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Airports Economic Regulatory Authority of India

Order No. 07/2010-11

**AERA Building,
Administrative Complex,
Safdarjung Airport,
New Delhi -110 003**

Date of Order: 4th November, 2010

Date of Issue: 4th November, 2010

**In the matter of suo moto revision of Fuel Throughput Charges by
Airport Operators**

The International Air Transport Association (IATA), vide their letter no.nil dated 18.06.2010, have informed 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 forwarded communications from Mumbai International Airport Limited (MIAL), Delhi International Airport Limited (DIAL), Cochin International Airport Limited (CIAL) and Airports Authority of India (AAI) to the fuel suppliers concerning the respective increases.

2.1 As per section 2(a) of the Airports Economic Regulatory Authority of India Act, 2008 (the Act) any service provided for supplying fuel to the aircraft at an airport is an 'Aeronautical Service' and the tariff for such aeronautical service at a major airport is to be determined by the Authority after taking in to consideration various factors as provided under Section 13 1 (a). Hence, any increase in fuel throughput charges without the previous approval of the Authority is a contravention of Section 13 of the Act.

2.2 The airport operators (AAI, DIAL, MIAL, CIAL and HIAL) were asked 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.

2.3 AAI, in their letter dated 02.07.2010 submitted that the revision of fuel throughput charges at AAI's airports is through a commercial agreement between AAI and Oil companies which covers many airports including those which are not under the purview of the AERA Act, 2008. Further, these agreements have been entered into with the Oil companies in the year 2005 based on the outcome of a competitive tendering process. The pre-determined increase has already been factored by AAI in calculations while seeking permission for levy of UDF at airports like Trivandrum and Ahmedabad.



In this regard, attention has also been drawn to clause 4.11 of Part IV Consultation Paper No. 03/2009-10 dated 26.02.2010 which states that:

“ in case the material common access/fuel farm facilities are provided as well as operated by a licensee, the Authority will take into account the structure and agreements between the airport operator and fuel facility provider....”

In view of the aforesaid reasons AAI has requested that they may be permitted to implement the annual escalation of 5% as agreed between AAI and Oil Companies.

2.4 MIAL vide their letter no. MIAL/PR/60 dated 02.07.2010, enclosed a copy of the escalation mechanism as agreed with the oil companies vide agreement dated 04.09.2008 for a period of 15 years. MIAL have requested the Authority to approve the increase of Rs. 26.75 per KL being minimum increase on Rs.535 per KL prevailing in F.Y. 2009-10, quoting the abstract from clause 4.11 Part IV of the Consultation Paper No. 03/2009-10.

2.5 CIAL vide their letter no. CIAL/OPS/61 dated 08.07.2010 have submitted that an agreement was executed between CIAL and BPCL in May, 1995 for providing exclusive fuel hydrant system at Cochin International Airport. Pursuant to the agreement, BPCL had the exclusive right to set up fuel hydrant system at Cochin International Airport. The installation and the facility is owned and operated by BPCL who pay CIAL the lease rentals and throughput charges, as per the provisions of the above motioned agreement. CIAL commenced its operations during 1999 and BPCL is paying the throughput charges to CIAL as per the existing agreement, which was executed during May, 1995.

2.6 Vide a further letter no. CIAL/OPS/61 dated 17.08.2010, CIAL reiterated their contractual arrangement with BPCL and specifically sought the approval of the Authority permitting them to charge the through-put charges on the ATF off-take as per the agreement with BPCL.

2.7 DIAL, vide their letter no. DIAL/2010-11/Comm-GH/dated 15.07.2010, submitted that the current charge is an old charge prevalent since 01.04.2008 that has been related to inflation related increase thereafter, as agreed between the airport operator and the fuel companies. Further, DIAL have also referred to the abstract from clause 4.11 Part IV of the Consultation Paper No. 03/2009-10 and have stated that the present escalation mechanism was arrived at for a long term stable pricing of throughput charges under the supervision of Ministry of Petroleum and the 15 year agreement on escalation mechanism was reached between the parties on 25.01.2010.

2.8 DIAL vide their letter no. DIAL-2010-11/Comm-GH/998 dated 26.07.2010 have requested the Authority to approve the revision of charges on account of the escalation mechanism agreement entered into with the fuel companies.

