouraging efficient and appropriate investments.

6.4 Treatment of Civil Enclaves

- (a) The overall approach and framework specified hereinafter does not apply, ipso facto, to the two Civil Enclaves (at present, Goa and Pune) within the regulatory ambit of the Authority. 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.

6.5 Regulatory Philosophy and Approach in Economic Regulation of Services Provided for Cargo Facility, Ground Handling and Supply of Fuel to the aircraft

- (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"). This 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.

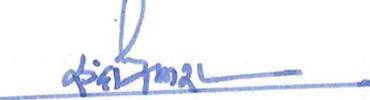


- (c) Where the Authority determines that the service is material and where there is insufficient competition in provision of services at a major airport ('material and not competitive'), it shall regulate through a price cap approach by setting a yield per unit and approval of tariffs annually.
- (d) 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 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 considers 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) above, 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 in this behalf.
- (k) The Authority proposes to operationalise the regulatory philosophy and approach as decided above through detailed guidelines. 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" is being issued separately for stakeholder consultation before being finalised.

By the Order of and in the name of the Authority


(Sandeep Prakash)
Secretary

To,

1. Airports Authority of India
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi – 110 003
(Through: Shri V.P Agrawal, Chairman)
2. Delhi International Airport Pvt. Ltd.,
Uran Bhawan, IGI Airport,
New Delhi-110037.
(Through: Shri Kiran Kumar Grandhi, Managing Director)
3. Hyderabad International Airport Pvt Ltd.,
Airport Office,
Shamshabad,
Hyderabad – 500409.
(Through: Shri Kiran Kumar Grandhi, Managing Director)
4. Cochin International Airport Pvt. Ltd.,
Kochi Airport P.O.,
Nedumbassery, Ernakulam – 683111 (Kerala).
(Through: Dr. Krishnadas Nair, Managing Director)
5. Bangalore International Airport Pvt. Ltd.,
Administration Block,
Devanahalli, Bangalore – 560300.
(Through: Shri. G.V.Sanjay Reddy, Managing Director)



6. Mumbai International Airport Pvt. Ltd.,
Chhatrapati Shivaji International Airport,
1st Floor, Terminal 1B, Santa Cruz (E),
Mumbai – 400 059.
(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,
B/h Syb Jail, Opp. FCI Godown, Sada,
Marmagoa-403 804,
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: 2nd 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
(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. National Aviation Company Of India Ltd.
Transport Complex Building, First floor,
CSI Airport, Vile Parle (East),
Mumbai 400099
(Through: Shri Arvind Jadhav, Chairman & Managing Director)
18. Express Industry Council of India
501,Crystal Centre, Raheja Vihar,
Off. Chandivali Farm Road, Powai,
Mumbai 400 072
19. M/s Bhadra International (India)Ltd.,
B-4/62, Safdarjung Enclave,
New Delhi-110029
(Through: Shri Prem Bajaj, Director)
20. 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)
21. 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)
22. Globe Ground India Pvt. Limited
GSE 2, Bengaluru International Airport, Devanahalli,
Bangalore 560300
23. 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)



24. Cambata Aviation Private Limited
IGI Airport Terminal 2
Line Maintenance
Block A, New Delhi – 110037
(Through: Mr. Yezdi Cooper, Airport Manager)
25. 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)
26. 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))
27. M/s. Essar Oil Ltd.
Essar Techno Park Building II,
Swan Mill Compound,
L.B.S.Marg, Kurla(W),
Mumbai-400 070
28. Indian Oil Sky Tanking Limited.
Fuel Farm 1,Bengaluru international Airport,
Devanahalli, Bangalore-560300
29. 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)
30. Shell MRPL Aviation Fuels & Services Ltd
No.72/4, Cunningham Road
Opp: Cottage industries Exposition
Bangalore
(Through: Shri.Sanjay Varkey-CEO)
31. Reliance Industries Limited
Reliance Corporate Park,
Block-6, D-Wing, 2nd floor,
5-TTC Industrial Area, Thane-Belapur Road,
Ghansoli, Navy Mumbai.
(Through Shri. P. Raghavendran-President (Petroleum Business))



32. Bharat Petroleum Corporation Ltd.
Bharat Bhavan, 4&6 Currimbhoy Road,
Ballard Estate,
Mumbai 400 001
(Through: Shri.S.P.Mathur, Executive Director (Aviation))
33. Hindustan Petroleum Corporation Ltd.
17, Petroleum House,
Jamshedji Tata Road,
Mumbai 400 020
(Through: Shri.K.Srinivas, Head,Aviation SBU)
34. CELEBI NAS Airport Services India Pvt Ltd.
B407, Citi Point,
Andheri Kurla Road,
Andheri (E),
Mumbai -400 059
(Through: Shri . Sahil Mehta, Managing Director)



सत्यमेव जयते

भा.वि.आ.वि.प्रा.
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