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Airports Economic Regulatory Authority of India

Order No. 01/2018-19

AERA Building,  
Administrative Complex,  
Safdarjung Airport,  
New Delhi - 110003

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**In the matter of Capping the amount of Royalty/Licence Fee/Revenue Share payable to Airport Operator as a “Pass Through” Expenditure for the Independent Service Providers providing Cargo facility, Ground Handling and Supply of Fuel to the Aircrafts at Major Airports.**

1.1 One of the major functions of the Airport Economic Regulatory Authority is to determine the tariff for aeronautical services in respect of major airports. Aeronautical services are defined in Section 2A of the AERA Act, 2008 to include Ground Handling services, services provided for Cargo facility at the airport and for supply of fuel to the aircraft.

1.2 While examining the Multi Year Tariff Proposals (MYTPs) of various Independent Service Providers (ISPs), it has been observed that some of the airport operators are charging unreasonably high royalty/licence fee/revenue share from the ISPs. There is no regulation at present to deter charging of exorbitantly high royalty/licence fee/revenue share by the Airport Operator. The rate of royalty/licence fee/revenue share as a proportion of gross revenue charged for services do not seem to be commensurate with the cost or quality of service provided by the operator.

1.3 Royalty/licence fee/revenue share payable to the Airport Operator by ISPs are made a part of the total operating expenditure which in other words becomes “A Pass Through Cost”. The entire amount of royalty/licence fee/revenue share payable to airport operator is taken as an operating expenditure by ISP and it is being allowed as “Pass Through” under the present mechanism, resulting in high tariff to be levied by the ISP.

1.4 The profitability of the ISP may also be low due to high rate of royalty/licence fee/revenue share payable by ISP to the Airport Operator and this limits the surplus generated and capability of the ISP to upgrade facilities and quality of service and if there is a monopoly situation there is no incentive to invest in expansion and modernisation of facilities. The ultimate user bears these additional charges and very often they are unaffordable thereby limiting the growth of the sector.

1.5 Mostly these charges are meant to acquire the right to do business in the airport. They do not have any relevance to costs incurred by airport operator and ISP and are therefore not consistent with the policies of ICAO relating to tariff determination.



1.6 The Authority had issued Consultation Paper no. 08/2016-17 dated 31.03.2017 with the following proposals.

“The authority proposes to tentatively cap the amount/percentage of Royalty/Revenue share payable by the ISP to Airport Operator at 30% of the Gross Turnover (GTO) of the regulated service which shall be allowed for regulatory purposes as “Pass Through” for determining the tariff of the ISP. Wherever fresh contracts are to be entered into, this ceiling shall be taken into consideration. In the case of existing contracts between the ISP and airport operator, the actual fee/royalty/ revenue share payable to airport operator will be allowed as “Pass Through” cost up to 31/05/2019 for determination of tariff. In the meantime the ISPs and airport operator are advised to renegotiate their revenue sharing agreements”.

The Authority also conducted Stakeholder Consultation Meeting on 21.04.2017 to elicit the views of stakeholders.

## **2. Comments received from Stakeholders and Authority's response on Stakeholder comments**

### **2.1 Oil Companies**

#### **2.1.1 Hindustan Petroleum Corporation Ltd. (HPCL)**

HPCL as an ATF supplier is paying various charges like Fuel Throughput, Fuel infra charges, Into plane service charges at various major airports on the basis of approval from AERA. We shall continue to abide by the decision taken by AERA in this regard. However, any revision in the charges related to fuel should be approved on prospective basis.

#### **2.1.2 Bharat Petroleum Corporation Ltd. (BPCL)**

The ISP's providing the Into-Plane (ITP) services share a maximum of 6% of their GTO with the Airport Operator. The Authority's proposal of capping the % age revenue share in respect of ITP service providers at 30% of their GTO would induce the Airport Operators to increase this %age to 30% from the present level of 6% or below.

#### **2.1.3 Indian Oil Skytanking Ltd. (IOSL)**

- i. Indian Oil Skytanking provides into-plane refuelling services to aircrafts at Bangalore, Delhi and Mumbai basis their Concession Agreements with BIAL, DIAL, and MAFFPL, respectively.

The revenues share arrangements as per our Concession Agreements are 5% each at Bangalore, Delhi and 6% at Mumbai.

- ii. This percentage of revenue share is stipulated by the Airport Operators at the time of tendering and the bidders take due cognizance of this as a part of their operating cost



while submitting the bid which is in Rs./KL of fuel delivered to the aircraft. The contract is finalised basis the lowest bid which is matched by another bidder, as the tender terms stipulated for a minimum appointment of two service providers.

- iii. The above stated arrangements is completely transparent and ensures reasonable levy of fees by the service provider and revenue share to the airport operator. Moreover, the ISP is selected through a competitive bid against the parameters including the revenue share to the Airport operator, set in the tender documents. Such arrangements are already established and working satisfactorily for all the stake holders.

In view of above submission, the authority to continue with the exiting proven arrangements with respect to the into Plane service arrangements.

#### **2.1.4 Bharat Stars Services Pvt. Ltd. (BSSPL)**

- i. The revenue share paid by ITP operators at 'Open access' airports are only 5% to 6% at Delhi and Bangalore airport while 6% at Mumbai Airport. This is much below the '30% capping' proposed by the Authority. Any capping with a percentage of revenue share which is higher than current figure of 5% to 6% may include the airport operators to increase the revenue share percent substantially.
- ii. Since revenue share is a 'pass through' expenditure item, the same would be recoverable in ITP tariff structure approved by AERA. A pass through of 30% implies the end user bears the additional burden of the service to this extent for no new benefit. The proposed increase in revenue share will adversely impact the end customer i.e. passengers.
- iii. The existing ITP tariffs are already based on a cost effective structure as the ITP operators are awarded the sub-concession on lowest cost basis i.e. whoever provides ITP services at least cost per KL of ATF fueled. This 'least cost' model of awarding sub-concession encourages the ITP operator to quote the most economical ITP tariff.
- iv. The Authority to consider capping revenue share paid by ITP operators at 'Open access' airports at 5% to 6% only.

#### **2.1.5 Authority's examination and responses on the comments by Oil companies: HPCL, BPCL, IOSL, BSSPL**

The Authority has carefully gone through the comments of the above stakeholders and the Authority decides to fix a cap on royalty / license fee or revenue share payable at 5% to airport operator on regulated revenue as a "Pass Through Expenditure" for the Into Plane Service (ITP) Providers in line with the existing arrangements in the major airports.



## 2.2 Airport Operators

### 2.2.1 **Mumbai International Airport Ltd. (MIAL)**

2.2.1.1 Authority has mentioned in the para 2.1 that same of the Airport operators are charging unreasonably high royalty/revenue share from the ISPs –Authority has not shared any basis/analysis for arriving at such a conclusion unless full- fledged comparative analysis is carried out by the Authority taking into consideration all the factors which influence Royalty/Revenue Share percentage. We request the Authority to share basis/comparatives analysis of its observation to enable us make meaning full comments on the Consultation paper.

2.2.1.2 Authority has mentioned in the para 2.2 that rates of Royalty /Revenue Share charged for services do not seem to be commensurate with the cost or quality of service provided It is absolutely wrong observation since quantum of Royalty/Revenue share has direct correlation with the capital cost incurred /to /be incurred by the Airport Operators since there are various from /structures under which concessions are /can be granted by the Airport Operators .prescribing a uniform percentage of Royalty Revenue share for all forms of the concessions without taking into consideration the specific structure of the concession is completely flawed. Authority is fully aware that in cases where investments are made/ to be made by ISP's, Royalty Revenue share percentage are lower compared to cases where investments are made/ to be made by the Airport Operators .This can be clearly seen from the international cargo concession was at Mumbai Airports vis-à-vis Delhi Airport. Since at Delhi Airport, cargo concession was for greenfield facility where entire investments (Hundred of crores of Rupees) was to be made by ISPs, Royalty Revenue Share was lower vis-a-vis Mumbai Airport, where concession was for a brown field and operating facility without any investments by ISPs as entire investments, both for past and future was to be made by the Airport Operator.

Secondly for every concession, airports operators is required to provide land to ISP, quantum of which vary from concession to concession and again depending upon structure of the concession, land rentals are either separately charged or not charged.

It is therefore completely wrong to compare different forms and structures of concession and put a uniform cap for all of them on Royalty Revenue Share percentage .Such an approach will be arbitrary and does not demonstrate an approach based on concession specific requirements.

2.2.1.3 Authority has mentioned in para 2.3 that Royalty in license fee payable to the Airport Operator by ISPs are made a part of the total operating expenditure which becomes "A pass Through Cost" resulting in high charges being lived by the ISPs –Authority has ben doing tariff determination for most of the ISPs under light touch approach depending upon materiality and competition , assessments where charges are decided by the Authority based upon competitive rates and users agreements etc, hence quantum of Royalty/ Revenue share



becomes irrelevant. We have not come across even a single case of tariff under price cap approach and increased charges significantly. Similarly case is point is Mumbai Airport where charges for cargo services were same before and after concession despite so called high Revenue share by the Authority, except a nominal Increase of 15% that too after a period of 8 years, which had to linkage with the revenue share. This clearly establishes that the Authority has not allowed increase in revenue share % Royalty revenue share has not been allowed as a pass through by the Authority even in a single case since it has determined tariffs under light touch approach. It can also be clearly noted from the attached comparison (Annexure I) that cargo service charges at Mumbai Airport are still lower than Delhi Airport and other airports inspite the fact that Royalty revenue share at those airports are significantly lower than the Mumbai Airport. If Authority's contention were to be correct than cargo charges at Delhi Airport and other airports should have been far lower than Mumbai Airport where as in fact cargo charges at Delhi and other airports are higher than Mumbai Airport.

2.2.1.4 Authority has mentioned in para 2.4 that profitability of the ISPs are low due to high rates of Royalty/Revenue share to the Airport Operators and that limits the capability of the ISPs to upgrade facilities and quality of service-This Observations of the Authority is also totally wrong and without any basis. ISPs for provision of various services are selected by the Airport Operators through fully transparent and open competitive bidding process where in prospective bidders carry out due diligence, financial analysis after taking into consideration all other aspects such as quantum of investments to be made, tenure of the concession, cost of the capital, operating cost, future business potential etc. arrive at the percentage of Royalty/Revenue share to submit their bids. Bidder quoting highest revenue share is selected, other things being equal for all other bidders.