2.9 Hyderabad International Airport Limited (HIAL), vide their letter no. DIAL/2010/Fin-Acc/928 dated 19.07.2010, submitted that their current charges are



prevalent from 23.03.2008 i.e., the start of commercial operations and there has not been any increase in them.

3. The Authority in its Seventeenth Meeting (No.11/2010-11) held on 26.08.2010, considered the issue of suo moto revision of fuel throughput charges by Airport Operators and made the following observations:

- (a) As per section 2(a) of the Act, any service provided for supplying fuel to the aircraft at an airport is an 'aeronautical service' and the tariff for such aeronautical service at a major airport is to be determined by the Authority after taking in to consideration various factors as provided under Section 13 1 (a). Hence, any increase in fuel throughput charges without the previous approval of the Authority is a contravention of the provisions of the Act. The Authority vide its letter dated 24.06.2010 to the operators had mentioned that any increase in fuel throughput charges without the previous approval of the Authority is a contravention of Section 13 of the Act and had accordingly advised the Operators to withdraw any increase so effected.
- (b) AAI, MIAL, CIAL and DIAL have revised the throughput charges based on the commercial agreements between them and the Oil Companies.
- (c) AAI, MIAL and DIAL have in their request for approving the revision in fuel throughput charges drawn attention to clause 4.11 of Part IV Consultation Paper No. 03/2009-10 dated 26.02.2010 which states that:-

"in case the material common access/fuel farm facilities are provided as well as operated by a licensee, the Authority will take into account the structure and agreements between the airport operator and fuel facility provider...."

- (d) The Authority has since issued an Order No.05/2010-11 dated 02.08.2010 in the matter of regulatory philosophy and approach in economic regulation of services provided for Cargo Facility, Ground Handling and Supply of Fuel to the aircraft at the major airports which shall apply to all independent service providers who directly charge users for the use of the cargo facilities, and/ or ground handling services and/ or fuel farm/ fuel access. Where the Authority determines that the service is material and where there is insufficient competition in provision of services at a major airport ('material and not competitive'), it shall regulate through a price cap approach by setting a yield per unit and approval of tariffs annually. Draft Guidelines for determination of tariff in respect of these services, wherever such services are provided by the independent service providers, have also been issued for stakeholder consultation vide Consultation paper No.05/2010-11 dated 02.08.2010.
- (e) None of the Airport Operators (AAI, MIAL, DIAL and CIAL) had confirmed the stoppage of the levy of through-put charge at higher rates or withdrawal of the same as advised by the Authority.



- (f) Para 4.11 of Consultation Paper No. 3/2009-10 dated 26.02.2010, which has been relied upon by the airport operators to seek approval for the increase in the throughput charges, does not cover the revenues accruing to the operators from the oil companies. The issue of revenues to airport operators from aviation related fuel access charges is covered in para 4.9 wherein the Authority has indicated that it will consider such revenues as part of the passenger yield cap calculation. This mechanism will provide for protection of user's interests wherein passenger yield determined by the price cap formula will take into account extent of such payments. Therefore, in case the access fees such as throughput fee are kept at a higher level, the airlines would bear the higher fuel throughput charges, but the impact of the same is likely to be neutralized/mitigated through lower airport charges, since the accruals from the higher fees would be considered towards the passenger yield cap calculation.
- (g) While there is an economic rationale for charging access fees such as throughput charges, there is no definite formula through which such charges can be determined. Therefore, conventionally such charges are negotiated between the access provider and the access seeker. In this case, such contractual commitments have been disclosed by the airport operators.
- (h) AAI, DIAL, MIAL and CIAL have started charging throughput charges at higher rates without seeking the approval of the Authority. Therefore, there is no legal warrant for such higher rates. These airport operators have not stopped charging the higher rates despite the administrative advise of the Authority. Therefore, Authority is left with no option but to issue directions under section 15 of the Act to the airport operators concerned to desist from charging throughput charges at higher rates until such revision is decided by the Authority.

4.1 In view of the above, the Authority decided as under:

- (i) to immediately issue directions under section 15 of the AERA Act, 2008 to AAI, MIAL, DIAL and CIAL to stop charging fuel throughput charges at the rates suo moto increased by them.
- (ii) to tentatively approve the requests for revision in rate of fuel throughput charges, as proposed by the respective airport operators, and place the proposal for stakeholder consultation through an appropriate Consultation Paper (to be issued immediately).

