Reference No: IOSL/AERA CP/ BOM ITP
Date: 21st May 2021

The Chairman,
Airports Economic Regulatory Authority (AERA),
AERA Building,
Administrative Complex.
Safdarjung Airport, New Delhi-110003

Subject: Stakeholder Comments to CP 01 / 2020-21 dated 08th April 2021 in the matter of determination of aeronautical tariff for M/s IndianOil Skytanking Private Limited (IOSPL) providing into plane services (ITP) at CSI Airport, Mumbai for the 3rd control period (FY 2021-22 to FY 2025-26).

Dear Sir,

Reference to the Consultation paper 01/2020-21 dated 8th April 2021, we would like to submit our comments as stated below:

1) **Chapter 1 - Clause 1.15:** *IOSPL, Mumbai has projected the Airport Operator Fees @ 6% of the Aeronautical Revenue whereas the Authority has proposed to cap the Airport Operator Fees @ 5% of the Aeronautical revenue based on AERA Order No. 01/2018-19 dated 5th April 2018 on 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, Supply of Fuel to Aircrafts at Major Airports.*

   IOSL's response:

   The Airport Operator Fee at 6% of the Aeronautical Revenue has been projected as mandated in the Public tender invited by Mumbai Aviation Fuel Farm Facility Private Limited (MAFFFL) and the terms articulated in the Sub-concession Agreement executed between MAFFFL and IOSL on 31st October 2014; whereas the AERA Order No. 01/2018-19 dated 5th April 2018 on capping the said fee at 5% as "pass through" expenditure was a subsequent event.

   We would also draw the attention of the Authority to our letter IOSL-AERA/Royalty Capping/01 dated 6th March 2021 (**Annexure I**) in the matter of Royalty capping Order No.01/2018-19 dated 5th April 2018, wherein we have requested the Authority to reconsider their initial proposal of consider capping the revenue share at 30% in line with Cargo and Ground handling in view of the shift of bid evaluation criteria fixed by Airport Operators from lowest fee to highest revenue share.

2) **Chapter 2 - Methodology for Tariff Determination process basis the three-stage process as per AERA Guidelines -** The Authority has proposed to adopt "Price Cap Approach" on "Single Till" basis for tariff determination as it perceives that the Competitive assessment criteria is not met in the real sense.

   IOSL's response:

   The Authority has established at Stage I that the service is material in nature and at Stage II deemed it to be Competitive. In accordance with Clause 3.2 of the CGF Guidelines 2011, when a regulated service is deemed to be 'material but competitive'

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the tariff determination shall be on a "light touch" approach for the duration of the Control period in accordance with provisions of Chapter V of the Guideline.

However, at Stage III where Reasonability of User Agreements is to be assessed for assurance, the Authority has concluded that the service provided by IOSL is not competitive in real terms as:

a. There are no user agreements with airlines
b. The service providers, being promoted by Oil Marketing Companies, primarily cater to the requirement of the promoter, and
c. The service is being provided to the airlines on behalf of the Oil Marketing Companies without any user agreement directly with airlines.

It may be noted that the User Agreements are in place which satisfy the Stage III process, and also competition on account of:

a. The ITP Service providers are finalized through competitive bidding process by the Airport Operators and/or its Concessionaires where in the terms of the bid and selection criteria are fixed. Any request for appropriate changes in the commercial terms during the pre-bid query stage is not accepted. Thus, the participating bidders do not have any control over such aspects.
b. In the Public Tender invited by MAFFFL, the revenue share was fixed at 6% and lowest ITP fee quote was the sole selection criteria in the Tender for selection of the ITP Service Providers.
c. The tender and the Sub-Concession Agreement executed clearly articulates that the ***"Parties acknowledge and agree that in order to ensure competition at the Airport, MAFFFL has granted sub-concessions to 2 (two) different service providers, selected through a competitive bidding process, to undertake and provide the Services to users, at the Airport, for a maximum period of 10 (ten) years from the effective date."*** < ref. Clause 3.3.4 of ITP Sub Concessions Agreement – **copy of the relevant page is attached** at **Annexure II**>
d. In the Scope of ITP Services, it has been mandated that "***Each into plane delivery or removal of ATF by the Sub Concessionaire to an Aircraft owned or operated by the Supplier or a Supplier's customer shall not be made except pursuant to a request by or on behalf of the Supplier". It is also stated that "It is a requirement of MAFFFL that all qualified Supplier(s) should be allowed to have access to and use of the ITP Services on a non-discriminatory basis. This will enable the Suppliers to freely select the ITP Service provider of their choice for any particular transaction at the Airport. The Open Access obligation of the Sub-Concessionaire forms an integral part and is the essence of this Agreement."*** This very clearly implies that we do not mainly cater to clients of our promoters by our choice, but it is by their choice. We are open to catering to any Suppliers' requirement should they desire to avail our services by their free choice. < ref. Clause 4.3.4 & 4.4 of ITP Sub Concessions Agreement – **copy of the relevant page is attached Annexure III** >
e. As per Clause No. 2.9 of the CP it has been contended by the Authority that we are providing ITP Service to Airlines on behalf of the Oil Marketing Companies without any user agreement with the Airlines. We have entered into user agreements with Airlines at airports where they have positioned product for their captive consumption. At Mumbai airport, the airlines are not sourcing product on their own due to lack of appropriate infrastructure at the Tank Farm. Should they intend to source their own product, they would be required to enter into user agreement for ITP Services of their choice. Furthermore, the user agreements with Airlines are subject to commercial arrangement between Suppliers and Airlines which are confidential to them. As per their current