Therefore while quoting for the revenue share percentages, bidders certainly know before hand that tariffs would be determined by the Authority under light touch approach, off course subject to meeting certain materiality and competition assessment criteria and user agreements and consequently expected returns to be made from the concession and therefore cannot question low profitability having quoted high revenue share in the competitive bidding process after having got the concession.

Authority has not quoted a single case of any ISP where they have complained either about high revenue Share or inability to invest or meet service quality standards. In the absence of any specific instances or even an indication about the specific airports where such concerns have arisen, it is not possible for MIAL as an Airport Operator to respond to such contentions in the CP. The Authority is requested to point out the specific instances bases on which, it has arrived at its conclusion about the capability of the ISP to upgrade facilities also it is important to note that as far as further investments are to be made quality of services to be provided, concession agreements clearly provided for quality/level of services to be maintained by the ISPs and consequent investment to be made either by ISPs or Airport Operators. Therefore arriving at the conclusion, without any concrete basis, that ISPs are not investing in the required infrastructure or not meeting



required service quality level because of high revenue share is fully flawed. There could be various other reasons for lack of investments such as lack of conviction of ISPs to get reasonable and timely increase in charges from the regulator after making investment or uncertainty about regulatory philosophy and methodology.

Further, the Authority is empowered u/s 13(1) (d) of the AERA Act to monitor the set performance standards relating to the quality, continuity and reliability of services as specified by the by the central government from time to time . The Authority can take adequate measures in relation to specific ISP/Airport Operator where it observes non- compliance with the prescribed service parameters.

Without prejudice to the submission made herein above MIAL would like to state that during the competitive bidding process, only ISPs with prior experience are considered. Thus, only experienced and reputed ISPs are selected, ensuring quality services. Further, Concession documents also lay down performance parameters which also include Objective Service Quality Requirements under Schedule 3 of OMDA.MIAL reserves its right to provide response to the service quality issues in detail once relevant inputs have been provided by the Authority in this regard.

2.2.1.5 Authority has mentioned in para 2.5 that these charge are paid to acquire the right to do business in the airports they do not have any relevance to cost incurred by airport operator and are therefore not consistent with the polices of ICAO relating to tariff determination – This observation of the Authority is also completely wrong and without any basis. As explained in paragraph 1.b above, these concession are given in different forms/structures where investments may or may not be made by ISP's and therefore fixing, without looking into facts to each case separately, uniform cap/ceiling on Royalty/Revenue Share is flawed and wrong .In some concession, like international cargo concession at Mumbai, entire investment in cargo facility is made by the Airport Operator (Hundreds of Crores of Rupees) and not ISP and where lease rentals for land are also not charged separately, Royalty/revenue share percentage are bound to be higher vis-à-vis other cases where investments are to be made by ISPs or where land rentals are charged separately.

2.2.1.6 It is also necessary to point out that Authority's proposal to cap the Royalty/Revenue share is not consistent with the principal enumerated under Section 13(1)(a) of the Act for tariff determination. The Authority is required to take into consideration any expenditure reasonably incurred by an ISP for determination of tariff. In order to do this, the Authority may be required to examine:

- a) whether the expenses incurred/proposed by the ISP is excessive in as much as it does not represent the actual expenses incurred; or
- b) whether the ISP is paying amount higher than the normal acceptable market price.

It is clear from the reading of section 13(1)(a) that Authority cannot put such a blanket restriction and uniform ceiling on the allowable concession fees for all



ISPs will determine tariffs for each of them separately without taking into consideration factors enumerated there in.

Similarly under the present proposal, it appears that the Authority seeks to achieve indirectly though expressly, a regulation of the amount of concession fee receivable by Major Airport Operators which are in the nature of non-aeronautical charges and therefore outside the scope of section 13(1)(a). There is no provision in AERA Act which authorizes the Authority to fix/ cap the concession fee receivable by the Airport Operators.

- 2.2.1.7 Capping the Royalty/Revenue Share payable by ISPs, has the effect of interfering directly with the exclusive rights of MIAL under the SSA and OMDA over the airport premises, and its discretion to let out/ allow use of the same on non-discriminatory basis by a third party on such terms and conditions as it deems proper. Such rights have been vested in MIAL as part of the terms of bidding for the purposes of privatization. Therefore, as far as the CSI Airport is concerned, such proposal of the Authority has the effect of undoing the rights vested in MIAL as part of the considerations to work out the Annual Fee to be paid to AAI, which was the basis on which MIAL was awarded the CSI Airport.

It appears that the Authority has proposed such capping, equating the royalty/ concession fee paid by ISPs to the Airport Operator with the Annual Fees in case of MIAL and DIAL which is not allowed as a pass through as per their respective concession agreements. No such limitation/restriction has been imposed on the pass through for determination of tariff in respect of concessionaires by the Airport Operators, as per their respective concession agreements, nor has any restriction been imposed by the concession agreements entered in case of MIAL/ DIAL. Authority has not allowed pass through of Annual Fee/ concession fee payable by MIAL/DIAL to AAI due to specific provisions in their respective concession agreements (SSA). Authority should therefore adopt similar approach for concession agreement signed between Airport should therefore adopt similar approach for concession agreement signed between Airport Operator and ISPs, Concession fees emanates from the Concession documents entered into between the Airport Operator(s) and ISPs and follow the terms of their respective concession agreements where there are no restriction on pass through of revenue share. Restricting/ limiting the pass through of Royalty/Revenue Share payable by ISPs would be contrary to the concession agreements entered between the Airport Operators and ISPs and shall be arbitrary.

- 2.2.1.8 Limiting the royalty/ concession fee at a specified % shall limit the availability of cross subsidy and lead to increased aeronautical charges which shall be detrimental to the interest of airlines as well as passengers and will benefit users of these services at the cost of passengers.
- 2.2.1.9 Any reduction in charges by ISPs/ concessionaires does not mean that it would benefit the ultimate users, since the tariffs charged by airlines, freight forwarders, etc. are not regulated by any Authority and certainly such benefits shall not get passed on to the passengers and the ultimate users.

- 2.2.1.10 a. Any change in regulatory regime post signing of concession agreements creates lot of uncertainty and discourages further investments in the sector and hence need to be avoided at any cost.

Once the Royalty/Revenue Share has been discovered through competitive bidding process, it is not open to the Authority to re-write the terms of the contract for the proposes of determination of tariff. It is pertinent to point out in this regard that Section 13(1)(a) of the AERA Act provides for “determination” and not “regulation” where the scope of regulatory interference may be wider.

b. Authority’s Proposal would make many ISPs unviable since they may run into losses. Such restriction cannot be made applicable to existing concessions with unexpired concession period beyond 31st May, 2019.

c. Further Authority’s proposal is against its own Order wherein it has clearly laid out the criteria for ISPs for determination of tariff on light touch basis, subject to meeting certain materiality and competition criteria and user agreements while though the proposed regulation it is seeking to achieve tariff determination through price cap approach, Since the Authority is determining tariffs for ISPs under light touch approach only after satisfying itself with the materiality and competition assessment along with the user agreements, we believe the market itself will take care of the user charges. If charges of one service provider are higher due to so called high revenue share, users will always have an option to avail services from the other service provider where charges as contended by the Authority would be lower. Therefore, the Authority should leave discovery of user charges to the competitive market itself rather than getting into intrusive price cap approach for tariff determination of ISPs.

d. Presently concessions are awarded to ISPs based on their technical experience coupled with competitive bidding for highest % of Revenue share quoted by them. In case a cap is introduced by the Authority on Revenue share, fee quoted by such ISP shall be limited to the % cap fixed which will hinder competition and it not be possible for Airport Operators to award the concession in case all prospective bidders quote the highest % allowed by the Authority.

Further, MIAL understands from reading of the Consultation Paper and clarity given by the Authority in the Stakeholder’s Consultation meeting held on 21st April, 2017, that lease rentals charged by the airport operator will not be considered part of cap 30% proposed by the Authority.

In view of the above, an across the board stand adopted by the Authority, considering all categories in the same manner is totally flawed and unjustified. In view of aforesaid and unique nature of each of such concession, it is necessary that each case is dealt by the authority individually.

In view of the issues raised above, the Authority is requested to not to proceed with proposed capping of Royalty/Revenue share at 30% of Gross turnover as pass through expenditure pf ISPs, especially where tariffs are being determined





by the Authority under the light touch approach after considering materiality, competition and user agreements.

**2.2.1.11 Authority's response:**

Regarding MIAL's comments on sharing of comparative analysis of royalty/licence fee/revenue share charged from ISPs, the Authority has noted that the rates keep varying for cargo, ground handling and ITP services and even within the same service, different rates are charged. For example, instances have come to notice when royalty is 18% of gross revenue for Cargo in Bangalore and Hyderabad and 69% in Mumbai and for Ground Handling Services, 10% of revenues in Hyderabad to 32.5% of revenues in Kolkata. The Authority has noted that one of the reasons for such wide fluctuation in rates may be whether the airport operator has provided the infrastructure facilities for the ISP. Including such costs as a part of royalty/licence fee/revenue share results in non-transparent process of loading costs. Instead, the Airport Operator can claim reasonable return for his investment by way of charges for the infrastructure facilities. The ceiling of 30% proposed by the Authority is inclusive of such return on investments made towards infrastructure facilities by the Airport Operator. However, rent for land/ space is not included in the ceiling prescribed above, which may be charged on a fair basis and equivalent to that being charged to other users.

It is true that Authority has been undertaking tariff determination for most of the ISPs under the "Light Touch" approach. Even while adopting the Light Touch approach, the Authority has to exercise due diligence, keeping in mind the ultimate welfare of the passengers / end users. However, when there is wild fluctuation in royalty/licence fee/ revenue share charged by different operators for Cargo / Ground Handling Charges, there is a need to adopt a normative approach. It wouldn't be prudent on the part of the regulator to allow an unreasonable charge levied on ISPs in the form of royalty/licence fee/revenue share to be passed on to ultimate customers.

The Authority has noted that the ISPs are selected by the Airport Operators through open competitive bidding process but given the sheer nature of business, the number of ISPs who are offered the Cargo / Ground Handling Services are very few and thus there is only limited competition resulting in a tendency on the part of the Airport Operators to encourage unreasonable royalty/licence fee/ revenue share.