4.2 The Authority issued a Direction (No.01/2010-11 dated 13.09.2010) under Section 15 read with Section 13 of the Act directing MIAL, DIAL, CIAL and AAI to stop charging fuel throughput charges at rates suo moto revised by them, at the respective major airports, with effect from 01.04.2010 until their request for approval for such revision is decided by the Authority. AAI vide its letter No.AV21012/9/2010-LM dated 24.09.2010, have confirmed stoppage of the revision until further orders.



4.3 The Authority, vide Consultation Paper No. 06/2010-11 dated 14.09.2010, proposed an upward revision in the fuel throughput charges levied by AAI, MIAL, DIAL and CIAL with effect from 01.04.2010 based on the agreements between airport operators and oil companies. While making this proposal the Authority, inter-alia, took note of the following:

- (i) While there is an economic rationale for charging access fees such as throughput charges, there is no definite formula through which such charges could be determined. Therefore, conventionally, such charges are negotiated between access provider and access seeker. In this case, such contractual commitments have been disclosed by the airport operators.
- (ii) The Authority is minded to consider revenues from aviation related fuel access charges as part of the passenger yield cap calculation. This mechanism will provide for protection of user interests wherein passenger yield determined by the price cap formula will take into account the extent of such payments. Therefore, in case access fees, such as throughput fees, are kept at a higher level the airlines would bear the higher fuel throughput charges but the impact of the same is likely to be neutralized/mitigated through lower airport charges, since the accruals from the higher fees would be considered towards the passenger yield cap calculation.

In other words, the Authority tentatively agreed to respect the contractual arrangements between the airport operators and the oil companies as it felt that there was no definite formula through which such charges could be determined and at the same time it was conscious of such revenues are taken as part of the passenger yield cap. The propensity of the airport operators to charge throughput charges at exploitative rates would be curbed in as much as the same would lead to lowering of airport charges and the impact of the airlines/passengers is likely to be neutralized/ mitigated.

5.1 The last date for submission of comments on the Consultation Paper was 28.09.2010. In response, 26 submissions/comments have been received which were placed on the Authority's website vide Public Notice No. 08/2010-11 dated 12.10.2010.

5.2 A stakeholder consultation meeting was also convened by the Authority at New Delhi on 25.10.2010. The minutes of the meeting have been uploaded on the Authority's website on 02.11.2010.

5.3 Broadly, the airlines and their representative bodies have opposed the proposal on following grounds:-

- (i) The throughput charges is not related to any cost.
- (ii) The fuel suppliers pay a rental for the use of the land at the airport, which forms part of their overall costs. The throughput charge is, therefore, a duplicate charge.
- (iii) Market access fees have been declared illegal in the European Union.



- (iv) The oil companies treat the throughput charge as a pass through rather than it forming part of the commercially negotiated fuel prices. Therefore, the oil companies have little incentive to negotiate the level of this charge.
- (v) The fuel prices in India are amongst the highest in the world.

5.4 The airport operators and their representative organizations have, on the other hand, raised following issues:

- (i) The throughput charge is not an aeronautical charge/service under the OMDA in case of Delhi and Mumbai. Hence, it should be kept outside the ambit of the price cap regulation.
- (ii) Concession agreements, in respect of Bangalore and Hyderabad airports, do not provide for throughput charges to be part of the “regulated charges”. The concession agreements empower the operator to determine the “other charges”. Hence, these operators have a clear and unambiguous right to levy and determine the throughput charges.
- (iii) Agreements with the oil companies/operators predate the establishment of the Authority. Hence, AERA should treat the agreements, in this behalf, as grand fathered.
- (iv) Refueling is an optional service for an aircraft landing at an airport. The airlines are free to use the services from any airport, which invariably brings competition.
- (v) MIAL has stated that throughput charge is by nature non-aeronautical. The AERA Act does not specifically stipulate that throughput charge is an aeronautical charge. On the other hand, in terms of Appendix 3 of the ICAO Document 9082 (8th Edition 2009), revenues from concessions granted to oil companies to supply aviation fuel and lubricants are, inter-alia, to be treated as revenue from non aeronautical services, even though such arrangements may apply to such activities which may themselves be considered to be of an aeronautical nature.
- (vi) The operators have also opposed the treatment of entire concession fees as part of the passenger yield calculation on the basis of concession agreements.

