

**ASSOCIATION OF PRIVATE AIRPORT OPERATORS**

Regn No. S/64468/2009

**Kiran Kumar Grandhi**  
President

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Secretary General



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30/9/10

**APAO/CP-06/AERA/ 2010-11**

Date : 28<sup>th</sup> September 2010

**Mr. Sandeep Prakash**, *Secretary*  
Airport Economic Regulatory Authority of India  
2nd Floor, Administrative Complex,  
Safdarjung Airport, New Delhi

*30/9/10*  
*SM (MBS)*

**Sub: Response to the Consultation Paper No. 6/2010-11 of AERA on Revision of Fuel Throughput Charges by Airport Operators with effect from 1st April 2010.**

Dear Sir

A kind reference is invited to AERA Consultation Paper No. 6/2010-11 of AERA on Revision of Fuel Throughput Charges by Airport Operators with effect from 1st April 2010 inviting comments from all the stakeholders.

The comments / suggestions of Association of Private Airport Operators on the various issues highlighted in the AERA Consultation Paper are enclosed herewith for your kind perusal and consideration.

The above comments are framed based on the existing Regulatory framework and we would like to submit that APAO reserves its right to review the stand taken on any of the issues as the Regulatory process evolves.

We look forward to your kind consideration of our submissions on the Consultation paper. We will be more than happy to provide any further information on the above if required by the Authority

Yours Faithfully

**For Association of Private Airport Operators**

**Satyan Nayar**  
**Secretary General, APAO**  
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At the outset we thank the Authority for giving us an opportunity to submit our views on the proposed revision of fuel throughput charges w.e.f 1<sup>st</sup> April 2010. The entire process of Regulatory Philosophy on Airport charges and the terms and conditions for providing various services are yet to be notified by the Authority and it is under consultation process. This proposed increase is a natural outcome of the prevailing market condition and covers the inflation effect and is also as per the agreed terms of the existing contracts with respective oil companies.

1. MAIL and DIAL are governed by OMDA agreements. Under the OMDA agreement, throughput fee is not specifically defined as an Aeronautical charge or Aeronautical services. OMDA refers to Common Hydrant Infrastructure for Aircraft fuelling as Aeronautical Service. Therefore, Throughput fee should not be considered within the ambit of price regulation while AERA can discharge the duties by having a regulatory oversight on it so as to ensure that there is no monopolistic abuse.
2. Greenfield Airports ( BIAL& GHIAL) are governed by Concession Agreements. As per schedule 6 of the Concession Agreement, the Fuel Farm services do not form part of the regulated services. The Authority must consider that the Fuel Farm services do not form part of the regulated services within the framework of the Concession Agreement. Otherwise it will run contrary to the business assumptions considered at the time of bidding for the airport and when the Concession Agreement and the other contractual instruments were signed by these operators.
3. Article 10.3 of the Concession Agreement empowers the Greenfield Operators to determine "Other Charges" at the airport freely and without any restrictions for facilities other than which the Regulatory Charges are levied. Thus, Article 10.3 gives BIAL/GHIAL a clear and unambiguous right to levy and determine the charges related to supply of fuel as this is not covered within the definition of "Regulated Charges". The Authority should honour the provision of Concession Agreement.
4. The Fuel Farm revenue & general passenger related revenue are two separate businesses and due consideration to be given accordingly by the Authority. As per the Concession agreement, the above services are considered as Non-Aeronautical revenues and hence the revenue received out of it needs to be excluded from passenger yield calculation and also avoid subsidizing Aeronautical revenues.
5. In the case of Cochin International Airport Limited (CIAL) the agreement was signed between CIAL and BPCL the oil PSU during may 1995 even before commencement of the operation of CIAL and also much before AERA Act came into existence. The price

determined was also in consideration of an agreement that would give BPCL the exclusive right to set up fuel hydrant system at CIAL.

6. The proposal of the operators for increase in the Fuel Throughput charges is on account of the conditions prevailing in the existing agreement. AERA in its consultation paper no 3/2009-10 dated 26<sup>th</sup> Feb 2010 on "Regulatory Philosophy and Approach in Economic Regulation of Airports and Air Navigation Services" has clarified that "in case the common access / fuel farm facilities are provided as well as operated by a licensee, the Authority will look into the structure and agreements between the Airport operators and fuel facility provider." We believe that AERA will uphold the sanctity of the existing agreements by monitoring / overseeing the service only to observe if there is any anticompetitive conduct etc.
7. Implementation of a mutually negotiated fuel throughput charges, in the field units in the absence of regulatory prescriptions is only mimicking the market competition.

**To summarize we submit the following:**

- The increase in Throughput Fee is as per the agreement signed with oil companies.
- Throughput fee is not specifically defined as Aeronautical charge / services under OMDA in the case of MIAL and DIAL. Therefore Throughput fee should be outside the ambit of AERA from price cap regulation while AERA can have a regulatory oversight on it to ensure that there is no monopolistic abuse in users interest.
- In the case of Concession Agreements signed with Green filed operators it is clearly evident that the fuel throughput charges do not form part of the "Regulated Charges". The Concession Agreement also empowers the operator to determine "Other Charges". Thus the operators have a clear and unambiguous right to levy and determine the charges related to fuel throughput as they are not covered within the definition of "Regulated Charges". As these are Non Aeronautical revenue it should be excluded from passenger yield calculation and also avoid subsidizing Aeronautical revenues.
- It is our earnest submission that the provisions of OMDA / Concession agreement are honored by the Authority.

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