Reference No: IOSDPL/AERA CP/ DEL ITP
Date: 22nd March 2022

The Chairman,
Airports Economic Regulatory Authority (AERA),
AERA Building,
Administrative Complex.
Safdarjung Airport, New Delhi-110003

Subject: Comments to CP 33 / 2021-22 dated 23rd February 2022 in the matter of determination of aeronautical tariff for M/S IndianOil Skytanking Delhi Private Limited (IOSDPL) providing into plane services (ITP) at Delhi International Airport for the third control period (FY 2021-22 to FY 2025-26)

Dear Sir,

Reference to the Consultation paper 33/2021-22 dated 23rd February 2022, we would like to place our comments on record.

Chapter 2 – Clause 2.8 – "The Authority noted that the IOSPL, parent company of IOSDPL, Delhi has been promoted by (Oil Marketing Company) i.e., IOCL and caters to its own clients mainly its promoters, hence, in real terms, there is no competition as ITP Service providers. Further, based on reasoning given in Para 2.7 above, the Authority is of the view that the Tariff of IOSDPL, Delhi for Third Control Period is to be determined under "Price Cap Approach"

IOSDPL's response:

The Authority has established at Stage I that the service is material in nature and at Stage II deemed it to be Competitive. In accordance with Clause 3.2 of the CGF Guidelines 2011, when a regulated service is deemed to be 'material but competitive' the tariff determination shall be on a "light touch" approach for the duration of the Control period in accordance with provisions of Chapter V of the Guideline.

However, at Stage III where Reasonability of User Agreements is to be assessed for assurance, the Authority has concluded that the service provided by IOSL is not competitive in real terms as:

a. There are no user agreements with airlines
b. The service providers, being promoted by Oil Marketing Companies, primarily cater to the requirement of the promoter, and
c. only a small portion of their business around 5% is generated from other clients such as HPCL and RIL

It may be noted that the User Agreements are in place which satisfy the Stage III process, and also competition on account of:

a. The ITP Service providers are finalized through competitive bidding process by the Airport Operators and/or its Concessionaires where in the terms of the bid and selection criteria are fixed. Any request for appropriate changes in the

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commercial terms during the pre-bid query stage is not accepted. Thus, the participating bidders do not have any control over such aspects.

b. In the Global Tender invited by Delhi International Airport Limited (DIAL), IOSPL and BSSPL were selected after the outcome of the tender process.

c. There are various clauses in the SPRH Agreement signed between IOSPL and DIAL (Copy Provided to AERA) which ensure competition in ITP Services at Delhi Airport. With these clauses being in place, ITP services remain competitive at Delhi Airport. Some of these clauses are reproduced below:

   (i) 2.3.4: Under any circumstances, DIAL shall not be liable or responsible to the Concessionaire or to any other entity whomsoever, for any loss of business, business competition, loss of investment, or any other loss or damage, costs or expenses for any reason whatsoever and it shall never be entitled to claim any consequential, direct or indirect damages, costs, expenses, inter alia, for such loss of business, loss of investment, business competition or any other loss etc. whether upon earlier termination or determination of this Agreement or otherwise, howsoever and whatsoever caused.

   (ii) The Concessionaire recognizes and acknowledges that DIAL has granted similar concession rights to Other ITP Concessionaire to provide similar services with the aim of retaining competition between the Concessionaire and the other ITP Concessionaire and to achieve efficiency and quality in the provision of the ITP Services

   (iii)3.3(e): The Concessionaire warrants and undertakes that it has not entered into and will not enter into any restrictive practice, including without limitation any exclusivity agreement or other agreement or understanding with an Air Carrier, Supplier, the Fuel Facility Operator or Other ITP Concessionaire(s) to distort or reduce competition in the market for ITP Services at the Airport or have a material adverse effect on the price and availability of such services.

