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GOVERNMENT OF KERALA

No. 9595/D2/2010/Trans. Transport (D) Department,
Thiruvananthapuram, Dated. 03.09.2010

From
The Secretary to Government.

To
The Secretary,
Airports Economic 'Regulatory Authority of India,
AERA Building,
Administrative Complex,
Sardarjung Airport,
New Delhi - 110 003.

FAX No: 011-24695039

Handwritten signature and initials
DSD-II

Sir,
Sub: Economic regulation of services provided for Cargo facility ground handling and supply of fuel to the Aircraft - reg.
Ref: Your D.O letter no. AERA/20019/CGF-G/2010-11/591 dated 02.08.2010.

Kind attention is invited to the letter cited. The following are the views of the State Government on the draft regulations released in the consultation paper 05/2010-11,

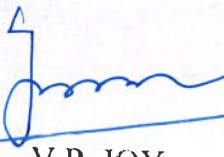
I. Views in General :-

- a. This draft consultation paper is for the independent service providers and not for Airport Operators, even if they provide the regulated service. However, any regulation on the Airports as service provider should also be consulted and yardstick should not be less favourable than to the service providers.
- b. AERA Act Ch III, 13.2 states AERA shall "determine the tariff ONCE in 5 years" and considered appropriate, amend from time to time, the tariff so determined. AERA now proposes (Ch. II, 6.3) ANNUAL

number of Customs officers for supervision of round the clock operations.

- iii) Sector-wise freight charges by various Airlines may be regulated by AERA to avoid unhealthy competition.

Apart from the above, we would also submit that while major Ports notified under Major Port Trusts Act, 1963 and Airports notified under the Airports Authority of India Act, 1994 are exempted from the purview of "Handling of Cargo in Customs Areas Regulations, 2009" [Government of India, Ministry of Finance, Department of Revenue, Notification No. 26/2009-Customs (N.T) dated 17.03.2009], Custodians like KSIE in the Public Sector are treated at par with stake-holders in the private sector, causing more financial burden on them and retarding their efforts to provide quality service at competitive rates. While framing the guidelines, the possibility of extending equitable treatment to the State Government owned stake-holders in the Civil Aviation sector like KSIE at par with AAI may kindly be considered by AERA in consultation with Ministry of Finance.


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Secretary
Transport Department

- tariff Proposal & approval processes, which is not in line with the directives of AERA of India Act 2008 itself.
- c. In CL. 4.1 (ii) to determine the materiality index (for fuelling service provider) the percentage should be changed from 5% to 10%
 - d. In CL. 4.2 (ii) to determine the materiality index (for Cargo service provider) the percentage should be changed from 2.5% to 5 %.
 - e. In Cl.4.3 (ii) to determine the materiality index (for Ground handling service provider) the percentage should be changed from 5% to 10%
 - f. AERA may consider fixing absolute numbers to denote materiality rather than fixing percentage, as even with increased operations, today's "material" airports can turn immaterial tomorrow, if other airports grows faster.
 - g. Airports which are "material" do not have sufficient volume for competition, even though required percentage for materiality exists. To equate 65,200 to 13,500 or 230,000 to 52,000 (which are 4 fold smaller) & compare & regulate them on equal footing is not sound nor logical nor natural justice. Therefore comparison benchmarking standards needs to be more equitable and justifiable.
 - h. Clause 5.1 states that there should be at least three (3) service providers in GH, cargo and fuelling to ensure competition. However, airports with less than 100 international movements per day, does not support competition by more than 2 agencies. Therefore, the number of service providers required for competition to be restricted to 2 agencies.
 - i. Competition in regulated services is NOT SOLELY on PRICE, but on factors like reciprocal service, national tie ups, bilateral, service quality, interest/ stake etc. Moreover self-handling airline who is also a 3rd party GH service provider possess a huge financial advantage over his non-airline competitor. These non-price factors which are

