

EICI/MEMO/985
21st February, 2011

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Shri Sandeep Prakash,
The Secretary,
Airports Economic Regulatory Authority of India,
AERA Building Administrative Complex,
Safdarjung Airport,
New Delhi - 110 003

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Sub: Response of EICI to the draft "The Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011" regarding Economic Regulation of Tariff for Services Provided by Airport Operators for services pertaining to inter alia Cargo Facilities at the airports.

Sir,

We are pleased to enclose our observations, comments and response to the "The Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011".

As you are aware EICI is a non profit company and has as its members and represents the interests of various express air cargo/courier companies. We welcome this opportunity to place on record the various problems faced by the express industry as users of services provided by the airport operators and the need for regulation of the tariff of such services. In order to access aircraft at the airports, the express air cargo industry is dependant on the infrastructure and services provided by the airport operators. The main infrastructure provided is warehouse space at airports with city side and air side access which is generally in the form of a bare shell and the users are expected to invest, develop and run the same.

While our earlier comments with respect to services provided to express companies, were not taken into account perhaps based on the presumption that they form a part of cargo services a whole, the current proposed guidelines do not even mention the term "express cargo" and the airport operators are not obliged to provide any details regarding the tariff charged for the same under the head of aeronautical services.

We would once again like to reiterate that due to the unique needs of express companies, the only major service provided by Airport Operators is cargo warehouse space for which are proposed to be excluded from the scope of Regulated Services.

We do hope our comments will be taken on record and suitable steps modifications made to the proposed "The Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011", to ensure that airport operators are held accountable for the services that they render to the express industry which hitherto have been unregulated leaving ample scope for unbridled demands for increase in tariff without any accountability or service level commitments.

Thanking you,

Yours sincerely,
For Express Industry Council of India

Vijay Kumar
Chief Operating Officer

Encl: As above

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Comments and submission of evidence of the Express Industry Council of India (EICI) to the draft "Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011"

Comments and submission of evidence of the Express Industry Council of India (EICI) to the draft "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" (hereinafter "Guidelines")

I. Introduction

The Express Industry Council of India is a nonprofit Section 25 company which was set up as a cooperative effort to voice concerns of the express cargo industry. The express cargo industry being relatively new is faced with the twin challenges of sensitizing law and policy makers and airport service providers about the specific infrastructure, regulatory framework and needs in general of the express cargo industry. EICI welcomes this initiative of AERA to study the needs of this industry with specific reference to the Cargo facilities and services provided by the airport operators and service providers to this industry.

Due to the unique needs of the Express Cargo industry which necessitates that each express cargo company set up its own infrastructure for handling its express cargo, the key services provided by the airport operators is (a) space for warehousing with air side and city side access which is crucial to ensure speedy loading on to the aircraft and (b) at some airports provision of x-ray machines. Both these activities which are clearly Aeronautical activities are not bound by any sort of regulation or control and the tariff is decided by the Airport Operator which has a dominant position given that it is aware that the express operators have spent large sums in developing infrastructure and hence the License Fee may be increased as they will be left with no option but to accept it. This has led to unreasonable demands of increase in License Fee of as high as 15% to 16% per annum.

Similar is the case with x-ray screening charges which for regular cargo are Rs 1.25 per kg, however for providing the same x-ray machine for screening express cargo, the charges have been as high as Rs 6.00 and thereafter reduced to Rs 3.25 per kg. More detailed evidence can be provided upon request in case AERA is inclined to intervene and fix the tariff for these services.

These are some of the main concerns which we were hoping to be addressed through the draft Guidelines. We however note that the word express Cargo finds no mention in the Guidelines and hence suitable amendments are required to be made to include the same.

Due to the hitherto absence of an economic regulatory authority and driven purely by profit motive, the airport operators have looked at the express cargo industry as a milch cow which can be easily arm twisted for extracting revenues by charging for services at higher rates without any justification or commitment to service levels. Even in Delhi and Mumbai which are key airports, while service levels have been set for most services, with

respect to services provided by airport operators to express cargo /courier services no service levels have been prescribed.

While the Airports Authority of India being a Public Sector organization was answerable to Parliament and the Ministry of Civil Aviation, the regulatory control of the new airport operators at Mumbai and Delhi are governed by the respective OMD Agreements. Unfortunately the same does not address the services to be provided to express cargo operators. This is indeed ironic as while the Naresh Chandra Committee report and the draft Civil Aviation Policy recognizes these needs of the express cargo industry, however after privatization of these airports there is a vacuum that has been created in terms of regulating such services provided to the express cargo industry.

