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28th September 2010

Mr. Sandeep Prakash
Secretary
Airport Economic Regulatory Authority of India
AERA Building
Administrative Complex,
Safdarjung Airport,
NEW DELHI - 110003

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Comments on
CP No 06/2010-11

Sub: Revision of Fuel Throughput Charges by Airport Operators with effect from 1st April 2010.

Dear Sir,

Bangalore International Airport Limited (BIAL) welcomes the opportunity to provide its viewpoints and suggestions to the comments sought by AERA from stakeholders on the Consultation Paper No. 06/2010-11 on "Revision of Fuel Throughput Charges by Airport Operations with effect from 1st April 2010".

At the outset, we compliment and appreciate the good industrial practice of dealing pertinent issues in a transparent way by which AERA proposing approval of the revised fuel throughput charges as proposed by different airport operators w.e.f 1st April 2010.

As emphasized by us in our previous submissions, BIAL strongly believes that ensuring adequate incentives for investors in the growth phase of the airport industry, may translate to better utility for users.

Through this letter we would like to highlight our viewpoints and suggestions on the proposed regulatory approach from a BIAL-specific perspective.

1. **Revision of Fuel Throughput Charges - Provisions as per AERA Act and respective Consultation paper**

a. **AERA Act**

As per Sec 2(a) of the AERA Act, any service provided for supplying fuel to the aircraft at an airport is an aeronautical service and tariff for the same at a major airport is to be determined by the Authority.

The tariff for such aeronautical service at a major airport is to be determined by authority after taking into consideration various factors as provided under Section 13 (1) a of the Act. Accordingly any increase in fuel throughput charges without the prior approval of Authority is a contravention of Section 13 of the Act. Further the factors to be considered by authority include 'The concession offered by the Central Government in any agreement or memorandum of understanding or otherwise'.

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b. Need for this Consultation paper

The International Air Transport Association (IATA) vide their letter dated 18.06.2010 informed the Authority that the fuel throughput charges have been increased w.e.f. 01.04.2010 at a number of Indian airports including the major airports at Mumbai, Delhi, Cochin, Hyderabad, Chennai, Kolkata, Ahmedabad and Trivandrum and in support of their claim had, inter alia, forwarded copies of communications from Mumbai International Airport Pvt. Ltd. (MIAL), Delhi International Airport Pvt. Ltd. (DIAL), Cochin International Airport Pvt. Ltd. (CIAL), Hyderabad International Airport Ltd. (HIAL) and Airports Authority of India (AAI) to the fuel suppliers concerning the respective increases.

The airport operators (AAI, DIAL, MIAL, CIAL and HIAL) were advised to withdraw any increase effected by them and furnish a status report with comments in the matter to the Authority for its consideration vide letter dated 24.06.2010 to each of the operators.

However, none of the airport operators (AAI, MIAL, DIAL and CIAL) have confirmed the stoppage of the levy of through-put fee at higher rates or withdrawal of the same as advised vide the Authority's letter dated 24.06.2010. Therefore, the Authority has separately issued directions, under Section 15 of the Act, to the said airport operators to immediately stop charging fuel throughput fee, at the respective major airports, at the rates suo-moto revised by them until their request for approval for such revision is decided by the Authority.

Through this Consultation paper (06/2010-11), the Authority proposes to approve the revised Fuel throughput charges with effect from 1st April 2010 and Authority solicits feedback, comments & suggestions from stakeholders on the authority's proposed approval of the revised Fuel throughput charges to 10 airports.

Also, Authority has drawn a reference to Para 4.9 of Part IV of the Consultation Paper, 03/2009-10, wherein Authority has indicated that it will consider revenues to airport operators from aviation related fuel access charges as part of the passenger yield cap calculation.

2. Concession agreements and Regulatory philosophy & approach - Continuing ambiguity and conflicts

As explained by us in our earlier responses to the Consultation paper on airport economic regulation and Consultation Paper No. 05/2010-11 on "Economic Regulation of Services Provided for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft", BIAL has concerns on the scope of airport regulatory framework, and its likely impact on the contracts that have already been entered to with service providers. Schedule 6 of BIAL's Concession Agreement clearly stipulates that Cargo, Ground Handling and Fuel Facility do not form a part of the aeronautical services for the airport operator.