As the Airport Operators are enjoying a monopolistic position, there is a need to regulate the royalty/licence fee/revenue share payable to them by the ISPs. Instead of fixing a ceiling on royalty/licence fee/revenue share payable to them, the Authority now proposes to fix the ceiling only for the amount which will be allowed as a "Pass Through" expenditure by the ISPs. It does not bar the Airport Operator to charge royalty/licence fee/revenue share based on tender outcome. The Authority is in no way interfering directly with the rights of the Airport Operators under the OMDA/ SSA or their respective concession agreement.



The Authority is of the view that there is no rationale for cross subsidization of aeronautical charges through high royalty/licence fee/revenue share for Cargo/ Ground Handling Services.

While the Authority may not be able to ensure that the ultimate benefit is passed on by the Airlines to the beneficiaries/ ultimate users, that position cannot be a factor in not considering a cap on royalty/licence fee/revenue share while determination of tariffs applicable to ISPs.

The ISPs, while bidding, should carry out necessary due diligence and financial analysis taking into consideration all aspects including the “Pass Through” available out of the royalty/ licence fee/revenue share payable by them to the Airport Operators. It is true that due to capping of the above, the tariff charged by ISP may go down and that is the ultimate objective.

Wherever the royalty/licence fee/revenue share rates are already agreed for a longer period, the ISPs and Airport Operators should re-negotiate the same considering the equitable benefits that will accrue to beneficiaries/ ultimate users.

As regards the point on bidding parameters for appointment of ISPs, the Airport Operators can suitably define the same like ranking for services rendered, technical qualifications, experience, track records etc.

## **2.2.2 Delhi International Airport Ltd. (DIAL)**

### **2.2.2.1 Cargo and Ground Handling Services are “non-regulated” under the concession granted by the Central Government**

OMDA and the State Support Agreement are part of the Concession granted by the Central Government to DIAL. Schedule 6 Part I of the OMDA executed between DIAL and AAI treats cargo handling and ground handling services as non-aeronautical services.

Further, Section 13 of the AERA Act, 2008 also requires the Authority to consider the concession offered by the Central Government. Thus, the Authority is statutorily mandated to take into consideration the fact that the concession granted by the Central Government to DIAL treats cargo handling and ground handling services as non-aeronautical services. Thus, the cargo services and the ground handling services are “non-regulated” and the Authority may refrain from proceeding further with the subject consultation paper proposing to cap the royal/revenue share payable by the ISPs providing cargo and ground handling services, to the Airport Operator.

### **2.2.2.2 Jurisdiction to cap Royalty/Revenue Share**

Without prejudice to the above, it is submitted that the Authority does not have any jurisdiction under Section 13 of the Airports Economic Regulatory Authority



Act, 2008 (hereinafter referred to as AERA Act 2008) to cap the Royalty/Revenue share agreed between the Airport operator and the ISP either by way of a mutual agreement or through a competitive bidding process. Even if it assumed that the Authority has the discretion to cap the amount/percentage of Royalty/Revenue share to be allowed as "Pass Through" for the determination of tariff for ISPs, the Authority may not have jurisdiction to cap the amount/percentage of Royalty/Revenue share payable by the ISPs to the Airport Operator under their respective agreements.

### 2.2.2.3 No jurisdiction to unsettle the existing contracts

Without prejudice to the above, it is submitted that the Royalty/Revenue Share payable by any ISP for Cargo facility, Ground Handling and Fuel Supply at the Delhi Airport has been fixed pursuant to a competitive bidding process adopted by DIAL as mandated in terms of Clause 8.5.7 (i) (c) of the Operation Management & Development Agreement executed between AAI and DIAL. As such, certain rights and liabilities have already come into existence under the existing agreements between the ISPs and the Airport Operator and the same should not be unsettled or interfered by the Authority. The effect of the present proposal to the extent it directs renegotiation of the existing contracts between the ISPs and the Airport Operators, is to amend the existing contracts entered into between the parties and their subsisting rights and obligations thereunder which will be outside Authority's jurisdiction given that these contracts are commercial contracts determined through a valid bid process.

### 2.2.2.4 Proposal of the Authority is contradictory to the Airports Economic Regulatory Authority of India' (Terms and Conditions for Determination of tariff for Service Providers for cargo Facility, Ground Handling and supply of Fuel to the Aircraft) Guidelines, 2011 ("Service Provider Guidelines")

It is submitted that the proposal of the Authority is in conflict with the Service Provider Guidelines issued by it. The said guidelines lay down the procedure for determining the approach to the regulation of Regulated Services. The procedure as set out in the Service Provider Guidelines recognizes the existence of completion as one of the criteria for determination of approach to regulation. Clause 3.1 of the Service Provider Guidelines states as under:

*3.1 The Authority shall follow a three stage procedure for determining its approach to the regulation of Regulated Service(s) as under:*

- Stage1: The Authority shall first assess 'materiality' according to provisions of Clause 4;*
- Stage2: The Authority shall then assess 'competition' according to provision and Clause 5;*
- Stage3: The Authority shall then assess the reasonableness of existing User Agreements(s) according to provisions of Clause 6.*



3.2 Based on the Authority's review at stage 1, stage 2 and stage 3 where the Regulated Service(s) provided are deemed:

(ii) 'material but competitive' the Authority shall determine Tariff(s) for service Provider(s) based on a light touch approach for the duration of the Control Period, according to the provisions of Chapter V;

Further, Clause 5 of the said guidelines lay down as under:

"Competition Assessment

5.1 Where a Regulated Service is being provided at a major airport by two or more Service Provider(s), it shall be deemed 'competitive' at that airport. If a Regulated Service is provided by less than two Service Provider(s), it shall be deemed 'not competitive':

Provided that the Authority may in its discretion consider such other additional evidence regarding reasonableness of competition, as it may deem fit.

Explanation: For avoidance of any doubt, the determination of number of Service Providers) at a major airport shall include the Airport Operator, if the Airport Operator is also providing Regulated Service(s) at that major airport."

Therefore, the said Guidelines clearly mandate that where a service is being provided by two or more service providers, the said service would be regulated according to a light touch approach. However, as per the current proposal, ISPs who are operating in a competitive manner would also be subjected to determination of tariff under building block approach. The Authority vide above captioned Consultation paper proposes to cap the amount/percentage of Royalty/Revenue Share payable by ISPs to Airport Operators which is contrary to the Service Provider Guidelines.

#### 2.2.2.5 Violation of the existing Concessions with ISPs

Without prejudice to the above, it is submitted that the proposal of the Authority to cap the allowable Royalty/Revenue Share as "Pass Through: by capping the Royalty/Revenue Share payable by ISPs to the Airport Operator, will lead to a situation where the additional license fee/royalty over and above 30% will not be allowed to be passed-through and would be borne by the ISPs which will make their business model unviable and restrict overall growth of aviation in India. When the concessionaire for Regulated Service had bid and obtained the contracts there were no such criteria. The concessionaire had bid for and agreed to pay the current revenue share based on the fact that the same will be allowed as an operating expenditure. Now by changing the ground rules, the ISP will be required to pay the actual revenue share whereas the operating cost thereof, being restricted by the Authority. This proposal if implemented would alter the contractual arrangement based on which the concessioners bid for these concessions. This will mean that the ISP will get into losses and business will become unviable. This proposal would also prejudicially impact the concessionaires financial projections based on which concessionaires would have



obtained loans from lenders and would lead to poor infrastructure being provided and no funds being available for expansion. This will also lead to litigations by such concessionaires against the Airport Operator, likely result in the fall of revenue Airport Operator, affecting their already precarious financial position and ultimately the fall in revenue share to a AAI by PPP airports. Thus, this proposal if implemented would be against a healthy development of aviation sector.

This will also be against the very objective of recent civil aviation policy related to enhancing ease of doing business through deregulation as well as promotion of entire aviation sector chain.

#### 2.2.2.6 **Competition leads to lower charges:**

It is worth noting that there is significant market competition in the airport services which controls revenues of ISP. Authority has also considered the competition as criteria to allow light touch approach for various ISPs across India only as the prices are market driven. As such there should be a soft touch approach followed for regulating ISPs.

Capping royalty or license Fee at 30% of Gross turnover of ISPs is an inefficient price discovery mechanism from the perspective of the Airport operator as ISPs would not be inclined to bid above the specified cap.

#### 2.2.2.7 **Risk of Regulatory uncertainty**

We would also like to bring to your kind notice that the majority of concessions for various airport services have been awarded following a competitive tendering process. Any change in Regulatory Policy impacting the viability post the investors investing into the venture will add to the regulatory uncertainty prevailing in the Indian economy. This will discourage private as well as global investment in Indian infrastructure. This will also add to the cost of borrowing and return on equity being expected from the sector leading to higher charges.

#### 2.2.2.8 **Impact on Airport Charges:**

Further, it is worth noting that the Revenues share from ISPs are a key source of revenue for any Airport Operator and these revenue ultimately subsidize airport user charges. Thus, in the event of any reduction in overall revenue of an Airport Operator due to the implementation of the Authority's proposal, it will lead to higher airport user charges given that it impacts the ability of an airport operator to maximize non-aero revenues in a hybrid tariff framework. Also important is the fact that the revenue from these sources have been forecasted by airports based on existing concession terms. Any change in terms with ISP will lead to actual revenue being lower than revenue forecasted in airport's tariff model. This will lead to worsening of financial position of airport operators.



### 2.2.2.9 Authority's response:

In case of concession agreements where Cargo and Ground Handling revenues are treated as non-aeronautical, the related services are considered as aeronautical by the Authority in terms of the AERA Act and the related charges are required to be determined by the Authority. It may be mentioned that the Act has primacy over an individual contract. The Authority has already explained the rationale for the treatment of cargo, ground handling and fuel through put services as aeronautical services in its order dated 24.02.2014 in the matter of determination of aeronautical tariff in respect of RGI Airport, Hyderabad for the first control period.

Regarding the issue of existing contracts, the Authority clarifies that it has only decided not to allow royalty/licence fee/ revenue share over and above the prescribed limit as the "Pass Through" expenditure for the ISPs.

Regarding the guidelines for Cargo, Ground Handling and supply of fuel to the aircraft guidelines 2011 (service provider guidelines), it may be stated that the Authority has decided to modify the guidelines as there is a need to adopt "price cap approach" when the materiality of services provided is established and when competition does not exist in its true sense or when the stakeholders' agreements appear skewed and reflect monopolistic nature of the contract. As the guidelines are subject to modifications based on experience gained from time to time, the Authority has already commenced determination of tariff under "price cap approach" where the services rendered are material even when apparently competition / user agreements exist.