d. As per Clause No. 2.9 of the CP it has been contended by the Authority that we are providing ITP Service to Airlines on behalf of the Oil Marketing Companies without any user agreement with the Airlines. We have entered into user agreements with Airlines at airports where they have positioned product for their captive consumption. At Delhi airport, the airlines are not sourcing product on their own due reasons not known to IOSPL. Should they intend to source their own product, they would be required to enter into user agreement for ITP Services of their choice. Furthermore, the user agreements with Airlines are subject to commercial arrangement between Suppliers and Airlines which are confidential to them. As per their current commercial agreements, in line with IATA Model Fuel Supply Agreement, the title to and risk of loss of product passes from the Supplier to the Airline only when the product passes through the inlet flange of the wing tip. In other words, the title of product is assumed by the airline only when the product is delivered into the aircraft wings. Thus, the Suppliers enter into user agreements and not the airlines. The airlines are free to approach the ITP Service providers to avail the services as per the provisions of the SPRH Agreement.

In accordance with the Authority's Order No. 12/2010-11 dated 10th January 2011 and Direction No. 4/2010-11 dated 28th Feb 2011 (CGF Guidelines) a regulated service shall

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be deemed to be competitive when it is provided by two or more Service Providers. It also provides for the Authority to consider other additional evidence in its discretion regarding reasonableness of competition, as it may deem fit. In view of above-mentioned business dynamics under which this service availed by the users, the discretion exercised by the Authority in considering the aspects of ISP catering mainly to promoter Oil Companies clients or not entering into user agreements with airlines is inappropriate, speculative, and unjustified. Thus, the Authority is deviating from its own guidelines with regards to the Competitive criteria.

Structurally on account of industry dynamics or on account of its market position, IOSL has not prevented any airline from entering into contracts with itself at Delhi Airport. Therefore, an airline may be due to commercial or other reasons find it more preferable to enter into contracts directly with Oil companies wherein ITP Services are provided by IOSL. Under the current arrangement, the Oil Companies indemnify the stakeholders in the value chain (ITP Operator, Airport Operator etc) and therefore airlines are not required to take Aviation Refuelling Liability Insurance (ARLI), thus leading to a cost saving for the airlines. This market structure cannot be interpreted to reach the conclusion that there is no competition in real terms.

Catering to requirements of own clients and / or promoters is not prohibited in any manner under the Companies Act or Indian Competition Law. Therefore, it cannot be construed to mean that there is no competition in real terms.

IOSL has also sought the Legal Opinion of M/s Link Legal, Advocates on the correctness of AERA's proposal to adopt the 'price cap' approach for Mumbai ITP Services. Link Legal, vide their opinion dated April 26, 2021, has reinforced IOSL's position that the approach adopted by AERA was not in consonance with the CGF Guidelines and that AERA should have proposed to adopt the 'light touch' approach. The same Legal Opinion is applicable for DEL ITP Services as well and the copy of this opinion has already been provided to AERA.

In view of the foregoing, we believe that competition exists in ITP Services at Delhi Airport due to the following:

- The contractual arrangements IOSL has had in place with its counterparties have not changed since the commencement of ITP services in Delhi Airport. Neither has any other market condition changed with the exception of varying market share of ITP Agents. In this situation wherein no change in ground realities has taken place, if AERA determined tariffs under "Light Touch" approach in the 1st and 2nd control period, then the same practice should also continue in the 3rd control period.
- As per AERA Guidelines, in case there are two ITP service providers, the services are deemed "Competitive". This condition is being met at Delhi Airport as two service providers, IOSDPL and BSSDPL provide ITP services at Delhi Airport.
- In the past, IOSL had direct ITP Agreements with Airlines such as Spice Jet, Jet Airways and Air India.
- The two ITP Agents were selected based on a competitive bidding process.
- Airlines and Oil Companies are free to avail the services of any ITP Service provider. Whether they exercise this choice is beyond the control of the ITP service providers.
- Both the ITP service providers are NOT free to charge the customers based on commercial factors, as the business is regulated by AERA. Therefore, undue profits

cannot accrue to the service provider even if they may have a dominant market position.

Furthermore, in Delhi Airport there are presently 04 fuel suppliers, namely

1. IndianOil Corporation Limited
2. Bharat Petroleum Corporation Limited
3. Hindustan Petroleum Corporation Limited
4. Reliance Industries Limited

Of these 4 fuel suppliers, IOSL has an Into Plane Agreement with 3 fuel suppliers (excluding Bharat Petroleum Corporation Limited). Copy of these Into Plane Agreements have already been submitted to AERA.