In fact the airport operators have even after the promulgation of the AERA Act had a field day collecting unjustified inflated charges for services provided to this sector and augmenting their revenue from express operators. A glaring example is provision of x-ray machines at Mumbai airport. The airport operator at Mumbai airport MIAL provides x-ray machines at the Cargo Terminal as well as at the Express Terminal. While for the service of providing an x-ray machine at the Cargo Terminal they have charged Rs 0.75 per kg, for providing the same x-ray machine at the Express Terminal at Mumbai they have charged at Rs 6.00 per kg till 1st June, 2010. While some users and airlines earlier paid under protest, as they were looking forward to AERA to take up this issue, subsequently the rates have been reduced to Rs 3.25 per kg which are still higher and discriminatory compared to the Rs 1.25 charged at the Cargo Terminal in Mumbai for the same x-ray machine. This is clinching evidence that underscores the need for capping of tariffs for services provided by the Airport operators to the express cargo industry.

Similar is the case with lease rentals and license fee for providing space at the airport for express operations and to some extent with Ground Handling services provided to foreign airlines.

It is in this background that the formation of AERA and the present draft Guidelines holds great promise and hope for the express air cargo/courier companies which avail of services provided by the airport operators. In order to ensure that AERA is in a position to take appropriate measures with effect from the date of the notification of the AERA Act, the affected users have maintained a record of the consultations held with the Airport operators which can be provided as and when AERA takes up this issue and requires further evidence of the consultations held with airport operators as providers of services to the express cargo sector.

Background

In order to appreciate the issues being faced by the air express cargo/courier companies it is important to understand the key aspects that define this industry. While the express air cargo industry is a subset of the general air Cargo sector, it has special needs driven by the unique operating requirements and regulatory framework in which they function. It is

important to understand that the main services are provided by the airport operators themselves all over India. The main service that an express cargo company needs at the airport is space with air side and city side access.

In this context it is pertinent to point out that the draft Guidelines do not take the services rendered by airport operators into consideration. The Guidelines only refer to cargo services and it appears that this may have been done based on the premise that providers of cargo facilities would include services provided to express cargo facilities. The reality however is that in India as far as the services availed by express cargo companies at airports is concerned the same are provided by the Airport operator itself, with the exception of Delhi airport where a temporary arrangement has been made and a Service Provider other than the Airport Operator has been appointed. Hence in effect in case this aspect is not looked into and Airport Operators also included within the scope of Regulated Service Providers with respect to Cargo Facilities, then the entire express cargo industry shall stand excluded from the purview of the Guidelines. Clubbing the express air cargo industry with other general cargo services provided by the Airport Operators would neither be logical nor desirable given the unique operating model of the express cargo companies. Hence it is submitted that provisions with respect to "express cargo services" also be included in the draft Guidelines so that the same may fall within the purview of Aeronautical Services for which the tariff may be regulated.

Specific Recommendations w.r.t. Guidelines

1. The scope of regulated services has been defined in 2.2.1 of the Guidelines which includes all aeronautical services. Further, Section 2(a) of the AERA Act defines aeronautical services hence the key issues that arises is whether the 2 key services i.e. licence of warehousing space and provision of x-ray machines would fall within the purview of aeronautical services or not. Clearly x-ray screening is an integral part of ground handling services related to cargo at an airport and hence cannot be excluded. Hence, it is important to include x-ray services provided to express cargo companies specifically and the same should be brought within the ambit of the Guidelines. Accordingly, all data gathering sheets with respect to the tariff and revenues should be recorded separately for express cargo as differential rates are charged and hence an inaccurate picture will emerge in the absence of the same. Hence, details for express cargo and the tariff charged should be collected separately and appropriate provisions made for regulation of the same.
2. The license fee charged by airport operators for express cargo warehouse facility are covered under aeronautical services as per the following provisions of Section 2(a) of the AERA Act:

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" 2 a (i) the landing, housing or parking of an aircraft or any other ground facility offered in connection with aircraft operations at an airport;"

Clearly the license fee charged is a critical component of the total services availed of by the express cargo operators. The magnitude of the impact can be gauged from the fact that in Delhi alone the license fee paid amounts to over Rs.12 crores annually for express cargo warehouse facility. Hence, it is abundantly clear that license fee is an important cost for services which are availed in connection with aircraft operations. It will be appreciated that express cargo operations require warehouse facility with landside and airside access and hence cannot be ignored or treated at par with lease rentals for office space which is not directly airport specific and could be at an off airport location.