The capping of amount allowed as "pass through" expenditure by itself will not result in reduction in revenue share payable to AAI/ GOI. But as a result, if royalty/licence fee is reduced, it may lead to lower revenue of the operator and lower revenue share to AAI/ GOI. But the Authority has to look into the interest of the passenger/ ultimate user more than the impact on revenue share.

Regarding existing concession with ISPs, the Airport Operators and concerned ISPs may re-negotiate the contracts in the larger interest of charges being equitable to beneficiaries/ ultimate users.

It may be mentioned that regulatory procedures / practices are bound to evolve over a period of time based on experiences gained and changes are required to plug loopholes, if any, and this process cannot be termed as "regulatory uncertainty".

Regarding impact on airport charges, the Authority is of the view that there is no rationale for cross subsidizing a segment of users by overcharging the other segment of users.



### 2.2.3 Hyderabad International Airport Ltd. (HIAL)

#### 2.2.3.1 Jurisdiction to cap Royalty/Revenue Share

Section 13 of the AERA Act, 2008 has provided power to the Authority to determine the tariff in respect of the aeronautical services, however, the Authority does not have jurisdiction to cap the Royalty/Revenue share agreed between the Airport Operator and the ISP either by way of a mutual agreement or through a competitive bidding process. Even if it is assumed but not admitting that the Authority has the discretion to cap the amount/percentage of Royalty/ Revenue Share to be allowed as 'Pass Through" for the determination of tariff for ISPs, the Authority does not have jurisdiction or power to cap the amount/ percentage of Royalty/Revenue Share payable by the ISPs to the Airport Operator under their respective agreements. Hence, the proposal of Authority to cap the revenue share payable by the ISP is clearly outside its jurisdiction.

#### 2.2.3.2 No jurisdiction to unsettle the existing contracts

Rights and liabilities have come into existence under the existing agreements between the ISPs and the Airport Operator. The AERA Act did not confer any jurisdiction to the Authority either to unsettle or interfere with the agreements between ISPs and Airport Operator. The effect to the present proposal of Authority to the extent it directs renegotiation to the existing contracts between the ISPs and the Airport Operators, is to amend the existing contracts entered into between the parties and their subsisting rights and obligations thereunder, is outside the Authority's jurisdiction.

#### 2.2.3.3 Proposal of the authority is contradictory to the Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of tariff for Service providers for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft) Guidelines, 2011 ("Service provider Guidelines")

It is submitted that the proposal of the Authority is in conflict with the Service provider Guidelines issued by it. The said guidelines lay down the procedure for determining the approach to the regulation of Regulated Services. The procedure as set out in the Service provider Guidelines recognizes the existence of competition as one of the criteria for determination of approach to regulation. Clause 3.1 of the Service Provider guidelines states as under:

*3.1 The Authority shall follow a three stage procedure for determining its approach to the regulation of Regulated Service (s) as under:*

- Stage1: The Authority shall first assess' materiality' according to provisions of Clause4;*
- Stage2: The Authority shall then assess' competition' according to provisions of Clause5;*
- stage3: The Authority shall then assess the reasonableness of existing User Agreement(s), according to provisions of Clause6;*

3.2 Based on the Authority's review at stage1, stage2 and stage3 where the Regulated Service(s) provided are deemed:

(ii) 'material but competitive,' the Authority shall determine Tariff(s) for Service provider(s) based on a light touch approach for the duration of the Control Period, according to the provisions of Chapter V;

Further, Clause 5 of the said guidelines lay down as under:

“ Competition Assessment

5.1 Where a Regulated Service is being provided at a major airport by two or more Service Provider(s), it shall be deemed 'competitive' at that airport. If a Regulated Service is provided by less than two Service provider(s), it shall be deemed 'not competitive':

Provided that the Authority may in its discretion consider such other additional evidence regarding reasonableness of competition, as it may deem fit.

Explanation: For avoidance of any doubt, the determination of number of number of Service Providers) at a major airport shall include the Airport Operator, if the Airport Operator is also providing Regulated Service(s) at that major airport.”

Therefore, the said Guidelines clearly mandate that where a service is being provided by two or more service providers, the said service would be regulated according to a light touch approach. However, as per the current proposal, ISPs who are operating in a competitive manner would also be subjected to determination of tariff under building block approach. The Authority vide above captioned consultation paper proposes to cap the amount /percentage of Royalty/Revenue Share payable by ISPs to Airport Operators which is contrary to the Service Provider Guidelines.

#### 2.2.3.4 Violation of the existing Concession with ISPs

Without prejudice to the above, it is submitted that the proposal of the Authority to cap the allowable Royalty/ Revenue Share as “ Pass Through” by capping the Royalty/ Revenue Share payable by ISPs to the Airport Operator, will lead to a situation where the addition license fee/ royalty over and above 30% will not be allowed to be passed-through and would be borne by the ISPs which will make their business model unviable and restrict overall growth of aviation in India. When the concessionaire had bid for and agreed to pay the current revenue share based on the fact that the same will be allowed as an operating expenditure. Now by changing the ground rules, the ISP will be required to pay the actual revenue share whereas the operating cost thereof, being restricted by the Authority. This proposal if implemented would alter the contractual arrangement based on which the concessionaires bid for these concessions. This will mean that the ISP will get into losses and business will become unviable. This proposal would also prejudicially impact the concessionaires financial projections based on which concessionaires would have obtained loans from lenders and would lead to poor infrastructure being provided and no funds being available for expansion. This





will lead to litigations by such concessionaires against the Airport Operator, likely result in the fall of revenue Airport Operator, affecting their already precarious financial position and ultimately the fall in revenue share to the Central Government by PPP airports. Thus, this proposal if implemented would be against a healthy development of aviation sector in India.

This will also be against the very objective of recent civil aviation policy related enhancing ease of doing business through deregulation of entire aviation sector chain.

#### 2.2.3.5 **Competition leads to lower charges:**

It is worth that there is significant market competition in the airport services which controls revenues of ISP. Authority has also considered the competition as criteria to allow light touch approach for various ISPs across India only as the prices are market driven. As such there should be a soft touch approach followed for regulating ISPs.

Capping Royalty or license Fee at 30% of Gross Turnover of ISPs is an inefficient price discovery mechanism from the perspective of the Airport Operator as ISPs would not be inclined to bid above the specified cap. Also, as mentioned above, no authority has been conferred by the AERA Act on the Authority to cap such royalty payable by ISPs to Airport operator.

#### 2.2.3.6 **Risk of Regulatory uncertainty**

We would also like to bring to your kind notice that the majority of concessions for various airport services have been awarded following a competitive tendering process. Any change in Regulatory Policy impacting the viability post the investors investing into the venture will add to the regulatory uncertainty prevailing in the Indian economy. This will discourage private as well as global investment in Indian airports infrastructure. This will discourage private as well as global investment in Indian airports infrastructure. This will also add to the cost of borrowing and return on equity being expected from the sector leading to higher charges.

#### 2.2.3.7 **Impact on Airport Charges:**

Further , it is worth noting that the Revenue share from ISPs are a key source of revenue for any Airport Operator and these revenues ultimately subsidize airport user charges given that it impacts the ability of an airport operator to maximize non-aero revenues in a hybrid till framework . Thus, in the event of any reduction in overall revenue of an Airport Operator due to the implementation of the Authority's proposal, it will lead to higher airport user charges. Also important is the fact that the revenue in terms with ISP will lead to actual revenue being lower than revenue forecasted in the tariff proposals submitted by the airport operator and will lead to worsening of financial position of airport operators.



For the above said reasons the proposals as mentioned above, by the Authority are not in consonance with the provisions of AERA Act as well as the concessions granted by the Central Government to the airport operator under the Concession Agreement, hence, the same may kindly be withdrawn.

#### 2.2.3.8 Authority's response:

Some of the points raised by HIAL have already been examined in the earlier paragraphs as the same issues have been raised by MIAL / DIAL. The Authority has only decided to cap the ceiling of royalty/ licence fee/revenue share which can be treated as "Pass Through" expenditure and the need for re-negotiation arises only to protect the financial interest of the ISPs and the Airport Operators are required to cooperate in the larger interest of the viability of operations of the ISPs.

#### 2.2.4 Cochin International Airport Ltd. (CIAL)

2.2.4.1 It is not clear from the consultation paper that whether the capping of percentage of Royalty/ Revenue share payable to Airport operator as a pass through expenditure will be applicable to all the three above mentioned categories or not. Till date, all tariff determination process of ISPs were done on a light touch basis. Further, it is not clear from the outlined in the original approach by the authority.

2.2.4.2 Authority's observation that some of the airports are charging unreasonably high revenue share from ISP's is not factual. Airport Operators have not levied exorbitant charges on ISP's but all these revenue sharing percentage are quoted by ISP's in a competitive bidding process by fully considering their business dynamics and market potential. More over the so called higher royalties/ revenue share received by the Airport operator is actually used to subsidize the aeronautical charges levied. Hence on account of the implicit cross subsidization as envisaged by the till regulation, the benefit of higher revenue share/royalty percentages are presently availed by the Airlines and Passenger community and no inordinate advantage is reaped by the airport operator.

In all the major airports aeronautical tariffs are regulated based on a till regime in which the rate of return is fixed and if the authority starts to regulate each line item of revenue from service recipient side also, it will result in redetermination of each tariff heads over and above the overall tariff determined for aeronautical services. Having determined the overall regulatory philosophy of Airport Tariff determination, the subsequent controlling of each revenue line item of the Airport operator from the hands of service recipients of services is unprecedented in any regulated or unregulated industries in India.

2.2.4.3 Moreover the revenue share/Royalty payables by the ISP's operators are determined through a competitive bidding process. The relevance of the bidding process will be lost, if such a predetermined revenue share/royalty percentage has been fixed by the regulator. This will lead to the cartelization of these activities by a very few players existing in India. It may be noted that only a few ISP's exist in



the field of Ground handling, Cargo handling and Fuel farm. Therefore if an arbitrary predetermined royalty percentage is imposed on to the system, the entire competitive eco system will get disrupted and will culminate into a monopolistic environment. This is against the Spirit of National Civil Aviation policy and the declared position of government of India to promote competition in these areas. This is also contrary to the approaches already followed by the AERA.