5.5 The oil companies have broadly indicated that in past 3 to 4 years the throughput charges at the Indian airports have increased manifold without any basis. They have also faulted the tendering process followed by AAI in 2005 in respect of determination of throughput charge. An issue has been raised that all revisions should be only perspective in nature. Reliance Industries Ltd. has suggested that the land rentals be also brought under the regulated ambit of AERA.



6.1 The issues raised have been examined in detail and the Authority's position/ comments thereupon are as under:

(i) Regulation of Fuel Throughput Charges:

In terms of section 2(a)(vi) of the Act, any service provided for "supplying fuel to the aircraft at an airport" is an "aeronautical service". The throughput charge is a charge in respect of and for the purpose of providing the service of supplying fuel to the aircraft. In this regard, ICAO Guidance is also very instructive. While the airport operators have drawn attention to Appendix 3 of Doc 9082 and Chapter 3 of Doc 9562 to suggest that ICAO requires the revenues from the concessions granted to oil companies to supply aviation fuel and lubricants to be treated as revenues from non-aeronautical services; this statement does not take into account the specific guidance in respect of fuel throughput charges. In the same Appendix 3, fuel throughput charges have been described as under:

"A concession fee levied by an airport on each litre or gallon (or other liquid measure) of aviation fuel sold at the airport."

Further in para 41 it has been stated that *"The council recommends that where fuel "throughput" charges are imposed they should be recognized by airport entities as being concession charges of an aeronautical nature and that fuel concessionaires should not add them automatically to the price of fuel to aircraft operators, although they may properly include them as a component of their costs in negotiating fuel supply prices with aircraft operators. The level of fuel "throughput" charges may reflect the value of the concession granted to fuel suppliers and should be related to the cost of the facilities provided, if any"*.

Thus, ICAO Guidance, in fact, suggests that the fuel throughput charges should be treated as aeronautical in nature. The level of such charges should reflect the value of concessions granted and should be related to the cost of the facility provided, if any.

In this view of the matter, there is no doubt that the domestic law as well as international guidance requires the throughput charge to be treated as aeronautical in nature and to be regulated on the basis of cost relatedness. In any case, the airport operators themselves have solicited the approval of the Authority in the matter.

(ii) Applicability of OMDA in case of DIAL and MIAL:

The OMDA provides a list of aeronautical services in Schedule 5 and non-aeronautical in Schedule 6. Sl. 17 in Schedule 5 reads as under:

"Common hydrant infrastructure for aircraft fuelling services by authorized providers"



At the IGI Airport, New Delhi, the common hydrant infrastructure, through Delhi Aviation Fuel Facility Private Limited (DAFFPL), is in place. The fuel throughput charge (which is apparently termed as airport operator fee, in this case) is being collected by the operator of the common hydrant infrastructure and thereafter passed on to the airport operator. In case of Mumbai airport also, as per the latest reports, an arrangement for common hydrant infrastructure, through a JV of MIAL and oil companies, has been firmed up. This arrangement is reported to be on the same lines as in case of Delhi. Therefore, in both these cases, the fuel throughput charge being a charge recovered and collected by the common hydrant infrastructure service provider has to be treated as an aeronautical charge even in terms of OMDA. Further, it is also relevant to notice that the concessions in respect of fuel do not form part of the Schedule 6 relating to non aeronautical services. Notwithstanding the above, even if the concessions in respect of fuel were to have been treated as non-aeronautical under the OMDA, the same cannot prevail in view of the statutory position discussed at (i) above. It is also to be noted that in terms of S.13 (1)(a)(vi) of the Act, the Authority is required to take into consideration the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise. OMDA is not a concession offered by the Central Government and it is an agreement between DIAL/MIAL on one hand and AAI on the other. Therefore, there is no requirement for the Authority to consider the provisions of OMDA while determining tariff for aeronautical services. It is also relevant to note here that the Central Government has entered into State Support Agreement/ SSA with both DIAL and MIAL. The Authority would give due consideration to the provisions of SSA at the final determination stage.