- intangible cannot be measured, esp, in terms of regulatory asset base/ investment. 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.
- j. Aggregate Revenue requirement (ARR) Ch III-CI.7 includes Operating expenses to determine the ARR. The operating expenses of an agency (say PSU), would be higher than another (private player). If Tariff approved takes into account high operating expenditure, efficiency is punished and overheads rewarded. If tariff does not care about expenses, the tariff will lead to losses. AERA has to devise before tariff determination, the maximum permissible operating expenditure bracket for service provider, depending open the level of operations.
 - k. Clause 8.1 Fair Rate of Return :AERA indicated 16% as Fair ROI which does not provide any incentive to the investor. The regulated Airport services require huge investment and operations are highly volatile. Moreover any over recovery has to be shared (CI.9. 15.2), but AERA does not guarantee appropriate return in case of short recovery and the method proposed is not feasible. The high risk is not properly rewarded.
 - l. AERA had projected in consultation paper of Feb 2010 CI 1.32 that AERA would intervene only when there is no sufficient competition or where the intervention will have material benefits. But in the present consultation paper 5/2010 chapter V.cl. 10 calls for a huge documentation for tariff fixation, where, borrowing AERA's own words "Cost of regulation will outweigh the benefits".
 - m. While deciding on materiality and competition and while tariff determination, AERA may consider agreements entered into even

before AERA originated and they should not be subject to regulation and should be left to the agreement between the parties.

- n. FROr for category of airports should lie within a homogenous bracket and should not vary too much wherein various agencies can be put to difficulties.
- o. In Cl.8.6 Revenue from services other than regulated services AERA purpose to include them in the gross revenue. This should not be done, as services provided are different and beyond regulations.
- p. Regulatory Asset Base or its value is not equivalent to quality service in aviation as manner of providing service, skill, accuracy, exactitude and timeliness of service provider are considered more important and premium rates are paid for service levels. Therefore, regulating the tariff for services or fixing yield based on real assets/ investment and not considering the intangible assets, which are quintessential in service, will defeat the purpose of efficient operations.
- q. Therefore, we propose that in major airports, where less than 5 million pax operate or less than 200 operations per day, AERA may indicate a tariff bracket (based on number of operations, cargo carried or fuel supplied) within which the service providers can levy tariffs, instead of approving individual tariff for each airport & Service provider separately.
- r. Investment by GH agency depends on the customer airlines and the GH requirements and their purchasing models and priorities may differ. Agencies with greater market share have to invest more while those serving lesser market have lower investment, but as the service being provided is the same and equipments being the same, fixing differential tariffs just based on the investment defeats the purpose of equality and fair competition. This effects the smaller players giving

scope for monopoly and cartels in the national level, which is dangerous to the market and also safety and security.

- s. Most importantly, AERA purposes to focus on benefits to end-user while fixing tariff. In aviation industry, in which market is highly volatile and risky and huge investment required, AERA has to fundamentally focus on the benefit & survivals of the investor since he is the sole entity directly and primarily affected. AERA is not in a position to ascertain that benefits are passed on to the end user. Therefore,. AERA needs to place focus and stress on investors' benefits, as he is the primary target of regulation & most directly impacted. AERA may ensure that monopolistic regime evolves. Any tariff fixation should consider the risk, profitability, survival, chances of loss and benefit to ALL STAKEHOLDERS (esp. investor/service provider) and not just the end-user)

II Views on Cargo handling service:-

Currently KSIE, a state owned PSU is the Air Cargo operator and Custodian of Air Cargo Complexes at Thiruvananthapuram and Calicut International Airports.

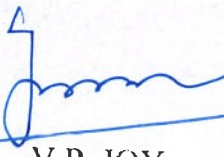
The following suggestions may be considered while formulating/ finalizing the guidelines.

- i) While fixing a ceiling by AERA in the tariff applicable for warehousing as well as other Cargo handling services, the respective Custodians may be given the flexibility to fix competitive rates within the ceiling fixed by AERA.
- ii) Cargo handling services (ie. Export/ Import activities) carried out at Air Cargo Complexes attached with Airports may be treated as part of Airport Activities and the present practice of charging Merchant Overtime, transportation facility etc by Customs etc may be dispensed with by providing sufficient

number of Customs officers for supervision of round the clock operations.

- iii) Sector-wise freight charges by various Airlines may be regulated by AERA to avoid unhealthy competition.

Apart from the above, we would also submit that while major Ports notified under Major Port Trusts Act, 1963 and Airports notified under the Airports Authority of India Act, 1994 are exempted from the purview of "Handling of Cargo in Customs Areas Regulations, 2009" [Government of India, Ministry of Finance, Department of Revenue, Notification No. 26/2009-Customs (N.T) dated 17.03.2009], Custodians like KSIE in the Public Sector are treated at par with stake-holders in the private sector, causing more financial burden on them and retarding their efforts to provide quality service at competitive rates. While framing the guidelines, the possibility of extending equitable treatment to the State Government owned stake-holders in the Civil Aviation sector like KSIE at par with AAI may kindly be considered by AERA in consultation with Ministry of Finance.


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