"2 a (iii) ground handling services relating to aircraft, passengers and cargo at an airport;"

As all handling of express cargo is done in an express cargo warehouse at the airport, the license fee charged for a cargo warehouse would clearly fall within the scope of ground handling services relating to cargo at an airport and hence be included in the definition of aeronautical services.

" 2 a (iv) the cargo facility at an airport;"

If any doubt remains regarding the scope of aeronautical services then the term cargo facility at an airport is very explicit. Clearly the objective of the AERA Act was not to exclude express cargo facilities at an airport but rather to include them keeping in mind the unique requirements for processing express cargo and hence specific provisions in the Guidelines should be included with respect to express cargo as a distinct sub category within cargo.

3. In appendix I dealing with consultation protocol it is requested that in a 1.2.3.3 "the Express Industry Council of India, and express cargo operators operating at that airport should also be included as they are the actual users.
4. In appendix 5 a 5.4.1.7 sub para (g) air cargo facilities have been indicated and a separate head for revenue generating area "express air cargo facilities" should be included.
5. In the form F12 for data gathering a specific heading for revenue generated from express cargo which could be later clubbed with cargo should be clearly specified as a subheading of cargo.

II. Express Cargo- CONTEXT Vis a Vis general Cargo

Though the regulatory philosophy issues have been asked to be specifically excluded from the purview of the present submission, it is important to understand the above recommendations in context and hence the same are being reiterated at the risk of repetition. Accordingly the position of express cargo operators is discussed below to provide a better understanding:

Cargo Vs. Express Cargo:

The draft approach Paper No 3 of 2009 in the Section on Cargo very correctly made certain observations regarding the various categories of Cargo facilities and the relevant extract from the approach paper is reproduced hereinbelow:

"2.3 Services at cargo facilities at major airports are provided either directly by airport operators or by their licensees (third party terminal operators). The charges levied by operators of such facilities include TSP Charge Agent/Consignee), Unitization/ De-Unitization Charge (Airline), Transshipment Charges (Airline), Demurrage (storage beyond free period), etc."

In this context as pointed out by other stakeholders as well in their response to the said approach paper, in the case of express cargo companies the only facility provided is a bare shell space allotted on the basis of airline status as the same is required for processing shipments to be loaded on to the aircraft or through a bidding process in case of non airline express companies or by allotment in the case of airlines. **Due to the special needs of air express cargo these facilities are dedicated facilities with air side and city side access at the airport. The airport operator expects the express companies to invest in the infrastructure and development of these dedicated express facilities.** Hence another category of users needs to be taken into consideration and added to the Guidelines in all places where it is appropriate i.e. **express cargo. This is necessary as facilities which are allotted on a bare shell basis to express companies are customized and developed as per their requirements.** Just as airport operators develop airport infrastructure based on a long lease and a transparent framework and with a fixed infrastructure cost, express cargo companies too should be given such space on a long lease on fixed terms subject to periodic review.

In fact the Approach Paper on the subject had rightly noted that:

"2.4 Further, three main types of cargo facilities exist at major airports:

- General (EXIM) cargo facilities;
- Perishable cargo facilities; and
- Express cargo facilities."

The Approach Paper very rightly identifies Express Cargo facilities as a subset of the Cargo facilities. As pointed out above however, the Draft Guidelines do not distinguish between cargo facilities and express cargo facilities and apply the same yardsticks for determining the

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tariff and the scope of Regulated Services even though the entire framework of services for each is different. Unlike cargo facilities which fall under the categories listed in 2.5 below, express cargo facilities are a separate and distinct category which do not fall under these categories.

"2.5 Cargo facility operators at major airports may or may not be operating under a competitive environment and the following scenarios are conceivable:

- Cargo facility operated by the airport operator alone;
- Cargo facility operated by a single licensee (independent agency) of the airport operator;
- Cargo facilities operated by more than one entity – licensee(s) of the airport operator and / or the airport operator itself as one of the operators."