(iii) Concession agreements in respect of Bangalore International Airport Limited (BIAL) and Hyderabad International Airport Limited (HIAL):

In terms of article 10.2 of these concession agreements, the Government or the independent regulator shall approve the “regulated charges”. As per article 10.3, the airport operator and or service provider right holder shall be free, without any restriction, to determine the charges to be imposed in respect of the facilities and services provided at the airports or on the site other than the facilities and services in respect of which regulated charges are levied. Schedule 6 of the concession agreement defines following as the regulated charges:

- (a) Landing, parking and housing charges (domestic and international)
- (b) Passenger Service Fee (Domestic and international)
- (c) User Development Fee(UDF) (Domestic and international).

It is the case of the airport operators that the charges relating to aircraft fueling, not being defined as regulated charges, they or their concessionaire are free to set such charges. However, as indicated above, the services provided for supplying fuel to the aircraft at an airport are aeronautical



services in terms of the Act. While the Authority is required to take on board the concession agreements made by the Central Government, while determining the tariff for aeronautical services, the Authority cannot be expected to give precedence to the contractual covenants over the statutory provisions. Therefore, the non specification of charges relating to aircraft fueling as regulated charges under the concession agreements cannot be a ground to keep fuel throughput charges out of the regulatory purview. It will also be relevant to note here that in terms of Schedule 3 Part I of the Concession Agreements "aircraft fueling services" are "airport activities". In these concession agreements, therefore, the fuel related services are being treated as aeronautical services.

(iv) Cost relatedness of Throughput Charges:

As indicated in point (i) above, ICAO has recommended that the throughput charges may reflect the value of concessions granted to the fuel suppliers and should be related to the cost of the facility provided. It is gathered from the material available on record that, in the Indian context, the airport operators only provide the land and access to the oil companies. The cost of land is recovered separately through the rentals. Therefore, it is the value of concessions which would have to be considered while fixing the throughput charges.

NACIL in its submissions has drawn attention to a Report (December, 1998) of the Australian Competition and Consumer Commission on fuel throughput levies. The Commission is required to monitor the aircraft refueling services. It took up the review of the fuel throughput levies imposed by the private airports on the basis of arrangements which were negotiated and put in place by Federal Airport Corporation (FAC) before the airports were privatized. These arrangements included provisions for fuel throughput levies but these were not activated. Pursuant to privatization, the private airport operators introduced the levies on the basis of the validity of contractual arrangements. In the review Commission, inter-alia, found as under:

- (a) The fuel throughput levies were not justified in terms of increases in cost or through off setting reduction in other charges. The Commission was also of the view that the question of validity of contractual arrangements between the airport operators and lease holders is a matter for the relevant parties not the Commission.
- (b) There is a strong case that large airports have market power in the market for refueling services. Further, when considered together with the monopoly nature of the market for land for refueling facilities, the lack of alternatives to refueling at some airports reinforces the airports market power. When considered in the light of the lack of any cost related justification for the levies, of offsetting reduction in charges, there is a strong case that imposition of a fuel throughput is taking advantage of market power.



In light of the above findings, the Commission recommended that a stricter form of price oversight in relation to aircraft refueling services and found that these services should be included within a CPI-x Price Cap. It would be also relevant to mention here that the Brisbane Airport and the Perth Airport have abolished the throughput fee in 2007.

In the Indian context as stated above, the cost of facility, i.e., land is being recovered separately through the lease rentals. Therefore, fuel throughput charges can, apparently, be justified only on the basis of value of concession. The airport operators have been fixing the throughput charges either on negotiation basis or on tender basis (as in case of AAI). It would appear that normally a market discovered fee through tender would be more representative of the "value of concession" as compared to a negotiated rate. However, the Oil companies have raised an issue that the AAI's tenders in respect of Chennai and Kolkata airport were flawed. It is their view that the airport operators exercise their monopoly position and Oil Companies have no option but to agree to their requirements. In the circumstances, it would be difficult to give preference to one mode over another.

