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Sub.In the Matter of Determination of Tariff in respect of Bharat Start Services Private Limited (BSSPL) for providing Into Plane Services at CSMI Airport, Mumbai from 01.04.2021 to 24.01.2025 of the Third Control Period | Submission by BSSPL.

1. BACKGROUND

1.1 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 ('2011 Guidelines') apply to Service Providers (i.e., person, other than Airport Operator, who provide one or more Regulated Services) for, amongst other things, supplying fuel to the aircraft at a major airport (being a Regulated Service).

1.2 The Authority has made an assessment with respect to 'materiality', 'competitiveness' and 'reasonableness of User Agreements' and is inclined to conclude that the into-plane services in question are;

'material and not competitive and where the Authority is not assured of the reasonableness of the existing User Agreement(s)'.

1.3 On the basis that BSSPL is not undertaking any non-aeronautical services and that there is only a single source of revenue for BSSPL, the Authority is inclined to apply the 'Single Till' methodology for tariff determination process of BSSPL, Mumbai, and in view of the foregoing assessment, the Authority is inclined to determine Tariff(s) based on price cap approach for the duration of the Control Period, and for such purpose determine the Aggregate Revenue Requirement and the Tariff.

2. PRELIMINARY SUBMISSION

- 2.1 The assessment regarding 'materiality' is an objective one in accordance with the 2011 Guidelines, and in the instant case, there is no debate regarding 'materiality' of the Regulated Services.
- 2.2 It is submitted that the assessment regarding 'competitiveness' and 'reasonableness of the existing User Agreements' should be examined only in the context of the provisions of the 2011 Guidelines and the underlying contractual arrangements in respect of the Regulated Service, and not any extraneous factor.

Assessment of Competitiveness

- 2.3 The Authority has stated that it finds that there is no competition in real terms (with respect to the ITP services) at the Mumbai Airport because;
- (i) BSSPL is providing ITP services to Airlines on behalf of the Oil Marketing Companies (OMCs) without any direct User Agreement with Airlines. In this context attention of the Authority is invited to paragraph 2.4.1 below.
 - (ii) The two ITP service providers viz. BSSPL and Indian Oil Sky tanking Private Limited (IOSPL) at Mumbai, primarily cater to the clients of their own promoters/principals, viz. Indian Oil Corporation Limited (IOCL) and Bharat Petroleum Corporation Limited (BPCL). In this context attention of the Authority is invited to paragraph 2.4.2 below.
 - (iii) As per BSSPL's submission only a small portion of their business is generated from other clients such as Hindustan Petroleum Corporation Limited (HPCL). In this context attention of the Authority is invited to paragraph 2.4.3 below.
- 2.4 BSSPL would like to provide relevant context in respect of the above observations of the Authority.

- 2.4.1 Context for: As stated by the Authority, BSSPL is providing ITP services to Airlines on behalf of the Oil Marketing Companies (OMCs) without any direct User Agreement with Airlines.

The scheme of the underlying contractual arrangements is such that it is the Suppliers alone who have privity of contract with the Air Carrier(s) (unless the Air Carrier is itself a supplier in which case the Air Carrier/supplier would have an agreement with the into plane agent). The number of Suppliers at the Airport is a consequence of MAFFFL

enabling 'Open Access' and in this respect, there are no factors attributable to BSSPL.

Under the Into-Plane Fuelling Services Agreement dated December 30, 2014 between Mumbai International Airport Private Limited (MIAL) and Mumbai Aviation Fuel Farm Facility Private Limited (MAFFFL), MIAL grants to MAFFFL, amongst other things, the right to provide 'Services', through itself or through sub-concessionaires, to the various Users at CSIA. 'Services' means fuelling, defueling and refuelling (of defueled ATF) of Aircraft at the Airport utilizing the ITP Assets as specified. [Reference: Section 3.1 and definition of 'Service' under Section 1]

The said Into-Plane Fuelling Services Agreement envisages that Services are intended to be rendered to the Suppliers, as illustrated below:

- (i) MAFFFL is required to render the Services on the principle of Open Access, on and from the Scheduled Commissioning Date. 'Open Access' means the provision by MAFFFL of access to the Services, on an equitable, non-discriminatory basis and on the common user principle, to Suppliers desirous of using such Services.
- (ii) MAFFFL shall on a monthly basis provide MIAL with details of the quantity of ATF delivered on account of Suppliers.