It is pertinent to add here that NO airport operator in India provides an express cargo/courier facility providing processing of such shipments, hence the question of competition does not arise. Due to the absence of such facilities either the industry users who have come together as EICI develop and run the facilities or they are developed as dedicated facilities by the individual express cargo companies themselves to process and load the shipments on to the aircraft. Hence based on the ground realities "express cargo" should be included in the Guidelines as a distinct and unique category for the purpose of Regulating Tariff of the License Fee charged by airport operators.

As the Guidelines do not make a distinction between cargo users and express cargo users of airport facilities or what are loosely called courier companies, it is important to understand the needs of express cargo companies which while forming a part of the broad cargo segment have certain specific distinguishing factors which warrants a somewhat different treatment based on their needs. The key distinguishing factors are as follows:

- (a) While general cargo is processed at the common user cargo facility, typically worldwide express operators **require a dedicated space for processing their shipments at the airport** as they require a faster processing speed. This requirement for dedicated space is necessitated by the regulatory framework and the different operational and processing flow that express shipments require.
- (b) **Express shipments require priority processing** and customs clearance and accordingly the customs authorities have provided for Courier Imports and Exports Clearance Regulations a different set of customs regulations which provide for expediting customs clearance for certain type of express shipments.
- (c) **The dwell time for processing such shipments is about 3 to 4 hours** given the high priority and time definite nature of express shipments whereas the dwell time for regular cargo ranges between 2 days to 5 days in actual practice.

(d) **High capital investment costs at the dedicated express cargo facilities by the express companies** to achieve speedy processing of express shipments is required. These investments are made by the express companies and not by the airport operators who only provide a bare shell space. The investments are mainly for developing state of the art mechanized package movement systems including ball mats, castor decks, heavy duty conveyor belts, sorting systems, x-ray machines, development of proprietary technology for scanning and tracking systems. Hence, while the airport operator provides the bare shell space for the dedicated express facility, the express company has to make large capital investments which can only be amortized by way of long lease in order for such space to be commercially viable. **This fact unfortunately gives the airport operators a dominant position which is often abused as they are aware that an express company has no choice after making such huge investments and hence will be amenable to paying higher License fees and additional charges to protect their high capital investments.**

(e) Any fair bench marking of the tariff with respect to express facilities would have to take into account all these factors before a fair comparison can be made in terms of the tariff charged by the airport operators at the cargo terminals.

Hence while the express cargo segment is a subset of the cargo sector as a whole, it has special needs and requires specific tariff fixation to protect abuse of dominant position and unfair treatment. In fact there is a greater need for tariff fixation of services provided by the airport operators to express companies as the existing and past facts clearly establish abuse of a dominant position. While on the face of it the sector appears small and inconsequential, the fact is that increase in such costs directly impact consumers who use this mode for sending their goods, drives up the costs of exports for Indian exporters who depend heavily on this mode to remain competitive in the international market thereby impacting India's foreign exchange earning capability and competitiveness of Indian exports. Exporters send samples through this mode which in turn gets them large orders. Timely and cost effective delivery of samples is key to clinching export orders. These are surely important factors which cannot be ignored and necessitate regulation and control by AERA of services provided by airport operators to such users.

III. Key issues being faced by the Express Cargo industry at airports

We now discuss some of the services that airport operators provide to the express cargo industry which the Guidelines should ideally address through AERA's oversight powers. The key issues being faced may be summed up as:

A. Licensing of space- arbitrary terms and increase in license fees with no control

B. X-ray screening charges being arbitrarily fixed at high rates with no justification

C. Ground Handling -differing standards for foreign and domestic airlines, and

D. No Tariff Guidelines or Service Levels defined or prescribed for providing (A) and (B) above

These issues are now discussed in detail from the perspective of the current Guidelines and the role of AERA in the fixation of Tariffs.

A. Licensing of dedicated space for express Cargo facilities at the Airport :

Assessment of the issues involved:

As discussed above, Express Air Cargo companies have distinct needs for dedicated express air cargo facilities at the airport, based on their operational requirements and proprietary handling systems. The way an express cargo shipment is handled at an airport facility determines its ability to connect to an aircraft. Each express company develops its own proprietary tracking and handling system which it has to implement at the dedicated express cargo facility. A dedicated express cargo facility at the airport with air side and city side access is a key prerequisite for an express cargo company to process its shipments at the airport.

