

AV/TSD/DIAL-ITP  
15<sup>th</sup> September, 2010

THE SECRETARY  
AIRPORTS ECONOMIC REGULATORY AUTHORITY OF INDIA  
AERA Building, Administrative Complex  
Safdarjung Airport, NEW DELHI – 110 003.

*Kind Attn: Shri Sandeep Prakash*

Dear Sir,

Subject: Feedback on the draft "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" ("Guidelines").

01. As you are aware we have been awarded a 10 year contract to provide In-to Plane (ITP) fueling services at the Indira Gandhi International Airport at New Delhi on the basis of international competitive bidding. We were awarded the bid as we had submitted a technically compliant offer to execute the works and to provide services as an ITP Service Provider at financially competitive rates. Our rates were accepted only after such an assessment of competitiveness by an open bidding process. The contract also envisages and benchmarks the service standards for the Into Plane Agent with stringent termination mechanism in case of defaults by them. As far as we can see, even the contracts between the Government and the Airport Operator proceeds on the assumption that our services are not regulated charges.
02. On the basis of the contract entered, the joint venture partners (which includes foreign service providers / investors) have provided world class technology and provided finance to enable this Company to provide into plane fueling services at Indira Gandhi International Airport. In terms of our earlier objection, we oppose any move to change our contractual rights, more particularly those relating to the guaranteed returns for our investments. It is apparent that the policy proposed by AERA completely ignores the rights of the shareholders / stake holders, more particularly their financial stake and risks undertaken.

03. If the idea was to get services at the airport on a 'cost plus rate of return' basis or any such model as proposed, the same could have been made clear prior to calling for contracts. At this stage when we have already made large investments, incurred expenses and commenced performing into plane services, the suggestion that our rates would be capped and/or tampered with is completely unacceptable.
04. It is likely that any alteration of our rates / guaranteed returns is likely to render the process unacceptable to us. We cannot be compelled to perform a contract on terms that is not acceptable to us. In the least the policy should contemplate a mechanism to adequately compensate us and provide an exit if so desired by the service provider.
05. Without prejudice to our stand that the entire exercise is illegal and unconstitutional, we wish to further point out that the policy that you are proposing is an unacceptable interference with our rights. The policy is not even objective as asserted. It is wholly inequitable in so far as it fails to factor in essential differences between service providers. The policy is also arbitrary since it is seeking to treat us on par with others who are not equally situated. It completely ignores the fact that the investors have also brought in technology and expertise which is not a factor of operating costs. In this context, amongst others we wish to draw your attention to the following factors in particular:
- a) We are a joint venture involving foreign participants, who bring in the required finance, expertise for various international standards and service parameters and culture, which are well above those observed by some of our competitors. The fundamental flaw in the policy is that it seeks to equate us with other service providers which comparison, which is neither fair to us nor to them.
  - b) The policy completely ignores the contractually agreed rate of return that was commercially bid and fixed for the contract and instead seeks to place the rate of return also at the mercy of AERA.
  - c) The policy completely overlooks the fact that the contract was for a period of ten years and the assessment of our costs and risks should be evaluated on this basis and not on the yardstick of the operational expense for any given year.