However, the AERA Act had included these services under the ambit of regulatory purview. The latest Consultation paper on regulation of these services has not addressed the problem of conflicts between possible regulatory positions and the terms

of the contract with the service providers. A post-facto imposition of regulation will lead to a variation of the business assumptions of the service providers, and increase uncertainties and risks for all stakeholders. At the outset, BIAL would like to reiterate its principled stand of ensuring sanctity of contracts, which is a necessary signal for an emerging economy to attract much-needed investment into large infrastructure projects on a sustainable basis.

3. Overview of BIAL fuel related concession agreements

BIAL have entered into Fuel facility Service Provider Right Holder (SPRH) agreement and Operator agreement with Indian Oil Corporation Limited, Sky Tanking Holding GmbH and Indian Oil Tanking Limited for providing service rights for design, construction, financing, testing and commissioning, of the facility. The infrastructure for supply of fuel is owned by separate concessionaire and the infrastructure owner owns and operates the infrastructure.

The throughput fees computation mainly takes into consideration the facility payments, projected annual fuel uplift, related operating costs & airport operator fee. Further we also ensured that above mentioned agreement have stringent controls to ensure stringent controls in pricing of throughput fees.

Hence, as per these agreements and also based on the review and comparison of actual ATF throughput with the projected throughput of ATF, the throughput fee presently being charged by the Operator is at Rs.1,500 per KL and the into-plane rate is Rs.210 per KL. There is a nominal increase in into-plane charges by 5% in June 2010 due to higher operating cost and reduced ATF uplift compared to the annual projected ATF.

In the SPRH and Operator agreement there was an agreed clause by both the parties that the operators will be compensated against cost increase, volume variance, and inflation etc at CPI of the base price. These are all long term agreements for a period of 20 years with market derived price, Secondly these agreements are signed well before AERA Act came into existence.

Also, as per the clause 13.1.2 of the Operator agreement, "the throughput fees shall be collected in accordance with the Supplier agreement provided always that the Operator shall implement a charging policy which is fair and non-discriminatory between suppliers regardless of the volume of ATF supplied".

AERA in its consultation paper no 3/2009-10 dated 26th 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.." This indicates that separate approval mechanism is not mandated and AERA will uphold the agreements existing by regulating the service except perhaps to see if there is any anticompetitive conduct.

As per Para 4 (e) of the Consultation paper 06/2010-11 the Authority itself admitted that there is an economic rationale for charging access fee such as throughput charge and there is no definite formula through which such charges can be determined. Therefore conventionally such charges are negotiated between the access providers and the access seeker and the proposal submitted by the operators on account of such

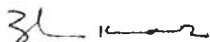
contractual commitments arrived by the market by transparent tendering and negotiations that too with the Government undertakings. As such the Authority's assertions that the Airport Operators had implemented the proposed revision on their own is not true.

4. Conclusion

BIAL would again like to reiterate its stand that AERA's provisions on Refueling facilities have run contrary to its business assumptions, at the time of bidding for the airport and when the Concession Agreement and the other contractual instruments were signed. The authority must ensure the following for BIAL:-

- Fuel farm services that do not form a part of the regulated charges as provided in BIAL's concession agreement and same needs to be respected.
- In the long term interest of the sector, it is necessary that AERA should treat the airports concessioned out already and in existing SPRH and operating agreements on a separate platform for evaluation. In BIAL's opinion, the best possible method of ensuring this would be to consider the clauses of the agreements as grandfathered.
- BIAL requests authority to consider that the fuel farm revenue & general passenger related revenue are two separate businesses and due consideration to be given accordingly. As per BIAL concession agreement, the above services are considered as non-aeronautical revenues and hence above consideration payments need to be excluded from passenger yield calculation and also abstain from subsidizing aeronautical revenues.
- Any revision in the fuel throughput charges based on the commercial agreements between airports and the concessionaires (Oil companies) have to be respected and the revision in charges has to be accepted.
- Further the above details indicates that separate approval mechanism is not mandated and BIAL request AERA to uphold the agreements existing by regulating the service except perhaps to see if there is any anticompetitive conduct.

Yours Sincerely,
For Bangalore International Airport Limited,



Bhaskar Bodapati
Director Finance