Due to the large investments required to make such a facility commercially viable and the fact that each express company's proprietary needs vary and there is no universal solution that fits all, the airport operators only provide bare shell space on a license basis which is developed into a dedicated express facility by the express cargo company. Hence unlike general cargo express cargo is processed in dedicated express cargo facilities.

Hence while analyzing the discussion with respect to general cargo, the cargo facility service providers or operators would have to be considered, however with respect to express cargo, there are no such facilities offered by the airport operators and the only input that the airport operators provides to express cargo companies is space on a licensed basis.

Express operators typically lease 3 types of facilities at an airport viz:

- (a) express cargo warehouse space- to build a dedicated facility
- (b) paved area – to store pallets and ULDs for cargo processing and
- (c) office space at the airport to support the air cargo operations at the airport Ramp.

While there have been different views with respect to office space and some countries have taken the view that the same be treated as non-aeronautical services on the premise that an office space can also be located at an off airport location. Even if the same view is to be adhered to the case would not be the same with respect to License Fee for express cargo warehouses at the airport with air side and city side access as they cannot be located off airport due to

the nature of express cargo operations. Further the matter needs to be considered carefully in the Indian context as unlike in other countries space at Indian airports is a scarce commodity which empowers airport operators and service providers to be in a dominant position where they are capable of abusing their market power. While in other countries there are alternate options available for relocation, to other airports where there are multiple airports in the vicinity, the same is not possible in India and hence this leads to monopoly rents. Some rents in India are higher than rents in the Central Business Districts of major cities. **Hence the issue should be carefully considered keeping the Indian context in mind and the License Fee for paved area on the airside and warehouse space should definitely be considered even if office space rentals cannot be considered for a tariff cap.**

Aeronautical Services- issue regarding express cargo being an Aeronautical Service or a Non Aeronautical service

Given the fact that the key input provided by an airport operator to an express cargo company for setting up a dedicated airport facility is “space at the airport on a license basis”, a key issue arises with respect to the present Guidelines as whether the same constitutes an Aeronautical Service or not as defined by The Airports Economic Regulatory Authority of India Act, 2008.

While lease and licensing of space for Banks, Duty Free shops, restaurants etc at an airport do not constitute Aeronautical services, if space is provided for an activity or a service in the absence of which an aircraft landing at an airport would not be able to operate from that airport, the same would undoubtedly be an aeronautical service as it is directly related to the aircraft operations. While most other services such as Banks, shops and restaurants do not impact the operation of an aircraft, the absence of an express cargo processing facility at an airport certainly would imply that the aircraft cannot operate from the airport if it cannot be pick up the express cargo from that airport. Hence at the outset it is of paramount importance to understand what constitutes an aeronautical service as envisaged by the law makers and the Act. Clearly space licensed for processing express cargo shipments at an airport through which shipments are loaded on to a cargo aircraft cannot be equated with space licensed for a restaurant or a Bank at an airport and hence be dismissed as a Non–Aeronautical service. Similar is the case with paved area allotted for storing cargo pallets on the air side and facilities for line maintenance of the aircraft. Clearly such activities are crucial to the operation of aircraft and cannot be performed at locations other than the airport and hence are very different from non-aeronautical services like Banks, restaurants and duty free shops which exist on a stand alone basis at airports and are hence construed as Non-Aeronautical sources of revenue. In fact some express cargo companies also operate their own aircraft or enter into arrangements with cargo airlines and the express cargo processed at these facilities are loaded on to these aircraft. In the absence of these dedicated express cargo facilities such aircraft cannot operate to such airports.

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In fact the original draft of the AERA Bill did not have the provisions with respect to "Cargo facilities" and a definite need for the same was expressed by the industry before the Government and the standing Committees of Parliament which was reviewing the AERA Bill, pursuant to which Cargo facilities were included as Aeronautical Services in the AERA Act. In the case of Express Cargo companies there is precious little that an Airport Operator provides in terms of services to such companies other than space for developing dedicated express cargo facilities at the airport. Clearly the intent of the law makers could not have been to keep express cargo services provided by the airport operators out of the purview of cargo "facilities" or for that matter to keep such services out of the purview of any regulatory control whatsoever.