2.2.4.4 Another concern which the authority has mentioned in the cited consultation paper was that the profitability of ISP's are low due to the high revenue share/royalty payable by them to the Airport Operator and this act as a limiting factor for the ISP,s to upgrade their quality of service. This premise is again factually incorrect. The ISP's are rendering their services in mainly three areas, i.e. Ground Handling, Cargo Handling and Fuel farm services. We do not subscribe to the argument that these ISP's are incurring losses or not able to upgrade their quality of service, only, on account of High royalty /revenue share payable to Airport operator. Moreover these expenses were all along a pass through for ISP's hence question of incurring losses in the past period would not have arisen. All these three sectors have different business dynamics and cost structures contributing to their overall business performance and the assumption of increasing the overall business performance of ISPs based on regulating a single item of cost is inappropriate. More over adopting a single percentage cap for all these different sectors with varying revenue and cost structures itself is incorrect.

It is practically impossible to levy 30% royalty /revenue share for fuel farm and cargo handling services and the reduction the royalty percentage of Ground handling activities will result in the pushing up the royalty percentages of the fuel farm and cargo handling services. Moreover, mere reduction of one element of cost will not benefit the users, since, cost have an inherent nature of settling into other items of cost when a single item of cost is regulated. These sort of arbitrary reductions in single items of cost will lead to determination of quality of service and will pave the way for the creation of monopolies in these sectors.

2.2.4.5 Another major assumption under which the consultation paper has relied upon is that these charges are meant to acquire right to do business in the airport and do not have any relevance to costs incurred by airport operator. This premise is very much erred. Any right to do business can only be given by somebody who creates a tangible or intangible assets, which itself is a very cost intensive proposition. We cannot infer that the Airport operator has not incurred any cost relating to the use of these assets. It is very difficult to quantify the cost on a per usage basis by which the ISP's provide services to their clients. Therefore in order to bridge the mismatch, a royalty/revenue share is arrived through a competitive bidding process. All these have linkages with cost and we feel that competitive process is the right method to discover the price of service rather that prescribing any arbitrary uniform percentage rates to all these services without considering the factors like nature, quality of service, competitiveness, relevance of cost and industry best practices.



In view of the above, we would earnestly urge the authority to reconsider the proposal of capping a single revenue/royalty share payable to Airport operator by ISP,s and if at all the authority proposes to implement the proposals mentioned in the cited consultation paper, the following factors may specifically addressed to

- i. Existing agreements and instances where bidding process have been initiated, the cutoff date for allowing the existing /quoted, royalty/revenue share percentage as a pass through expenditure may be extended from 31.05.2019 to the currency to the contract.
- ii. Any renegotiation with ISP's in revenue sharing agreements already entered should not be insisted and existing agreements may be honoured until the expiry of the agreement.
- iii. If at all the renegotiation is insisted for reducing the rate for one or two services such as ground handling and/or cargo, then the airport operator may be permitted to revise upward the revenue share/royalty for other category of services such as such as fuel farm in order to protect the total revenue earned out of these three services. This will ensure that the other aeronautical charges such as landing, parking, UDF etc. are not affected.

#### 2.2.4.6 Authority's response:

Some of the points raised by CIAL have already been responded to earlier. It is clarified that the capping of royalty revenue share is applicable to all three categories of services namely Cargo, Ground Handling and Fuel Through Put charges.

The Authority is of the view that any cartelization of the activities by a few players will not happen only because of ceiling on allowing royalty/licence fee/ revenue share payable by the ISPs to the Airport Operators as "Pass Through" expenditure. Wherever the Airport Operator is providing infrastructure facilities, he can charge for the same within the ceiling of 30% of revenue to ensure reasonable return on the investments made. Similarly, in case of changes due to re-negotiation of existing contracts, the consequent reduction in royalty/licence fee/ revenue share will be considered while determining the tariff for Airport Operator at the time of truing up of the previous control period.

ISPs may not have complained so far against high royalty/licence fee/revenue share charges as at present the entire amount is being treated as a pass through expenditure for them. However, it is noted that the quantum of royalty/licence fee/revenue share varies largely from Airport to Airport and Service to Service. In one case, the quantum of royalty fee is 80% of revenue earned. There is a large disconnect between the actual cost of service rendered and rate charged to customer due to the effect of high royalty.



## 2.2.5 Bengaluru International Airport Ltd. (BIAL)

- 2.2.5.1 AERA has to take into consideration the concessions offered by the Central Government in any agreement or memorandum of understanding or otherwise.
- 2.2.5.2 The Concession Agreement executed between BIAL and Ministry of Civil Aviation, Government of India and in particular 10.2.2 read with Schedule 6 provides a list of charges that are to be regulated. Cargo, ground handling and fuel firm services are excluded from the ambit of regulation under Schedule 6.
- 2.2.5.3 Since the Concession Agreement provides for certain specific concessions and exemptions to BIAL, BIAL cannot be subject to a regulatory exercise contrary to the Concession Agreement and thus BIAL should be excluded from the applicability of the present consultation paper.
- 2.2.5.4 AERA's CGF Guidelines, 2011 have been determined by light touch approach for a multitude of service providers also known as indisputably provides for intrusive regulation i.e. Price Cap approach which is quite the opposite of regulation by light touch approach which is quite the opposite of regulation by light touch approach.
- 2.2.5.5 BIAL requests the Authority to consider that a one size fits all approach is not apt. There may be situations where the airport has created the infrastructure and likewise, there may be other instances where the ISPs have created the infrastructure. So, accordingly, the royalty should be capped.
- 2.2.5.6 The airport is well within its ambit to expect revenue share for enabling access to the market for accessing the market by the ISPs.
- 2.2.5.7 Even if there is a ceiling/cap on the revenue share, there is no certainty that the ceiling or cap will necessarily result in either reduction of charges and/ or provision of better facilities.
- 2.2.5.8 As regards case fuel firm activity, ABAIL has an Operating Agreement with the fuel firm operator and the throughout fee is determined as per the Agreement. Hence, the airport operator fees needs to be considered as a separate component collected by the Fuel farm operator as a separate component collected by the Fuel farm operator on behalf of BIAL and not consider this as a revenue share.

### 2.2.5.9 Authority's response:

Some of the points raised by BIAL have already been responded to earlier. Regarding BIAL's request for excluding it from the application of the present CP, it is not possible to agree to the request.

The Authority decides that ceiling for allowing royalty/licence fee/ revenue share as "Pass Through" expenditure will be made applicable only under "price cap approach".

## 2.3 Cargo, Ground Handlers

### 2.3.1 Air India SATS Airport Services Pvt. Ltd. (AISATS)

- 2.3.1.1 The Domestic Carriers are permitted to do self-handling as per the National Civil Aviation Policy which directly impacts the Ground Handlers who are left with



international carriers having few flights as compared to huge volume of Domestic Carriers. Any change in the royalty structure will have adverse effect on the financial health of ground handling business.

2.2.3.2 AISATS is of the opinion that status quo should be maintained regarding Royalty/ Revenue Share till such time a comprehensive ground handling policy evolves including all domestic and international carriers and the market dynamics will evolve the appropriate revenue sharing structure.

2.2.3.3 **Authority's response:**

It is stated that in the context of domestic carriers being permitted to do self-handling as per the NCAP, the ground handlers would be left with international carriers having few flights and that any change in royalty structure will have adverse effect on the financial health of the ground handlers. But it is not clear how that capping of "Pass Through" expenditure of royalty/licence fee/ revenue share will affect the ground handling business pertaining to international carriers only.

**2.3.2 Bird Worldwide Flight Services (BWFS)**

- 2.3.2.1 The concession fee/ Royalty fee/ Revenue share at each of the airport is different because of bidding process. As desired in the Consultation paper At all the airports mentioned above, we are operating along with other ground handler(s) and face more than required competition.
- 2.3.2.2 Charges for ground handling services comprises of three key components i.e. (a) Average cost of operations, (b) revenue share and (c) applicable taxes which at present is service tax at applicable rates.
- 2.3.2.3 We as GHA, in most of the cases, are required to quote fixed rates for three years while all operating cost components are increasing on a daily basis. Therefore, year on year basis, the cost of operations increase whereas revenue factor remains stagnant which puts pressure on the bottom line.
- 2.3.2.4 Airlines obtain multiple quotes from different GHAs and compare the offers. Lowest quotes are still negotiated to lower the prices and inclusion of free services.
- 2.3.2.5 Non- concession Airports e.g. Ahmedabad, Goa etc. levies a fixed Royalty Fee on all agencies working at the airport which are known in advance to airlines and all agencies. Such royalty fee is not opted by the ISPs.
- 2.3.2.6 At airports where Concessionaires have been appointed through competitive bids, due privatization, the airport operators aim to provide better environment, efficiency and services to airlines and passengers. All such Aims consume efforts and resources and hence, higher operating costs.
- 2.3.2.7 Financial situation of our ground handling operations is not in a position to take burden of the suggestion made in the Consultation Paper.
- 2.3.2.8 We suggest that the total cost of a flight at each of the airport should be compared and if any of the airport operators margins are very high, such airport operator should be asked to rationalize their other charges such as CUTE, UDF, Landing charges, Parking charges etc.



2.3.2.9 Another suggestion emerge from the fact that most of the domestic airlines are doing self-handling which does not attract revenue share. In case ISPs are providing ground handling services to domestic airlines, the same may also be excluded from the ambit of revenue share.

2.3.2.10 **Authority's response:**

The points raised by BFWS have been replied in the previous paragraphs of the Authority.

**2.3.3 Express Industry Council of India (EICI)**

2.3.3.1 The Authority's proposal to cap Royalty and Revenue Share payable to Airport Operators. We do not agree that there should be a blanket cap of 30% on Royalty as it is excessive. As this area has remained un-regulated there has been a manifold increase in royalty rates charged by private airport operators. In the past prior to privatization the royalty rates ranged from 5% to 13% and were later increased to 19%. As the private airport operators raised their royalty charges, Airport Authority of India (AAI) soon followed suit and on 1st August, 2012 increased it to 32.5% as there was no regulatory restriction in place. At present certain airport operators are charging royalty rates as high as 45%. It is also pertinent to add that given that the Authority as per its own benchmark caps profits for the Independent Service provider (ISP) and the Airport Operator, a 30% cap on royalty is not only incommensurate but makes the actual cost of service inflated by almost 45% which is neither just nor desirable for the airport sector and clearly shows an artificial increase in costs.

2.3.3.2 Need for cap on royalty: As pointed out by the Authority, some of the airport operators are charging unreasonably high royalty/revenue share from the ISP's. Further there is no regulation at present to deter charging of exorbitantly high rates of royalty revenue share by the Airport Operator. The rates charged for services do not seem to be commensurate with the cost or quality of service provided, which in certain cases does not even entail providing any service.