Therefore, the airlines have a choice of going to any fuel supplier amongst these 4, which gives them ample choice to source ATF at competitive rates.

When this market structure is compared to Mumbai Airport, there only 3 fuel suppliers presently exist. These suppliers are connected to the existing fuel farm at Mumbai Airport, via pipelines. Presently there is no facility at Mumbai Airport for unloading of ATF via tank trucks.

1. IndianOil Corporation Limited
2. Bharat Petroleum Corporation Limited
3. Hindustan Petroleum Corporation Limited.

Since the upcoming Integrated Fuel Farm Facility is not yet operational, tank truck unloading facilities are not yet available. It is our assumption that once tank truck unloading facilities are available at Mumbai Airport, more fuel suppliers, which do not presently have pipeline access may be able to access the airport through tank trucks.

When both Mumbai and Delhi Airports are compared, it can be said that there is more competition in supply of ATF at Delhi Airport (04 Fuel Suppliers) v/s Mumbai Airport (3 Fuel Suppliers). These market dynamics are not controlled by the Into Plane Agents and are largely driven by the Owner of the Fuel Farm Facility.

Considering the factors highlighted above, we request the authority to determine tariffs for Delhi into Plane Services under "Light Touch Approach".

Chapter 9, Clause 9.10: The Authority noted that IOSDPL, Delhi has projected the Airport Operator Fees @ 7% of the Aeronautical revenue (ITP revenue) whereas the Authority had approved Airport Operator Fees @ 5% of the aeronautical revenue vide its Order No. 01/2018-19 dated 5th April 2018 on Capping the amount of Royalty/licence Fee / Revenue Share payable to Airport Operator as a "passthrough" expenditure for the Independent service Providers providing Cargo Facility, Ground handling, Supply of Fuel to Aircrafts at Major Airports. The Authority based on its order, proposes Airport Operator Fees @ 5% of the aeronautical revenue of IOSDPL, Delhi for the Third Control Period.

IOSDPL Reply:

Based on the response to clause 2.8, we urge the authority to determine tariffs under "light touch approach" and consider the entire airport operator fees of 7% as a pass-through cost (for volumes under 3 mn KL) and 9% in case of volumes > 3 Mn KL.

Table Number 27: Inflation on Operating Costs

IOSL Reply:

The rates of inflation proposed by the Authority are not adequate to cover the expected increase in operating costs of IOSDPL. IOSDPL's estimates of inflation were based on prevailing trends observed in inflation, along with a forecast keeping in mind the prevailing situation. Therefore, we request the authority to consider inflation as forecasted by IOSDPL.

Chapter 9, Clause 9.9 (ii): "The Authority also noted that IOSDPL has proposed 16% margin on the total operating expenses under Administrative & General expenses which cannot be considered."

IOSDPL Reply:

The ITP Business is manpower intensive in nature, which can be observed from Table 26 of CP. The capital assets which are deployed in rendering ITP Services have a useful life of 8 Years during which these assets are fully depreciated. The RAB size is therefore relatively low and therefore returns on RAB are not enough to provide for a reasonable return to the ITP Operator. Based on this same principle of low RAB size, The authority has allowed a 10% return on ARR in the case of GSEC at Ahmedabad Airport (Clause 9.2.4, Order Number 27/2021-22, Table Number 22) and 16% Operating Margin in case BKFFPL in Order Number 23/2021-22 Table Number 25 was allowed for Fuel Farm and Into Plane Operations. An operating margin of 16% proposed by IOSL is for similar reason and also similar in nature to a return on ARR. The authority has not also given any reason for not considering the proposed 16% margin on operating expenses. Considering such a return component was allowed in the case of GESC at Ahmedabad Airport and BKFFPL at Kannur Airport, we urge the authority to allow a 16% operating margin to IOSDPL in providing ITP Services at Delhi Airport.

Submitted for the consideration of the Authority.

Thanking You.

For IndianOil Skytanking Delhi Private Limited.

Bipin Wankhede
Chief Financial Officer

Indian Oil Skytanking Delhi Private Limited
Bangalore