The remarks of the Parliamentary Standing Committee on Tourism, Transport and Culture in its 133rd meeting when it considered the amendments to the provisions of the AERA Bill sheds light on the intent of the law makers and how the Act is required to be interpreted. The relevant sections are reproduced hereinbelow for ready reference:

"7. The proposed legislation does not address the cargo activity involved in the airports. The Cargo Agents Association while submitting their views before the Committee requested that **the definition of airport user should be expanded to include persons availing of cargo/freight transportation and operation facilities at the airports.** The Cargo Agents Association submitted before the Committee that as far as India is concerned, **30% of the international trade is carried by air, i.e., in value terms. It will come around 40-50 billion dollars of our trade.** They further stated that **the most glaring omission in the draft Bill is the absence of the any mention of cargo in the definition in Section 2(c).** In Section 2(c) it is mentioned : "user means any person availing of passenger services at airport" but cargo has not been mentioned as part of airport user. **The matter was taken up with the Ministry of Civil Aviation and they submitted vide their letter NoAV.20036/32/2005-AAI dated the 7th February, 2008 that since cargo operators also use airports and pay charges for aeronautical services the suggestion is acceptable.**

8. The Committee notes that **cargo is one of the major components of the civil aviation sector and the omission of cargo from the definition of the Bill needs to be rectified.** The Committee, therefore, recommends that the definition 'airport user' in Section 2(c) should read "**as any person availing of passenger and/or cargo facilities**".

9. The Committee also received a representation stating that various surcharges imposed on the cargo added to more than what is the freight charges. The Committee feels that this also needs to be looked into.

10. The Committee recommends that the Ministry may suitably amend the Bill to include the cargo operators in the ambit of the Bill."

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"29. The Committee feels that there appears to be a gap between the definitions of aeronautical services as defined in the AERA Bill and the coverage of aeronautical services under the concession agreement for airports signed by the Government of India or even the Operations Management Development Agreement, the OMDA signed

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in the case of Delhi and Mumbai airports. The Committee is of the opinion that while the AERA Bill limits itself to the navigation, surveillance and supportive communication for Air Traffic Management and for landing, housing or parking of aircraft, **the OMDA has a broader scope for aeronautical services** and it includes baggage systems, check-in concourses and hydrant infrastructure for aircraft fuelling services **among many others.** **The Committee recommends that AERA oversight for aeronautical services and their charges should not be restrictive in scope, but should be extended to all other major aeronautical service heads laid out in concession and OMDA agreements as AERA has to ensure a balanced outcome between airports, airlines and also the passengers as many services which have been left out of AERA coverage are essential to passengers and need monitoring by a regulator.**"

The above clearly establishes that the intent of the law makers was (a) that they realized that cargo was an important aspect of India's trade and hence no part of it could be neglected or kept out of the oversight mechanism envisaged under AERA and (b) that a broad view be taken rather than a restrictive view interpreting the scope of Aeronautical Services.

Section 2 of the The Airports Economic Regulatory Authority of India Act, 2008 (the "Act") defines Aeronautical services as under:

"2 (a) "aeronautical service" means any service provided –

(i) for navigation, surveillance and supportive communication thereto for air traffic management;

(ii) for the landing, housing or parking of an aircraft **or any other ground facility offered in connection with aircraft operations at an airport;**

(iii) for ground safety services at an airport;

(iv) for **ground handling services** relating to aircraft, passengers and **cargo at an airport;**

(v) **for the cargo facility at an airport;**

(vi) for supplying fuel to the aircraft at an airport; and

(vii) for a stake – holder at an airport, for which the charges, in the opinion of the Central Government for the reasons to be recorded in writing, may be determined by the Authority;"

The fact that there are not one but three references which cover the aspect of space licensed at an express cargo company for development of a dedicated express cargo facility makes it amply clear that the intent of the Act was not to exclude services such as provision of space for express cargo facilities but to include them.

- Section 2 (a) (ii) clearly defines Aeronautical services to include **"any other ground facility offered in connection with aircraft operations at an airport"**. The key ingredients being that it should be (a) a ground facility, (b) it should be in connection with the aircraft operations and not existing on its own and (c) it should be at the airport.