(v) Applicability of Contractual Arrangement Between the Airport Operator and Oil Companies:

The Authority has proposed the approval of higher throughput levies in accordance with the contractual arrangement between airport operators and the oil companies. However, the airlines have pointed out that the agreements are entered into between the two parties who do not bear the financial burden thereof. The oil companies, who are paying the charges, pass the same on to the airlines and the airport operator is the net gainer. In other words, the parties to the agreement are no worse off as a result of any hike negotiated between themselves whereas entities, i.e., airlines which bear the burden are neither a party to the agreement nor are they consulted in the process. In these circumstances, the submission of the airlines that the airport operators and the oil companies have no incentive to keep the throughput charges low has merit. This position read in conjunction with the ICAO guidance and the position stated in respect of point (iv) above indicates that the Authority's stand that it would respect the contractual arrangement between the airport operators and oil companies may not be the best position. However, as the present exercise is for adhoc determination and in absence of any other viable way, presently, available, the Authority, could proceed in line with the position already taken.

(vi) Treatment of Revenues arising out of the fuel throughput charges:

Airport operators have placed reliance on the position stated in Appendix 3 of ICAO Doc 9082 and para 3.49 of Doc 9562 to state that the revenue generated from the fuel throughput charge should be treated as non-aeronautical revenue. It is the case of airports that, therefore, entire revenue generated from throughput charge should not be taken towards price cap



otherwise it will be beyond 30% shared till reflected under SSA. It is to be noted that the Authority has proposed the approval of the revised throughput charge on the basis of contractual arrangements, inter-alia, because it is minded to take the entire revenue therefrom towards the passenger yield calculation. If the operator's contention that the entire revenue should not be taken towards passenger yield is to be accepted, the rationale for accepting the contractual arrangement also diminishes to that extent. However, as stated earlier, the legal as well as procedural implications of SSA could be duly considered at the final determination stage.

(vii) Market Access Fee is illegal in EU:

EU has issued a Directive (No. 96/97/EC of 15.10.1996) on access to the ground handling market at community airports. As per sl. 7 of Annex, "fuel and oil handling" is part of ground handling service. Article 16(3) of the Directive provides that where access to airport installations gives rise to the collection of a fee, the latter shall be determined according to relevant, objective, transparent and non-discriminatory criteria. From the papers made available by IATA, it appears that the European Court of Justice has interpreted Art. 16(3) in a manner that it "precludes the managing body of an airport from making access to the groundhandling market in the airport subject to payment by a supplier of groundhandling services or self-handler of an access fee as consideration for the grant of a commercial opportunity, in addition to the fee payable by that supplier or self-handler for the use of the airport installations". In absence of any legal instrument of the nature of EU Directive, the ratio of EU Directive and its interpretation by the European Court of Justice may not be applicable in Indian context. However, EU position and the Australian position (discussed in point (iv)) demonstrate that the Fuel Throughput Charges are not encouraged in other jurisdictions.

6.2. To summarize:

- (i) The throughput charge is a charge in respect of and for the purpose of providing the service of supplying fuel to the aircraft. The fuel throughput charge is, therefore, required to be determined by the Authority in terms of section 13(1)(a) read with section 2(a)(vi) of the Act.
- (ii) ICAO Guidance suggests that fuel throughput charges should be treated as aeronautical in nature. The level thereof should reflect the value of concessions granted and should be related to the cost of facilities provided, if any.
- (iii) There appears to be no merit in the argument that the OMDA for Delhi and Mumbai treats concessions in respect of fueling of aircraft as non-aeronautical services. In any case, there is no requirement for the Authority to consider the provisions of OMDA while determining tariff for aeronautical services.



- (iv) The Concession Agreements in respect of BIAL and HIAL explicitly list out the regulated charges. The charges in respect of aircraft fueling are not indicated therein. However, aircraft fueling services per say are covered as "airport activities" in the Schedule 3 Part I of the Concession Agreements. Keeping in view the fact that the explicit statutory provisions prevail over the concession agreements, the Authority would have to regulate the fuel throughput charges in respect of these airports as well.
- (v) There is a merit in the arguments put forward by the airlines that the fuel throughput charges as to be fixed on the basis of cost relatedness. ICAO also supports this position. However, in the Indian context the cost of the facility, i.e., land is being recovered separately through the lease rentals. Therefore, it would appear that the fuel throughput charge should be so determined so as to represent the value of concessions.
- (vi) The contractual arrangement between the airport operator and the oil companies regarding levy of throughput charges is of a nature where the contracting parties are not worse off due to any increase in the levy and have as such no incentive to keep the charges low. The airlines which bear the burden are neither a party to the agreement nor are consulted in the process. Therefore, there is a strong case for review of the Authority's position in so far as fixing the charges in line with the contractual arrangement is concerned. However, as the present exercise is for adhoc determination and in absence of any other viable way presently available, the Authority is proceeding in line with the position already taken.

