

336



14 September 2010

Shri Yashwant Bhawe
Chairman
Airports Economic Regulatory Authority of India
New Delhi

Shri Yashwantji,

Economic Regulation of Ground Handling and Cargo services

Please refer to the consultation paper No. 05/2010-11 published by AERA on the on the proposed economic regulation of tariffs and yields of ground handling and cargo services provided at major airports across India.

We understand that AERA is empowered to regulate the tariffs charged at the airports by the ground and cargo handling companies in India. However, we would appeal to your good office that perhaps it is not the opportune time now to regulate the industry as the industry is drawing investments to develop the infrastructure to world class standards. There is also no evidence at the current point in time that players in the industry are making supernormal profits. Existing players are hardly able to achieve a reasonable returns for their stakeholders. Also, the influx investment of funds yield significant foreign exchange inflows beneficial to India as a whole. Finally the investments at the airports facilitates the development of other ancillary goods and services industry benefiting the area as a whole. We would like to draw your kind attention to the issues we append Annex 1.

Thank you for your attention and we look forward to your consideration that there is currently no need for AERA to regulate the tariffs charged by the ground and cargo handling companies. Whenever there is a need to introduce the regulatory frame work for tariffs for ground and cargo handling companies, we would recommend that a joint working group consisting of different stake holders in the ground and cargo service industry be formed to review the proposed consultation paper and its working and arrive at a consensus before enforcing any form of economic regulation for ground and cargo handling companies at the airports in India.

Yours Sincerely

Willy Ko Tuck Chong

Willy Ko Tuck Chong
Chief Operating Officer

Willy Ko Tuck Chong
17/9/2010

Secy (AERA)

20/9

OSD-II

1538/Secy/10
20/9/10

449/(W)/AERA
17/9/10

337

**AERA REGULATION OF TARIFFS – ISSUES**

1. Airport infrastructure in India needs to be developed and evolved to world class standard and at par to developed economies. Any regulation of the players is going to stifle innovation and efficiency.
2. Reference to investment considerations with airport Operator and investment was made based on the assumption of free market and not regulated market. The investing companies have taken considerable risks in investing and should be given the leeway to earn the returns required by its stakeholders. Any distraction from free market competitive forces are likely discourage competition and force the market to be restricted.
3. AERA's approach should be to ensure fair pricing levels and level playing field at airports rather than controlling and regulating tariffs which discourages investments. Policies should motivate companies to invest in infrastructure and improving service levels, rather than capping the yields and returns.
4. There is currently no evidence of exorbitant charges by a ground handling company as competitive mechanism is working well at major airports. Perhaps the authority could review and reconsider the need to regulate the tariffs.
5. Ground and Cargo service providers have entered into commercial agreements with airlines and airport operators. AERA's proposed regulation could force the service providers to review and revise the existing agreements which will increase the cost of compliance to the service provider, resulting in no real benefit to the industry.
6. Furthermore, level of competitiveness at a particular airport should be linked to the market size at that airport, e.g. 2 players in a market of \$100m could be termed as non-competitive whereas 2 players in a market of \$1m could be termed as competitive.
7. Ambiguity and conflicts between agreements & regulatory philosophy – We request complete adherence to its concession agreement, which clearly specifies that cargo, fuel farm and ground handling services are not covered within definition of "Regulated Charges". The service providers, who were party to the contracts, have participated in the competitive process assumptions.
8. Furthermore, at Delhi, airport operators have already set a ceiling rate for domestic and international flight handling tariffs. Such multi-level cap on tariffs imposed by authorities and stakeholders are confusing and detrimental to the development of ground and cargo handling industry in India.

338



9. At the time of commitment of their investments, all service providers at BIAL had established business assumptions and considered the provisions stated in the concession agreements (Schedule 6). Any variations now to these business assumptions can work to the detriment of the service providers. Also it does send the wrong signal to the foreign business communities in the industry at a point in time where India is trying to attract foreign investments in the aviation industry.

10. It should be noted that the contents of the contract with the service provider which clearly illustrates that the spirit assumed by the authority of the Concession Agreement, and that all these services would be non-regulatory services.

11. As far as competition is concern, we strongly feel that a minimum of 2 service providers in an airport leads to competition. We also noted that the measure of competition for any service cannot be established simply by the number of the players in the market. Factors like market share, size, resources, economic power, etc, must be considered as these play an important part in the determination of a competitive market which is viable and sustainable in the long run.

12. In determining the materiality of competition in a market, we felt that we should keep in mind the nascent stage of the industry. Also AERA should increase the threshold for materiality up to 20%.

13. Further, both the materiality and competitive indices proposed by AERA need to be reviewed. It is noted from the minutes of the stakeholder consultation meeting held on 18.08.2010 that IATA too has pointed out the incongruence in the materiality index computation.

14. Service levels in the Indian aviation industry need to be improved exponentially. investments are required towards infrastructure, recruitment and training, etc. to improve efficiencies and for better service levels. The current form of regulation proposed seems to completely disregard the link between investments and service levels. There are clauses built in the agreement with the airport operator which ensures the minimum quality standards to be maintained. As there is a co-relation between high service standards and the cost, AERA needs to recognize and consider the existing contractual agreements with airport operators as grandfathered and twin controls – on service levels & corresponding prices.

15. It is noted that the Efficiency Factor or incentive factor-“X” factor is benchmarked against the performance of the same service provider which may not be a fair approach. It is felt that such a factor would push even the most cost-efficient service provider to better its own performance year-on-year, notwithstanding the quantum difference between their performance levels and the levels of performance

339



of less-efficient providers within or in any other airports. As explained earlier, an experience based industry with stringent service quality standards like airports cannot be expected to divert its attention to meeting its cost objectives, independently of evolving service quality obligations

16. Even as AERA would adopt a Regulatory Approach, we urge that a Light touch approach without too much interfering with competitive market forces and allow regulation by existing contracts to ensure the balance between quality of services and costs of providing the services, thus ensuring the viability of the businesses of the existing players.

17. AERA should also clarify on how the authority would ensure that service providers do not cross subsidize domestic handling with international handling.

18. The Yield/unit and tariff calculations proposed by the authority are mathematical in nature, complex and do not address:

- a. Reciprocity arrangement between airlines and ground and/or cargo service providers
- b. Service Level agreements between airlines and service providers
- c. Service levels and complexity of servicing different aircraft types
- d. Difference between servicing a night stop or an arrival or a departure flight
- e. Effect of depreciation on the Regulatory Asset Base thereby leading to a reduced recovery each year. Also, clarity is required when the RAB reaches its written down value at the end of the depreciation cycle as per the depreciation policy

19. The paper proposes to include concession fees payable by service providers to airport operators in the operating cost of the service provider. Concession fees are set by the airport operator after consulting with AERA. The current setup does not allow a service provider to negotiate the concession fees. As such, such costs should be allowed as a "pass-through" cost for the service provider and should not be included in the operating cost of the service provider.

20. The reporting requirement mandated by the paper is extremely onerous and involves disclosure of materially sensitive information which could be treated as "business secrets". , e.g. operating costs, 10 year business plans, etc.

21. Such detailed reporting requirement also increases the cost of compliance for the service provider, not to mention the admin work entailed and time spent in collating and providing the information requested under the paper. Moreover, AERA should clarify on the steps that the authority would take in safeguarding the information provided and ensuring confidentiality.