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License of warehouse and other space for dedicated cargo facilities to express cargo operators clearly are ground based services which exist to facilitate processing of express cargo shipments at the airport so that they can be loaded on to the aircraft. In other words in the absence of these dedicated express cargo facilities, the aircraft cannot uplift express cargo and they are crucial to their operation. Clearly such facilities are typically with air side and city side access at the airport as they cannot be relocated to any other location as the same would entail loss of time which is crucial to express cargo operations.

Hence clearly the license of space to express cargo facilities at airports by airport operators falls within the scope of aeronautical services as envisaged in the Act. To dismiss it and equate it with a Bank, Restaurant or any other non-core aeronautical activity would be a misinterpretation of the Act which will defeat the legislative intent of the Act.

- Section 2 (a) (iv) clearly defines Aeronautical services to include "for **ground handling services** relating to aircraft, passengers and **cargo at an airport**". The above definition read with the Ground Handling Policy clearly evidences that cargo handling which includes handling of express cargo shipments is very much a part of Aeronautical services as envisaged in the Act. Unlike regular cargo which is handled at the Cargo Terminal, express cargo shipments are handled at dedicated express cargo facilities at the airport. As these are dedicated facilities and not provided by the Airport Operator as services and the only service being provision of space, it is clear that provision of space on a dedicated basis for processing express cargo is covered under the ambit of Ground Handling of Cargo. Taking a different view would imply that express cargo is not handled at an airport which is clearly not tenable. Hence as per this definition too provision of space for dedicated express cargo facilities by the airport operators constitute Aeronautical services.
- In case any doubt still remains regarding the scope of Aeronautical services with respect to provision of space on a License basis for dedicated express cargo facilities at airports, then the same are set to rest by Section 2 (a) (v) which defines Aeronautical services to include any service provided "**for the cargo facility at an airport.**"

Clearly dedicated express cargo facilities provided by airport operators are not outside the scope of a "cargo facility at an airport". All dedicated express cargo facilities are at the airport and provided on a license basis to express cargo companies and hence are very much a part of Aeronautical Services. Any interpretation suggesting that such services are outside the purview would clearly be inconsistent with the legislative intent and a plain reading of the Act itself.

It is hence submitted that the licensing of dedicated space for express cargo companies by airport operators directly or indirectly through service providers be included in the scope of the Guidelines as it is clearly covered within the scope of Aeronautical Services.

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As far as competitiveness is concerned it is pertinent to point out that dedicated Express Cargo facilities are primarily provided by the Airport Operators themselves and not by any other Service Providers. As pointed out in the case study below, with the exception of Delhi and Bangalore, all other dedicated express cargo facilities all over India have been provided by the Airport Operator. The examples of dedicated express cargo facilities are as under:

Airport	Dedicated Express Cargo facility space provided by
Mumbai Airport	MIAL
Chennai Airport	AAI
Bangalore Airport	AI-SATS and BIAL
Delhi Airport	DCSCPL on temporary lease from DIAL

Further given the lack of space at major airports in India, there is no competition and the Airport Operator is the only service provider providing space for dedicated cargo facilities on a license basis leading to a virtual monopoly with no competition.

Case for Tariff Cap and specific Evidence of abuse of Dominant position

Specific case study of Delhi Airport as evidence of abuse of dominant position

- (i) While under the OMDA there is a requirement for providing multiple cargo operators ostensibly to reduce costs, improve service and provide competition, unfortunately in the absence of specific prescribed norms for provision of facilities for express cargo facilities no such competition exists. On the contrary, dedicated Express cargo facilities have been construed as convenient sources for fulfilling the revenue needs of General Cargo Service Providers till such time that their facilities are developed. As evidence the specific example of the Express Cargo Terminal at Delhi airport is a case in point.

As the Airport operator DIAL realized that it had little or no role to play apart from collecting the rent or License fee from the express cargo operators who had been licensed bare shell space at the Express Cargo Terminal, it decided to hand it over to M/s Delhi Cargo Service Pvt. Ltd. (DCSCPL) for a period of 2 years till such time that their new General Cargo handling facility was developed.