7.1 AAI in vide letter no. AAI/CHQ/AERA/TPC/2010 dated 27.09.2010 have not made any specific comments on the Consultation Paper but requested that the rates of fuel TPF after 5% escalation w.e.f 01.04.2010 indicated at para 2.5 of the Consultation Paper in respect Ahmedabad, Guwahati and Jaipur be corrected. The rates reflected in the Authority's Consultation Paper are Rs.112.10/KL for the year 2010-11 for the three airports. AAI has requested that the rates may be corrected as follows: Ahmedabad – Rs.528.38/-KL; Guwahati – Rs.344.60/-KL and Jaipur Rs.291/- KL.

7.2 The Authority observed that the rate reflected in the Consultation Paper for the 3 airports have been taken based on AAI's letter No.AV-21012/93/2006-LM/Vol.I/ dated 25.03.2010 wherein it was mentioned that pending final view of the Ministry of Petroleum and Ministry of Civil Aviation, PSU Oil Companies will pay the through put rate @ Rs.106.75 /KL on provisional basis (w.e.f 01.4.2009, escalation @ 5% on 1st April every year). In view of this position, in respect of Ahmedabad, Guwahati and Jaipur airports, the fuel throughput rate i.e., Rs.112.10/KL for the year 2010-11 as reflected in the Consultation Paper No.06/2010-11 appears to be correct.

7.3 In any case, after the final decision of the Ministry of Petroleum and Ministry of Civil Aviation in respect of the rates at these three airports, it would be open to AAI to approach this Authority to seek approval for revised rates, if any.



8. Having perused the records and upon due consideration of all facts, circumstances and submissions made by the stakeholders, the Authority passes the following Order.

ORDER:

9. In exercise of powers conferred by Section 13(1)(a) of the Act the Authority approves the fuel throughput charges at the following airports as per the rates indicated against each airport with effect from 01.04.2010, purely on an adhoc basis:

Sl. No.	Airport	Airport Operator	Pre-revised Fuel Throughput charges (Rs./KL)	% increase approved	Approved Fuel Throughput charges (Rs./KL)
1	Chennai	AAI	1390.31	5	1459.83
2	Kolkata	AAI	1158.78	5	1216.72
3	Trivandrum	AAI	133.15	5	139.80
4	Ahmedabad	AAI	106.75	5	112.10
5	Calicut	AAI	106.75	5	112.10
6	Guwahati	AAI	106.75	5	112.10
7	Jaipur	AAI	106.75	5	112.10
8	CSIA, Mumbai	MIAL	535.00	5	561.75
9	IGIA, Delhi	DIAL	535.00	5	561.75
10	Cochin	CIAL	70	20	84

The Authority expects to finalize the guidelines in respect of through put charges as part of the guidelines proposed to be issued for determination of tariff for the services provided by the airport operators. The Throughput charges approved, on an ad-hoc basis as above would be taken up for final determination pursuant thereto. Consequent to the above approval, the Direction No.01/2010-11 dated 13.09.2010, which was issued in the interim to MIAL, DIAL, CIAL and AAI to stop charging fuel throughput charges at the rates suo moto revised by them at the above mentioned airports would not be applicable any more.

AERA

By the Order of and in the Name of the Authority


(Sandeep Prakash)
Secretary

To,
1. Airports Authority of India,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi -110 003
(Through: Shri V.P. Agrawal, Chairman)



2. **Cochin International Airport Pvt. Ltd.,
Nedumbassery,
Cochin,
Kerala.
(Through: Dr. Krishnadas Nair, Managing Director)**
3. **Delhi International Airport Pvt. Ltd.,
Uran Bhawan,
IGI Airport,
New Delhi -110 037.
(Through: Shri Kiran Kumar Grandhi, Managing Director)**
4. **Mumbai International Airport Pvt. Ltd.
Chhatrapati Shivaji International Airport,
1st Floor, Terminal 1B, Santa Cruz GE),
Mumbai -400 059.
(Through: Shri G.V. Sanjay Reddy, Managing Director)**



सत्यमेव जयते

भा.वि.आ.वि.प्रा.
AERA