[Reference: Sections 6.1.2, 6.1.4]

Under the Into-Plane Fuelling Service Sub Concession Agreement dated November 07, 2014 between MAFFFL and Bharat Stars Services Pvt Ltd (BSSPL), BSSPL has been granted the right to provide Services to various Users in accordance with amongst other things, the terms of the said Into-Plane Fuelling Service Sub Concession Agreement and the ITP Agreement (i.e., the said Into-Plane Fuelling Services Agreement). [Reference: Clause 3.1 of the Into-Plane Fuelling Service Sub Concession Agreement]

- 2.4.2 Context for: The two ITP service providers viz. BSSPL and IOSPL at Mumbai, primarily cater to the clients of their own promoters/principals, viz. IOCL and BPCL.

Under the said Into-Plane Fuelling Service Sub Concession Agreement, BSSPL is under an obligation to provide Services (all functions necessary for the Aircraft Fuelling, Aircraft Defueling and Aircraft Refuelling) to the Users in accordance with the terms and conditions of the agreements executed with the various Users.

There is no requirement for the into plane agents to have in place agreements with each of the suppliers at the Airport.

Even if BSSPL is catering to the requirements of its own promoter (BPCL), any such contractual arrangement inter-se BSSPL and BPCL would be on arms -length basis following applicable provisions of the Companies Act, 2013.

- 2.4.3 Context for: Only a small portion of BSSPL's business is generated from other clients such as HPCL.

Until the implementation of 'Open Access' at the Airport, the number of suppliers are limited. As mentioned above, it is MAFFFL's obligation to ensure Open Access in accordance with the terms and conditions of the said Into-Plane Fuelling Services Agreement (with MIAL).

In the assessment of 'competitiveness', the prescribed criterion is the provision of the Regulated Service by two or more Service Providers. If this criterion is met, then the Regulated Service is deemed competitive. The utilisation of such service by the suppliers at the Airport is not the issue for determination in this regard.

It is submitted that BSSPL and IOSPL were awarded the sub-concession for rendering ITP services at the Airport pursuant to a competitive bidding process. BSSPL was selected, being the most competitive and IOSPL was required to match the price offering of BSSPL.

It may be noted that BSSPL caters to a portion of HPCL's customer airlines in competition with IOSPL. In fact, BSSPL has lost a portion of the business of HPCL to IOSPL due to higher tariff rates, which has pulled down the BSSPL share in comparison with IOSPL. The fact that even a major supplier (like HPCL) is entitled to choose its ITP service provider and that it has shuffled its requirements between the ITP service providers is a testimony of competitiveness between IOSL and BSSPL.

It is pertinent to state here that MAFFFL is required to commission the integrated fuel farm (IFF) and operate it on open-access basis, paving way for other suppliers like RIL, Shell-MRPL to participate and choose the ITP service provider of their choice, thus making it more competitive.



The integrated fuel farm facility is expected to be commissioned within the prevailing year 2021 of which only 7 months remain.

Assessment of reasonableness of the existing User Agreement(s)

- 2.5 The Authority, it appears is not assured of the reasonableness of the existing User Agreement(s) because BSSPL is providing ITP services to Airlines on behalf of the Oil Marketing Companies (OMCs) without any direct User Agreement with Airlines.
- 2.6 As elucidated above, the scheme of the underlying contractual arrangements is such that it is the Suppliers alone who have privity of contract with the Air Carrier(s) (unless the Air Carrier is itself a supplier in which case the Air Carrier/supplier would have an agreement with the into plane agent). The number of Suppliers at the Airport is a consequence of MAFFFL enabling 'Open Access' and in this respect there are no factors attributable to BSSPL.
- 2.7 Further, the contractual arrangement inter-se BSSPL and BPCL would be on arms -length basis following applicable provisions of the Companies Act, 2013.
- 2.8 It is also submitted that in the assessment of whether or not the existing User Agreement(s) is reasonable, as prescribed under the 2011 Guidelines, the Authority shall consider that the existing User Agreement is reasonable provided;
- (i) Service Provider submits existing User Agreement(s) between the Service Provider and all the User(s) of the Regulated Service(s), clearly indicating the tariff(s) that are agreed to between the Service Provider and the User(s) of the Regulated Service(s), and
 - (ii) The User(s) of the Regulated Service(s) have not raised any reasonable objections or concerns in regard to the existing User Agreement(s), which have not been appropriately addressed.
- 2.9 The User Agreement cannot be considered as 'unreasonable' under the provisions of the 2011 Guidelines because the underlying contractual framework, as explained above, envisages only the Suppliers to have privity of contract with the Airlines.