This case study epitomizes how it is possible to abuse the dominant position in a monopoly situation and in the absence of an economic regulatory framework. M/s DCSCPL was provided the right to collect the License fee from the Licensees at the Express Terminal at IGI Airport Delhi for a fixed period till December, 2013. Upon stepping in to the shoes of DIAL they decided to raise the License Fee for warehouse space by 16% and of office space by 11% instead of the 10% escalation and 7.5% escalation respectively charged by DIAL. This was done even

though this entailed provision of no additional services for the warehouse space. The increased and unjustified demand was made possible by the following factors which are revealing and highlight the current situation and the need for regulation of tariff of dedicated express cargo facilities:

- (a) While AAI was accountable to the Government, the new concessionaire DCSC is sub concessionaire of DIAL and as such is not accountable to any agency or regulatory body at present, unless AERA brings it under its purview.
- (b) While as per the OMDA the objective was to provide multiple cargo service providers, the same provision has been used to add an additional landlord between the Airport Operator DIAL and the express cargo companies and is hence not a service provider. Such an interpretation makes it possible to abuse the dominant position of the airport operator albeit by indirect means to increase lease rentals and license fees. An additional layer between the Airport Operator is bound to increase rentals and abuse of dominant position in a monopoly in the absence of competition. As there is no additional space for another Express Cargo Terminal provided by DIAL there is no question of there being any competition at present and hence the operation continues in a monopoly situation. In a monopoly situation the dominant position is bound to be abused.
- (c) This increase is possible as express cargo companies who are the Licensees with dedicated facilities have invested crores of Rupees in development of the dedicated facilities. They would be left with no choice but to accept whatever increase is demanded as they are subject to abuse by the dominant position of the Airport Operator or his concessionaire.
- (d) Lack of transparency with respect to the terms on the basis of which the Express Terminal in Delhi has been transferred to DHCSPL. While the express companies were informed that the transfer would be on the same terms and conditions, the License Agreement was sought to be renegotiated with an increase inconsistent with the past terms. In the absence of clear cut guidelines for such disclosure the same was made possible.
- (e) Being temporary landlords and in the absence of any clear cut guidelines regarding the obligations of DCSCPL in the development of the dedicated express cargo facilities, the only guiding criterion for a temporary landlord with no long term interest or commitment would be maximization of revenues hence leading to demand for higher lease rentals. Hence militating against the very objective of privatization, competition and reduction of costs with respect to express cargo facilities. This leaves express cargo companies who are users of such express cargo airport services in a very unenviable position.

It is also requested that warehouse space which requires huge investments be provided on a long term basis otherwise there is always a risk that airport operators may make unreasonable demands for escalation knowing fully well that an express company would like to protect its capital investments in the facility

Comments and submission of evidence of the Express Industry Council of India (EICI) to the draft "Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011"

and may be pressurized into paying extraordinary increases in license fee. Hence there is a strong case for fixation of tariffs on rentals.

B. X-ray screening charges being arbitrarily fixed at high rates with no justification

X-ray screening:

X-ray screening which forms a part of security is recognized as an integral part of ground handling services and is an Aeronautical service. Charges for provision of x-ray machines have been charged at differential rates for general cargo users and express cargo users. As discussed above, the airport operator at Mumbai airport MIAL provides x-ray machines at the Cargo Terminal as well as at the Express Terminal. While for the service of providing an x-ray machine at the Cargo Terminal in the past they have charged Rs 0.75 per kg, for providing the same x-ray machine at the Express Terminal at Mumbai they have charged at Rs 6.00 per kg till 1st June, 2010. While some users and cargo airlines earlier paid under protest, as they were looking forward to AERA to take up this issue, subsequently the rates have been reduced to Rs 3.25 per kg which are still higher and discriminatory compared to the Rs 1.25 charged at the Cargo Terminal in Mumbai for the same x-ray machine. This is clinching evidence that underscores the need for capping of tariffs for x-ray services provided by the Airport operators to the express cargo industry.

The new modified ground handling policy clearly recognizes the fact that cargo airlines and express companies have the right to perform terminal handling services exclusively given the proprietary nature of their service operations. However, due to lack of clarity and in an attempt to maximize revenues very often airport operators tend to increase their revenue by forcing express companies to pay exorbitant rates for services such as x-ray screening based on the premise that they have a right to charge additional charges from express operators in the absence of regulatory oversight for controlling such tariffs.

It is hence requested that the tariff for the same be fixed and specifically included in the guidelines as a separate category of x-ray screening tariff for express cargo.

In conclusion we do hope that AERA will carefully consider the issues of the express industry raised above and will take appropriate steps to ensure the same can be addressed by an appropriate mechanism that is deemed most suitable and appropriate while exercising its oversight powers.