- d) The policy states that the factors that will be considered for estimating the cost of equity will be left to the discretion of the Authority. As a consequence the estimation of Return on Equity (ROE) for the service providers will be left to the absolute discretion of AERA and its officials. It is thus apparent that there is no objectivity in the determination as contemplated in the policy and we will be left to the mercy of AERA for determination of rates.
- e) The policy does not contemplate an exit mechanism if the service provider does not desire to provide the service at the rate so fixed by AERA. We are already operating on low margins which were finalized through competitive bidding process and any further price cap shall make the approved model totally unviable.
- f) To fix the rates on the basis of an expected annual operational cost is meaningless, in so far as we have factored into our rates costing for the entire duration of the contract. As such, the rates quoted necessarily contemplate amortization of returns over the contract period, which necessarily will involve some years of higher return and some years of low return. In the case of New Delhi, the entire economic rationale is that the high risks and low returns of the early years are to be compensated by higher returns in later years. It is not fair to look at each year's return in isolation.
- g) The policy makes no provision for increasing the contractual rates if the rates fixation in accordance with the formulae, will contemplate the payment of a higher rate than that fixed under the contract.
- h) The policy as framed contemplates, a factoring of the loss of value of money by the rate of inflation. However the policy contemplates that the rate of inflation will be discounted by AERA, at its discretion for the purpose of fostering 'competitiveness'. The policy states that 'Price Cap' itself was devised to compensate for the lack of 'competitiveness'. The net result of such discounting only ensures that the Service Provider is not paid its just entitlement even according to the framework of the scheme. The factor of discounting vests in AERA an absolute discretion to subjectively fix and/or harass Service Providers and to deny them their just entitlement year on year.
- i) Various costs that are not apparent in day to day operations are amortized by the service provider over the contract period and the policy

completely negates such provisions, which will push us into severe losses.

- j) Different Airports follow different models for provision of services. However your policy completely ignores the various material differences in the various contracts, all of which are factors that affect the commercials of the service provider.
- k) The contracts for supply of aviation turbine fuel to aircrafts at various airports entered into between us and the airport operator has been based on open and competitive bidding process. The bids have been awarded to us after satisfaction of, *interalia*, a fair and competent rate for such services. However, the policy considers such contracts also as 'non-competitive'. This is wholly illegal.
- l) As mentioned earlier, we were selected through the transparent bidding process to provide into plane fueling services on "Open Access Model". Ignoring this aspect and terming the service by the Into Plane Agent as "non-competitive" as envisaged in the draft regulation would defeat the very purpose of "Open Access Model". **It may please be noted that Open Access model has already brought in lot of savings to the end users.**
- m) The service provider is required to factor in various costs payable to other Airport functionaries it is not clear if these are subject to revisions and if so the policy does not state as how they would be factored as Baseline Operating Costs.
- n) The service provider's fee is only a component of the cost of providing the service. The manner in which the cost of the service is worked out in the contract with the Airport Operator and other concerned parties. From the policy it is not clear as to how this would be treated.
- o) Alteration of the price component without examining and/or considering the other contractual terms would be unfair and unreasonable. It clearly does not make any provision to protect the interest of the service provider in this regard.
- p) It may please be noted that the Throughput fees being charged comprises of Airport Operator Fees, Recovery of Capital Costs, Operating costs, Operating Margin and reserves. The Operators costs which are being proposed to be capped are very small compared to other

components leaving the other major components untouched. This seems to have been completely ignored in the policy document circulated.

- q) It is apprehended that with the regulatory approach of "Price Cap" as being contemplated in the draft regulation, there would be tendency of the service providers to compromise on the quality of service & equipment. Further compliance of regulation would add administrative costs to the Into Plane Operations.
- r) If the policy seeks to meddle with the returns guaranteed on a contract that was secured on an international competitive bidding, it clearly sends the wrong message to the investor community, including foreign investors. Such an action will be a deterrent against private enterprise in Indian airport projects. In the long run our airports will suffer the lack of quality and enterprise, contrary to what was intended while opening this sector to private investment.
- s) The policy seeks to completely destroy competition and enterprise in this sector.

06. These are our preliminary inputs on the proposed regulation. But it will be apparent from what is stated herein above that the policy as proposed has grave implication for service providers like us and is a definite disincentive against working towards ensuring world class services at these Airport. We request you to kindly reconsider the proposed action in case of the Into Plane Agents who are selected through the competitive bidding with long term contracts and drop all steps to implement any policy as suggested.

In view of the above, we sincerely request to keep the Into Plane Operations outside the purview of this proposed regulation.

Thanking you,

For Indian Oil Skytanking Limited,



(T.S. Dupare)

15/09/2010

Chief Executive Officer

CC : Mr Pradeep Panicker, Chief Commercial Officer, Delhi International Airport Limited, Delhi