2.10 In light of the foregoing it is submitted that;

- (i) Following the assessment criteria prescribed under the 2011 Guidelines, the Regulated Service in question is 'material but competitive'.
- (ii) The Authority is required to adhere to the assessment criteria set forth in the 2011 Guidelines and not take into account extraneous considerations. Further, the Authority is required to keep in consideration the underlying scheme and provisions of the concession.
- (iii) The existing User Agreement(s) answer the test of 'reasonableness' under the 2011 Guidelines. Without prejudice to the foregoing, it is submitted that as per the 2011 Guidelines, Single Till/Hybrid Till clause is applicable only when price cap method is applied. Accordingly, we wish to reiterate and affirm in view of what is stated above that BSSPL may continue to be assessed under light touch approach and hence these factors regarding 'reasonableness' of the existing User Agreement(s) become irrelevant.

3. SUBMISSION ON MERITS

Fuel throughput

- 3.1 There are certain serious issues which remain to be considered in respect of fuel throughput which BSSPL seeks leave to submit as under.
- 3.2 Though the Authority took an optimistic view that the ATMs shall start recovery by year 2021-22 and fully recover by year 2022-23, in view of the surge in the COVID-19 pandemic, the scarcity in vaccine availability and considering that we are still in the midst of a catastrophic second wave which is worse than the first one, such an optimistic view may be misplaced.

We may agree that more or less the domestic ATMs may recover to 100% by 2022-23 but the international ATMs may recover only in the year 2023-24. As per press briefs of IATA, Global passenger traffic (revenue passenger kilometres or RPKs) will not return to pre-COVID-19 levels until 2024, a year later than previously projected.

It is noted from Table 5 of Consultation Paper No. 04/ 2021-22 in case of M/S BHARAT STARS SERVICES PRIVATE LIMITED (BSSPL) FOR PROVIDING INTO PLANE SERVICES AT KEMPEGOWDA

INTERNATIONAL AIRPORT (KIA), BANGALORE FROM FY 2021-22 TO FY 2025-26 OF THE THIRD CONTROL PERIOD, that the yardstick applied as far as recovery of ATMs is concerned is different in the CP No.02 for BSSPL Mumbai and matches with what is being proposed below in 3.4 with a variation of fuel efficiency factor and the CAGR for FY 2023-24 to 2024-25.

Hence, the estimation that the ATMs may start recovering by year 2021-22 and willfully recover by 2022-23 merits a review.

3.3 The compounded growth rate in case of Mumbai was around 2% year on year in an earlier view of AERA. Hence the growth rate proposed by the authority i.e. 111% for 2023-24 & 120% for the year 2024-25, may not be achievable in the current scenario where there is a lot of uncertainty as to how the pandemic will pan out in the future considering that the business travel may not reach pre-covid levels as many organizations are resorting to virtual meetings over physical meetings and thus avoiding travel.

3.4 During the pandemic, many airlines have started phasing out the old versions of the aircrafts (for example: grounding of all B747 aircrafts by British Airways) and started introducing more fuel-efficient aircrafts. The Authority is requested to factor in this aspect of fuel efficiency saving during the 3rd Control Period as below-

Table No. 1

Year	Recovery % on Base FY 2019-20		ATM Numbers (0.000)			Percentage of Fuel Efficiency Saving		ATF Volume (In 0.000 KL)		
	Dom.	Intl.	Dom.	Intl.	Total	Dom.	Intl.	Dom.	Intl.	Total
2019-20	Base		228.7	76.0	304.7	Base	Base	473.19	1009.57	1482.76
2020-21	Actual		92.2	23.7	115.9	Actual	Actual	203.34	403.01	606.34
2021-22	70	50	160.1	38.0	198.1	1	1	330.00	500.00	830.00
2022-23	100	75	228.7	57.0	285.7	3	3	460.00	735.00	1195.00
2023-24	(102) ³	100	242.7	76.0	318.7	5	5	470.00	960.00	1430.00
2024-25	(102) ⁴	(102) ⁴	247.5	82.3	329.8	6	6	480.00	1030.00	1510.00
2025-26	(102) ⁵	(102) ⁵	252.5	83.9	336.4	7	7	485.00	1040.00	1525.00

For projecting the Domestic & International ATMs & ATF Volumes for BSSPL for the 3rd Control Period, authority used the percentage share of 2019-20 (13% & 35% for Domestic & International respectively), which was an aberration. The historical percentage share is 22 & 40% for Domestic & International respectively.