2.3.3.3 It is pertinent to add here that while AAI was a government undertaking and the royalty rates were always within control as AAI being a government agency also had the mandate to ensure that there is no unjust enrichment and transaction costs were contained. However after privatization of airports and with no regulation royalty rates have been a tremendous increase which has been on no rational or logical basis thereby making transaction costs of doing business prohibitive.

At present royalty is charged from almost all ISPs without any justification or logic. Royalty charges appear to be one loophole, as they are unregulated hence provide revenues to airport operators without any cap. in the absence of any clear guidelines not only do airport operators demand any rate of royalty without any fear, even the services for which royalty may be demanded are unclear.



Royalty has in effect become a toll at the airport gate and anyone entering the airport is asked for royalty. Despite charging royalty to ISPs in certain cases even if a vendor provides a service to the ISP such service provider of input services too has to pay royalties. Hence in effect the royalty is charged at the input stage and the output stage or double royalty.

It is pertinent to add that the issue of Royalties is a much larger and complex question as has been extolled in various judgments of the Apex Court on the issue of whether royalty is a tax or a charge and if so what is the Constitutional mandate and statutory enactment which permits charging of royalties. Hence without verifying the legal provisions permitting charging of royalties no cap should be decided. Once the legal provisions are studied and verified and the justification for charging royalties is established, then only should any cap be decided upon. The cap has to be based on certain objective criterion and not arbitrarily fixed.

2.3.3.4 What is royalty and why applicable: In order to understand the need for capping royalty fees, we first need to understand as to what is royalty and what is the justification for charging it.

Blacks law dictionary defines Royalty as under:

“A payment reserved by the grantor of a patent, lease of a mine, or similar right, and payable proportionately to the use made of the right by the grantee.”

“A royalty is a payment to an owner for the use of property, especially patents, copyrighted works, franchises or natural resources. A royalty payment is made to the legal owner of the property, patent, copyrighted work or franchise by those who wish to make use of it for the purposes of generating revenue or other such desirable activities. In most cases, royalties are designed to compensate the owner for the asset’s use, and they are legally binding.”

Business Dictionary definition of Royalty rate:

“The royalty rate or the amount of royalty charged per product or service depends on the type of royalty fee for which a party is paying. “Origin of the word royalty. Late Middle English: from Old French roialte, from roial (see royal). The sense ‘royal right (especially over minerals)’ (late 15th century) developed into the sense ‘payment made by a mineral producer to the site owner’ (mid-19th century), which was then transferred to payments for the use of patents and published materials.

The above makes it clear that a royalty may be charged as a fee in lieu of a grant of a right or a concession by the person charging the royalty. Hence royalty payments are in lieu of a concession granted by the Airport operator to the ISP or say an opportunity to cost i.e. had the Airport operator performed the same service on its own. Hence the royalty can only be capped at the amount that an Airport Operator would have earned had he performed the service himself. This is the key underlying rationale for charging a Royalty fee by the Airport Operator.





Clearly the quantum of royalty cannot be more than what the Airport Operator would earn if he performed the same service himself, which he is permitting the ISP to perform it defies all logic as to how they can claim high royalties as high as 32.5% or even 45% in some cases. This would amount to legitimizing returns of 45%.

It is also pertinent to point out that in most cases Royalty and rent in terms of License Fee are charged at the same time. This is a windfall for Airport Operators as not only do they get rent for the land they provide, they also get profits based on investments made by the ISP. In the Minimum Guarantee model a minimum fixed royalty fee is also charged irrespective of the revenues generated by the ISP. In the absence of clear guidelines this practice continues and it is imperative that AERA set out clear guidelines for the same.

**2.3.3.5 Impact on high royalties: As a result of non-regulation of Royalties the following consequences emerge**

- The profitability of the ISP is low due to high rate of Royalty payable by ISP to the Airport Operator
- This limits the capability of the ISP to upgrade facilities and quality of service to keep costs down
- There is no incentive for the Airport Operator to invest in expansion and modernization of facilities as his royalty is fixed and even guaranteed in some cases.
- The ultimate user bears these additional charges and very often they are unaffordable thereby limiting the growth of the sector.
- Increase transaction costs of doing business in India.
- There is no direct co-relation between costs incurred by airport operator and the Royalty charged which is arbitrary and hence therefore not consistent with the policies of ICAO relating to tariff determination.
- Even if Royalty is capped, other charges will be increased and it is imperative that an alternate mechanism for monitoring increase in demand from Airport Operators is worked out to ensure that capping does not lead to increase in other demands.

**2.3.3.6 Royalty in the context of an airport operator and factors to be considered.**

In the context of an airport operator in order to fix the rate of royalty, instead of a blanket cap, the cap should be based on certain rational and tangible considerations which include the following:

- In the Airport Operator providing any service and if so is he paying service tax for providing such services.
- What are the investments made by the Airport Operator for the ISP based on which the demand for royalty is being made
- What is the profit margin of the Airport Operators and is it consistent with the Royalty being demanded as the royalty cannot be in excess of the profit percentage of the Airport Operator

- What are the risks that the ISP takes and what is the risk of the Airport Operator
- Impact on growth of the sector
- Impact of Royalty rate on sustainability and growth of service
- Overall transaction cost to end user

2.3.3.7 Hence our recommendations are as under:

- A thorough review of the legal basis of charging royalties be undertaken before any decision permitting royalties is taken
- Detailed guidelines be issued defining the circumstances in which royalty may be charged more specifically if they can be charged on input costs such as engagement of vendors.
- In view of the above the Authority should call for a more detailed study of the factors outlined above based on which clear guidelines should be issued for determination of the cap on the Royalty rate rather than a blanket cap cutting across all sectors.
- The Royalty if legally tenable should be capped to a maximum of a low single digit logically derived.
- Based on the recommendations, a time frame for renegotiation of the Royalty rates should be given to ensure that the reduction in royalties has a tangible impact on the reduction of the overall cost for end users.

2.3.3.8 **Authority's response:**

Some of the points raised by EICI have already been responded to earlier. Regarding EICI comments on royalty being charged at both input (to ISPs) stage and output (by ISPs) stage, it is for the Airport Operator to ensure that double royalty is not charged on the same transaction.

As regards EICI's comment on capping the royalty at the amount that an airport operator would have earned had he performed the service himself is very difficult to estimate and hence the suggestion is theoretical.

As regards the comment on minimum guarantee model, it is for the ISPs to not agree for such models as any royalty/licence fee/revenue share unlinked to the gross revenue earned which will make the business unviable in an adverse scenario.

## 2.4 Associations and Airlines

### 2.4.1 Air Cargo Handlers Association of India (ACHAI)

- 2.4.1.1 Revenue Share/ Royalty paid are in accordance with the market valuations and represent a fair cost of the opportunity that the market offers.
- 2.4.1.2 ISPs do not compromise with their quality of services even if their profitability levels are not adequate



- 2.4.1.3 ISPs use the opportunity at the airport to do their business for which they pay Revenue share/ Royalty.
- 2.4.1.4 ISPs have not only to recover their invested capital but also earn a reasonable return on their investment.
- 2.4.1.5 It will be gross injustice to the ISP to expect ISPs to forgo any part of their bona-fide expenditure but that should be done in consultation with the Airport Operator concerned.
- 2.4.1.6 The Authority is infringing upon the right of an ISP to earn a reasonable return on his investment along with the recovery of its capital by limiting the revenue share
- 2.4.1.7 Government of India is urged to put an upper limit, by means of a legislative process, on Revenue Share/ Royalty that are charged by Airport Operators from the ISPs for all the future contracts.
- 2.4.1.8 The existing contracts should be allowed as "Pass Through cost for determination of tariff" until its tenure as these existing contracts are already signed for long terms basis and cannot be renegotiated, and some of the contracts are signed with Govt. of India.

2.4.1.9 **Authority's response:**

As the Authority determines the tariff for various aeronautical services, its regulation will be limited to ensuring reasonableness of the major costs and hence pass through of the entire cost as incurred by ISPs is not feasible when such costs are found to be exorbitant.

**2.4.2 Air Passenger Association of India (APAI)**

- 2.4.2.1 As the airport operators charge very high royalty share from ISPs and ISPs, in turn, pass on the burden to the passengers, ultimately, the passenger carry the burden of high levy.
- 2.4.2.2 ISPs are awarded the service after following the due process of tendering and the ISP, in advance, knows that how much the ISP would have to part with.
- 2.4.2.3 Single till approach should be adopted instead of Hybrid till.
- 2.4.2.4 Airport Operators shall be reined in and the benefits will be passed on to the passengers.
- 2.4.2.5 Royalty should be scrapped, as it is the legacy of British period and royalty means that the 'payments made to the idea inventor'.
- 2.4.2.6 Royalty charged does not commensurate with the service of quality provided by the ISPs.
- 2.4.2.7 High rate of royalty share leads to less profit of ISPs resulting in a deterrent in modernization of the facilities.
- 2.4.2.8 Existing contracts between ISPs and Airport Operators shall be continued till 31.05.2019 and thereafter, new contracts shall be entered into, as per the AERA guidelines of Royalty Capping.
- 2.4.2.9 Proposed Royalty Capping Guidelines are not ICAO compliant.



#### 2.4.2.10 Authority's response:

As the practice of charging royalty/ license fee/revenue share has been in existence for a long time it may not be possible to scrap the same in one stroke. Besides, this may necessitate a change in our economic regulation. The endeavor will be to move towards a scenario when the Airport Operators will be charging for the infrastructure made available by them at a rate which will provide a reasonable return on their investments.

### 2.4.3 Business Aircraft Operations Association (BAOA)

2.4.3.1 'Royalty' is a legacy of British India and used to be called '*Lagaan*' during pre-partition times. Even the dictionary meaning of 'Royalty' disqualifies it to be part of costing at a 'Public airport'. Royalty has been defined, in accounting terms, as 'payments made to someone whose invention, idea or 'property' is used. Therefore, at public airports charging royalty, over and above charges for aeronautical services, is illegal, unethical and akin to being an 'organized loot'

2.4.3.2 AERA Act makes it obligatory on part of AERA to fix charges of all aeronautical services at a public airport on 'cost plus basis' as provided in SSA, including Independent Service Providers (ISP's) giving cargo facility and 'supply of fuel'.

2.4.3.3 Once the charges are fixed in a rational and 'cost-plus' basis, allowing 14-15% return on investments, the airport operator at a public airport, whether, AAI or 'under PPP', should not be allowed to charge any amount above the AERA's prescribed ceiling to the public.

2.4.3.4 The Consultation Paper has not addressed the issue of maintenance hangars at a public airport functioning under CAR 145 approvals.

2.4.3.5 AERA should immediately fix license fee/ rental for maintenance hangars at all 'public airports' as per provisions of AERA Act and completely remove additional fee/ charges under any head, like 'royalty' or 'revenue sharing' etc., being charged, hitherto.

#### 2.4.3.6 Authority's response:

So far the Authority has not determined the tariff for hangars. The issue may be taken up separately at a later date.

### 2.4.4 Blue Dart

2.4.4.1 The royalty charges are levied only for providing access to the Independent Service Provider (ISP) to the airport, and should therefore be very nominal in nature and not substantially increase the cost of services provided by ISP.

2.4.4.2 The Royalty Charges/ Revenue Share charged by Airport Operators is not in consonance with European Union Regulations, where the same is prohibited.

2.4.4.3 Royalty Charges/Revenue Share payable to airport operators by ISP are made part of the total operating expenditure of ISP and the same has been collected by ISP from the users of the services. The said charges do not substantially increase the cost

of the services availed by the users, without adding any value thereby limiting the growth of the sector.

2.4.4.4 Royalty charges/Revenue Share charged by airport operator are calculated on an ad-hoc basis and do not have any relevance to the cost incurred by airport operator. As AERA rightly pointed out in the consultation paper, the same are not consistent with the policies of ICAO related to tariff determination.

2.4.4.5 AERA to kindly eliminate the royalty charges in line with European Union regulations. In the unlikely event that this is not deemed acceptable, it is requested that AERA cap the royalty charges to 5% to promote the growth of aviation sector.

2.4.4.6 **Authority's response:**

The comment on capping royalty at 5% has been noted by the Authority but the Authority is of the view that at this juncture it is prudent to have a median rate of 30% considering overall rates charged as royalty/licence fee/ revenue share on Cargo / Ground Handling services.

2.4.5 **Go Air**

2.4.5.1 Costs are being multiply layered currently for services procured for an aircraft to take flight. Besides a fair margin charged by the service provider, huge amount of 'royalty' is being charged by airport operators ranging from 13% to 40% at various airports. Not only does this apply to ground handling and cargo services, it is also levied on food and fuel from in-flight kitchens and fuel companies. This is borne by the airlines, thus having a significant bearing on overall cost of air travel for the end consumer. It is such kind of multiple layering that is raising the cost of air travel taking the masses away from flying.

2.4.5.2 Airports across our country are the nation's gift to the public as a worthy asset. Activity associated with the preparation of a flight can only be undertaken at an airport and practically nowhere else. Levy of royalty is not a global practise and needs to be differentiated from the charge of rent

2.4.5.3 Levy of royalties on ground handlers will only make availing the services of a concessionaire unattractive as compared to self-handling by airlines directly or through their subsidiaries. From the technical services view, MROs are exempt from royalty under NCAP

2.4.5.4 Abolishing royalty will truly support the viability of NCAP. Reduced cost benefit will translate to affordable air travel, use of funds in training, deployment of low emission vehicles and improving local air quality will support the arch principles of the NCAP

2.4.5.5 **Authority's response:**

Regarding Go Air's comment on levy on food and inflight kitchen, at present, AERA is not determining the same and they are not treated as aeronautical services rendered by airport operators.

## 2.4.6 Association of Private Airport Operators (APAO)

2.4.6.1 The Authority after undergoing elaborate consultation process had issued Orders and Guidelines regarding tariff regulation of cargo, Ground Handling and Fuel throughput services. In the said regulation notified by AERA it was mentioned that if the quantum of service provided by ISPs at the Major Airport is not material and if material but competitive then the tariff is determined on 'light Touch Regulation'. In such a situation fixing a cap for royalty /revenue share by AERA is totally against AERA's own mandate. A Light Touch Regulation approach cannot have a predetermined cap for royalty.

2.4.6.2 Authority in its Order considered the competition as criteria to allow light touch approach for various ISPs across India and because of this the royalty /license fee today are market driven. As such there should be a soft touch approach for the service and royalty /license fee for ISP business. The consideration of 30% limit is totally arbitrary and not supported by any sound reasoning or justification. The artificial cap on license fee /royalty at 30% will also lead to inefficient price discovery as concession fee determination is dependent on several factors including quantum of Capex investments made, business volumes, prevailing competition etc.

2.4.6.3 It is worth noting that the license fees from ISPs are a key source of revenue for any Airport Operator and these revenues ultimately subsidize airport user charges. Thus, in the event of any reduction in the overall revenue of an Airport Operator due to the implementation of the Authority's proposal, it will lead to higher airport user charges. Also important is the fact that the revenue from these sources have been forecasted by airports based on existing concession terms. Any change in terms with ISPs will lead to actual revenue being lower than revenue forecasted in airport's tariff model. This will lead to worsening the financial position of airport operators. Further, a cap on royalty percentage may not necessarily bring in reduced ground handling rates as this percentage may be arrived is applied on a range of rates. Hence, if percentage is reduced, market tends to fix the rates at the highest range of rates. If at all a cap on royalty is to be made, then the percentage may be arrived on some rationale basis or on a detailed guidelines. The guidelines can inter-alia look into the rates based on an imposed percentage arrived without any scientific/ analytical basis. Further, if the royalty rate is capped at the hands of the ground handling service providers which will eventually only benefit the airlines. Hence the airlines alone will derive unjust enrichment from the hands of Ground Handling operators and airport operators.

2.4.6.4 The Authority has proposed that the pass-through of royalty will be restricted up to 30% of Gross Turnover of Regulated services. In such a scenario the additional license fee/royalty over and above 30% will not be allowed to be passed-through and would be borne by the ISPs which will make their business model unviable and restrict the overall growth of aviation in India. When the concessionaire for Regulated Services had bid and obtained the contracts there were no such criteria envisaged. The concessionaire had bid for and agreed to pay the current revenue share based on the fact that the same would be allowed as an operating



expenditure. Now by changing cost thereof, being restricted by the Authority. This proposal if implemented would alter the contractual arrangement based on which the concessionaires bid for these concessions. This will mean that the ISP will get into losses and their business will become unviable. This proposal would also prejudicially impact the concessionaire financial projection based on which concessionaires would have obtained loans from lenders and would lead to poor infrastructure being provided and no funds being available for further expansion. This could also lead to potential litigations by such concessionaires against the airport operator and likely result in the fall of revenues of the airport operator, thereby affecting their already precarious financial position. This ultimately would result in fall in revenue share to AAI by the PPP airports. Thus, this proposal if implemented would be against a healthy development of aviation sector. This will also be against the very objective of the recent National Civil Aviation Policy (NCAP) related to enhancing ease of doing business through deregulation as well as promotion of entire aviation sector chain.

2.4.6.5 This proposal of Capping Royalty by the Authority is flawed because all ISPs cannot be treated under single category. There are different categories of concessions where entire assets created by the Airports or existing assets belonging to Airport operator are made available to concessionaire resulting into higher revenue share where depreciations and return on RAB is not there in such concessionaire. Hence users may continue to pay lower charges in spite of higher revenue share. Another category can be of Greenfield facility under competition with other facility which is with or without Revenue share to the Airport Operator. In view of the above a general stand by the Authority, considering all categories in the same manner is totally flawed and unjustified. In view of the aforesaid and unique nature of each of such concession, it is necessary that case is death by the Authority individually on its merit.

2.4.6.6 Investments for a regulated utility like Airport sector will continue to be forthcoming only if investors receive a return on their investment commensurate with the perceived risks. Investors are vulnerable to Regulators changing the rules of the game after the investments have been made. In such situations they will be less willing to invest additional funds if they are not certain of the broad rules of the game. This uncertainly will discourage the potential investors in investing in Indian environment enabling all stakeholders to anticipate the context for future decisions and to make long term investment decision with certainly. Piecemeal, ad hoc or unanticipated changes in regulatory services. AERA must be consistent in its approach in regulated the ISP business. Setting a cap on Royalty/License fee for a business which is already regulated in the Light touch regime will definitely send the wrong signal to potential investors in this sector.

2.4.6.7 **Authority's response:**

The points raised by APAO have been replied in the earlier paragraphs.



## 2.4.7 IATA

- 2.4.7.1 These royalties and revenue share which have no relation to any cost for the airport are being simply passed through by the ISPs to the Airlines. IATA welcomes AERA's recognition of the adverse impact of this flawed practice on the industry.
- 2.4.7.2 As the consultation document rightly points out, the high royalty fees being charged by airports are simply allowed as a pass-through under the light touch approach adopted by AERA for regulation of the ISPs. This practice has resulted in artificially high charges being passed through to the airlines – without any relation to service levels, quality of service, competition or the impact on consumers.
- 2.4.7.3 ISPs bidding for the operating rights at an airport are motivated to bid at artificially and excessively high levels of revenue share, without consideration for their bids being commensurate with cost or quality of service. This is of course due to the fact that the system allows for the existence of these royalty fees which are then allowed to be fully passed-through to the Airlines. This is a fact which AERA has recognized in the Consultation Paper. The issue at hand is not only about competition, but how competitively and reasonably priced services by ISPs can be better achieved without imposition of such unjustifiable royalties. IATA is aware of at least one case where an airport operator has attempted to unilaterally impose a hike in the Royalty (more than doubled) without any due justification given.
- 2.4.7.4 IATA would like to highlight that ICAO Doc 9082 (Para 10 section II refers) indicates that concession revenues directly related to the operation of air transport services (such as fuel, in-flight catering and ground handling) should not be maximised. Regular escalation of concession fees runs against the guidance of ICAO. AERA's Consultation paper too has correctly recognized that the levy of such charges are not consistent with the policies of ICAO relating to tariff determination. It is unclear then why AERA is still proposing to allow, albeit with a cap, concession revenues solely for the right to do business on these services.
- 2.4.7.5 Annual escalation of these royalties continue to pile on cost with no upper limit. An annual escalation is unjustifiable as there is no inflationary factor in a non-cost related charge. A cap will put a stop to this unsustainable and unjustifiable practice. IATA does not support royalties and recognizes that AERA's proposal to implement capping is a step in the right direction, though it should be more ambitious.
- 2.4.7.6 In the area of fuel specifically, the airport levies a concession fee in the form of a Fuel Throughput Charge (FTC). This FTC charge is levied on fuel suppliers which AERA does not consider as ISPs. Nonetheless, such a concession fee should also be included in the ambit of this consultation as it is a market access fee with no cost basis that is applied to a critical aspect of air transportation and impacts directly the cost of provision of air transport services. The capping for the FTC is not on gross turnover of the supplier but should be benchmarked to the levels previously paid by suppliers to the Airport Authority of India prior to the privatization of Indian airports of 57.88 INR/KL.
- 2.4.7.7 Capping of Royalty Fees for ISPs (including into-plane service providers), IATA believes that a 30% cap on Gross Turnover is much too high and would still burden the industry with a significant cost – an outcome that the capping is





intended to avoid. We believe that AERA should aim to not allow any royalty fees. However, if AERA intends to continue to allow them (with a cap), a more appropriate level that we believe is sustainable for the industry, is a cap of 5%. AERA's current proposal of 30% cap is far higher than the levels arrived at after a very detailed analysis at some of the other successful airport hubs in the region.