Hence there is a change in the recovery rate and the volumes. The corrected tabulation is given below:

Table No. 2

Year	BSSPL ATM (in 0.000)						BSSPL ATF Volume (in 0.000)					
	Dom.		Intl.		Total		Dom.		Intl.		Total	
2019-20	28.6	13%	26.5	35%	55.1	18%	48.0	10%	480.0	48%	528.0	36%
2020-21	10.2	11%	11.1	47%	21.3	18%	20.0	10%	195.0	48%	215.0	35%
2021-22	35.2	22%	12.5	33%	47.7	24%	75.0	22%	200.0	40%	275.0	34%
2022-23	50.3	22%	18.8	33%	69.1	24%	102.0	22%	300.0	40%	402.0	34%
2023-24	53.4	22%	25.1	33%	78.5	24%	105.0	22%	380.0	40%	485.0	34%
2024-25*	31.8	22%	15.8	33%	47.6	24%	62.0	22%	240.0	40%	302.0	34%

* FY 2024-25 will be for 7 months only as the LOA was issued on 29th October 2014.

3.5 Updated information:

Even since the Authority issued the Consultation Paper on April 08, 2021, there has been an unprecedented surge in COVID cases and in response to the second wave of COVID, the Ministry of Home Affairs, via its Order dated 29th April 2021, has extended the restriction imposed by Order dated 23.03.2021 until 31.05.2021.

Further, it has been suggested by principal scientific advisor, to the Government of India that 'phase three' is inevitable, given the high levels of circulating virus,' and it is likely that the Government may continue to impose such restrictions based on the assessment of the situation.

The full impact of the surge in COVID 19 cases on ATM for 2021-22 cannot yet be ascertained.

Operational and maintenance expenditure

3.6 Authority's Examination & Analysis.

Employee Benefit Expenses: In accordance with Table 5 of the Consultation Paper at page 14, it is estimated that the ATMs of Domestic & International would return to 100% in 2022-23 and in our submission, we estimate that ATMs of Domestic may return to 100% by 2022-23 and International to 100% by 2023-24. Although, there would be recovery in ATMs as well as volumes during the 3rd Control Period, the recovery of volumes would not be proportionate to recovery in ATMs.

Accordingly, the manpower would need to be augmented to cater to this increase as ITP services is manpower oriented and the requirement of manpower will increase in tandem with increase in ATMs/ fuelling operations.

Aggregate Revenue Requirement – Determination of Yield per Unit

- 3.7 In Table 13, the fuel throughput is calculated up to 31st January but the LOA issued by MAFFFL is dated is 29th October 2014. Hence the contract period will get over by end of October 2024. Volumes for the year should be for 7 months only instead of 10 months for calculation of yield.

True up of losses

- 3.8 The Authority has proposed to true-up the ATM traffic and fuel throughput volume based on actual numbers for the 3rd Control Period at the time of determination of tariff for the next Control Period.
- 3.9 It is submitted that there may not be a next Control Period for BSSPL in the event the said Into-Plane Fuelling Service Sub Concession Agreement is not extended by MAFFFL, thereby rendering BSSPL remediless.

Rework of RAB

- 3.10 The Authority in paragraph 4.15 of the Consultation Paper has observed that *'The Authority, in order to ensure that BSSPL adheres to the Capital expenditure plan, proposesto rework the RAB of the BSSPL Mumbai for the 3rd Control Period, by reducing the RAB by1% of the cost of ITP Depot/dispensers & refuellers etc. as the case may be, if BSSPL Mumbaifails to commission and capitalize the CAPEX as per the plan considered by the Authority.'*
- 3.11 It is submitted that BSSPL should not be penalised for not incurring capex as projectedon account of reasons not within its control. COVID 19 has presented unprecedented situations and given that several more waves of COVID are likely to hit the human population across the globe, there is no visibility of the future. In case the capex cannot be spent due to reasons beyond the control of BSSPL, the company should not be penalised.

Deviation from earlier approach

- 3.12 It is submitted that factors used to make an assessment with respect to 'materiality', 'competitiveness' and 'reasonableness of User Agreements' have remained the same since the 1st Control Period. There is no change in the factors affecting the foregoing assessment and it is submitted that as done on earlier occasions, the Light Touch approach should continue to apply in the determination of tariff for the Regulated Service in question.

4. PROPOSAL

- 4.1 For reasons stated above and emphasising that the charges paid by the supplier on fuel throughput is the lone source of income for BSSPL and any variation can affect the profit and loss accounts to a large extent, BSSPL submits that the light touch approach should be adopted for determination of tariff with respect to the 3rd Control Period.

We request the Authority to consider our Submissions favourably and pass orders with revised throughput forecast.

- 4.2 We would be available for any additional information that may be required by the Authority in this regard.

Thanking you



Prashanth M Kamath
Chief Executive Officer