#### 2.4.7.8 Authority's response:

The Authority has carefully examined the suggestions of IATA where separate Royalty/ License fee/revenue share is added to cost of fuel by ISPs or the fuel suppliers, the Authority has decided to Cap the "pass through expenditure" at 5%.

3. AERA determines tariff for all aeronautical services taking into consideration the capital expenditure required to be incurred for improvement of airport facilities, timely investment in these facilities, providing a reasonable return on such investments and the cost for maintaining/ improving efficient and economic operations at the airports. In the absence of any law prohibiting collection of royalties from concessionaires and with royalties being charged at rates rising steeply in the airport sector, it has become necessary to at least fix ceilings on the royalty/licence fee/revenue share that can be borne by the customers taking into account the conventions and trade practices in the aviation sector.

The Authority has carefully evaluated the comments provided by stakeholders and decides to cap the amount allowed on "Pass through expenditure out of the Royalty/Revenue share payable by Independent Service Providers as per the rate given at para 2A for determining the tariff of ISPs. The caps as above will apply only in cases where intrusive/ Price-Cap approach is adopted for determining the tariff. It is clarified that the rent for land/ space is not included in the ceiling prescribed below, which may be charged on a fair basis comparable to the amount charged to other users. It is further clarified that this order shall not prohibit Airport Operator to fix a higher rate of Royalty/Revenue share with Independent Service Providers, however the Authority will restrict the Royalty/Revenue share as "Pass Through" expenditure in accordance with this order for determining the tariff of Independent Service Providers.

4. In line with Government of India, MoCA notification dated 15<sup>th</sup> December, 2017 the Authority also decides that:

- a) No royalty is payable in case of self-handling by Airlines and,
- b) At all airports, the JV or the subsidiary of Air India shall match the lowest royalty paid by the other ground handling agencies.

5. The Authority also decides to allow a time of 24 months for implementation of the order for existing contracts in line with the concept of transition period mentioned in the CP.

#### **ORDER :**

1. The Authority, in exercise of powers conferred by Section 13(1)(a) of the Airports Economic Regulatory Authority of India Act, 2008, and after careful consideration of the comments of the stakeholders on the subject issues, decides and orders that :



2A. The Authority has decided to Cap the amount allowable as Pass Through Expenditure out of the Royalty/Revenue share payable by Independent Service Providers for determining the tariff of ISPs, as given below:

- (i) Into Plane Fuel Services : 5% of Gross regulated revenue
- (ii) Cargo/Ground Handling/Other Services (including Fuel Throughput): 30% of Gross regulated revenue of the ISP.

This will be applicable to all cases where the Authority decides not to resort to light touch approach and takes up intrusive tariff determination on cost plus basis.

2B. The Authority will consider the land rent over and above the royalty/licence fee/ revenue share only to the extent the amount is fair and is comparable to that charged to other users.

2C. Where a separate Royalty/License Fee/Revenue share is added to cost of fuel by ISPs/ Fuel Suppliers, the Authority has decided to cap the 'Pass Through Expenditure' out of such royalty/ licence fee /revenue share at 30% of gross revenue.

2D. The pass through expenditure with regard to Royalty/ License fee/ Revenue share will be computed on estimated gross revenue for future years with the ceiling rates mentioned at 2A (i) and (ii) subject to true up on actual basis.

3. The ceiling on royalty/ licence fee/ revenue share allowable as "Pass through Expenditure" shall be considered for all contracts entered into, after issuing of this order, by ISPs for whom the tariff is determined under 'Price-Cap approach'. In the case of existing contracts between the ISP and airport operator, the actual fee/ royalty/ revenue share payable to airport operator will be allowed as "Pass Through" cost up to **31/03/2020** for determination of tariff.

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AERA

By the Order of and in the  
Name of the Authority

  
(Puja Jindal)  
Secretary

To

All Airport Operators and Independent Service Providers at Major Airports.

Copy to:- Secretary, Ministry of Civil Aviation, Rajiv Gandhi Bhawan, New Delhi – 110003.



**List of all Airport Operators and Independent Service Providers at Major Airports.**

- 1. Shri Guru Prasad Mahopatra,**  
IAS, Chairman,  
Airports Authority of India,  
Rajiv Gandhi Bhawan,  
New Delhi.
- 2. Shri V.J. Kurian, IAS,**  
Managing Director,  
Cochin International Airport Pvt. Ltd,  
Ndedumbassery, Kochi Airport P.O.,  
Ernakulam – 683 111, Kerala.
- 3. Shri K Narayana Rao,**  
Director,  
GMR Delhi International Airport Pvt. Ltd,  
New Uran Bhawan, IGI Airport,  
New Delhi – 110 037.
- 4. Shri S.G.K Kishore,**  
Chief Executive Officer,  
GMR Hyderabad International Airport Pvt. Ltd.,  
GMR Aero Towers, 4<sup>th</sup> Floor,  
Rajiv Gandhi International Airport,  
Shamshabad, Hyderabad – 500 409.
- 5. Shri Rajeev Jain,**  
Chief Executive Officer,  
Mumbai International Airport Ltd (MIAL),  
CSI Airport, 1st floor Terminal 1B ,  
Santacruz (E), Mumbai- 400 059
- 6. Shri G.V. Sanjay Reddy,**  
Managing Director,  
Bangalore International Airport Pvt. Ltd.,  
Alpha-2, Administration Block,  
Bengaluru International Airport,  
Devanahalli, Bangalore – 560 300.
- 7. Shri Sunil Dutt**  
Chief Executive Officer,  
Chandigarh International Airport Ltd.  
New Civil Air Terminal Village,  
Jureri, Mohali – 140306, Punjab
- 8. Shri Jayakrishnan Sivadasa Kurup,**  
Chief Financial Officer,  
Kannur International Airport Ltd.,  
“Parvathy”, T.C. 36/1,  
N.H. Bypass, Chacka,  
Thiruvananthapuram, Kerala – 695024



9. **Shri Vijay Mulekar,**  
Senior Airport Director,  
MIHAN India Ltd.,  
Dr. Babasaheb Ambedkar International Airport,  
Nagpur Maharashtra 440005
10. **Shri T S Dupare,**  
Chief Financial Officer & Company Secretary,  
Indian Oil Skytanking Pvt. Ltd.,  
Fuel Farm Facility,  
Benguluru International Airport,  
Devenahalli, Bengaluru,  
Karnataka - 560300
11. **Ms. Geeta Venkatesh Iyer,**  
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CSI Airport, Opp. ITC Maratha,  
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12. **Shri Akash Tiwari,**  
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Bharat Stars Services (P) Ltd.,  
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13. **Shri Soumyabrata Bhattacharya,**  
Company Secretary,  
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Aviation Fuelling Station,  
Shahbad Mohammad Pur,  
IGI Airport, Near Sector – 8,  
Dwarka Metro, New Delhi-110061.
14. **Shri Saji Basheer,**  
Managing Director,  
M/s Kerala State Industrial Enterprises Ltd.  
St. Joseph Press Building, Cotton Hill,  
Trivandrum – 695014
15. **Shri Dinesh M.N. IPS,**  
Managing Director,  
M/s Rajasthan Small Scale Industries Corporation Ltd.,  
Air Cargo Complex,  
Airport Saganer, Jaipur,  
Rajasthan – 302029.
16. **Shri Samir Mankad,**  
Executive Director,  
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17. **Shri Venkata Reddy K.,**  
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Menzies Aviation Bobba (Bangalore) Limited,  
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18. **Shri Kalpesh Kumar Singh,**  
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19. **Shri Ramesh Mamidala,**  
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Celebi Delhi Cargo Terminal Management (I) Private Limited.,  
Management (I) Private Limited.,  
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20. **Shri Avinash Razdan,**  
Vice President & Chief Financial Officer,  
Delhi Cargo Service Centre India Pvt. Ltd,  
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Gate No. 6. Cargo Complex,  
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21. **Shri Harish Krishna Shetty,**  
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22. **Shri Ravinder Bolangady,**  
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Hyderabad Menzies Air Cargo Pvt. Ltd.,  
Administrative Office, Air Cargo Terminal,  
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23. **Shri Anil Sonawane,**  
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CONCOR Air Limited,  
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Air Cargo Complex, Sahar Andheri (E),  
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24. **Shri Vijay Kumar,**  
Chief Operating Officer,  
Express Industry Council of India (EICI),  
501, Crystal Centre, Raheja Vihar,  
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- 25. Shri Ratnakar Bandaru,**  
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Ground Support Equipment Building,  
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Hyderabad – 500 409.
- 26. Shri Prem Bajaj,**  
Director,  
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B-4/62, Safdarjung Enclave,  
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- 27. Shri Shyam Malani,**  
Director,  
M/s. Indo Thai Airport Management Services Pvt. Ltd.,  
904-907, Time Tower,  
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- 28. Shri Sanjay Savant,**  
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M/s Globe Ground India Pvt. Ltd.,  
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- 29. Shri Anurag Srivastava,**  
Sr. General Manager,  
Bird-Worldwide Flight Service (I) Private Ltd.,  
Bird Consultancy Services Pvt. Ltd.,  
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- 30. Mr. Cem Sencoz,**  
Chief Financial Officer,  
Celebi NAS Airport Services India Pvt. Ltd.  
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- 31. Mr. Cem Sencoz,**  
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- 32. Shri Captain A. K. Sharma,**  
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33. **Shri Harish Krishna Shetty,**  
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