commercial agreements, in line with IATA Model Fuel Supply Agreement, the title to and risk of loss of product passes from the Supplier to the Airline only when the product passes through the inlet flange of the wing tip. In other words, the title of product is assumed by the airline only when the product is delivered into the aircraft wings. Thus, the Suppliers enter into user agreements and not the airlines. The airlines are free to approach the ITP Service providers to avail the services as per the provisions of the Sub-concession agreement. However, they are limited in view of ATF being under VAT regime wherein all pre-delivery costs form a part of the product cost. If at a future date another ISP not promoted by any Oil Company enters this business segment, they would necessarily have to enter into user agreements with Oil Companies or Suppliers not of their choice, but on the choice of the Supplier. These are prevailing circumstances beyond the control of the ISP and hence the perceived lack of competitiveness cannot be attributed to the ISP.

In accordance with the Authority's Order No. 12/2010-11 dated 10JAN2011 and Direction No. 4/2010-11 dated 28FEB2011 (CGF Guidelines) a regulated service shall be deemed to be competitive when it is provided by two or more Service Providers. It also provides for the Authority to consider other additional evidence in its discretion regarding reasonableness of competition, as it may deem fit. In view of above-mentioned business dynamics under which this service availed by the users, the discretion exercised by the Authority in considering the aspects of ISP catering mainly to promoter Oil Companies clients or not entering into user agreements with airlines is inappropriate, speculative, and unjustified. Thus, the Authority is deviating from its own guidelines with regards to the Competitive criteria.

3) *Chapter 2 – Clause No. 2.6, 2.7,2.8 and 2.9 (Page 11)*

Clause No. 2.6 *- IOSPL, Mumbai have submitted User Agreement with their supplier i.e., Indian Oil Corporation Limited (IOCL) & Hindustan Petroleum Corporation Limited (HPCL). As per IOSPL submission they do not have any User Agreement with the Airlines.*

IOSL Reply: At Mumbai Airport there are 03 fuel suppliers, i.e., IOCL, BPCL and HPCL and IOSL has ITP Service contracts with IOCL and HPCL. **We provide services to Users who desire to avail our services of their own free will and in the current commercial contracts between the Seller (Oil Supplier) and the Buyer (Airline), the user of our services is the Oil Supplier as the title to and risk of loss is held by the Oil Supplier till the fuel passes onto the inlet flange of the aircraft tanks.** While it is true that IOSL at Mumbai Airport, does not have any user agreement with the airlines, IOSL's services are ultimately received by the airlines. *Therefore, it can be said that IOSL has an "indirect" user agreement with various airlines*, which in turn have "direct" user agreements with the oil companies. This industry structure has not been created by IOSL as it is not a party to contracts between airlines and oil companies. The agreements are structured so that IOSL acts as a "Bailee" and provides services to airlines, on behalf of the Oil Companies. In the event the Airline assumes the role of Supplier by bringing its own product for their own consumption, then they enter into User Agreements, again of their own free will.

Clause No. 2.8 *- The Authority noted that IOSPL, Mumbai has been promoted by the Oil Marketing Company IOCL and caters to its own clients mainly its promoters, hence, in real terms, there is no competition as ITP Service providers. Further, based on reasoning given in Para 2.3 above, the Authority is of the view that the tariff of IOSPL, Mumbai for 3rd Control Period is to be determined under "Price Cap Approach".*

IOSL Reply: Structurally on account of industry dynamics or on account of its market position, IOSL has not prevented any airline from entering into contracts with itself at Mumbai Airport. Therefore, an airline may be due to commercial or other reasons find it more preferable to enter into contracts directly with Oil companies wherein ITP Services are provided by IOSL. Under the current arrangement, the Oil Companies indemnify the stakeholders in the value chain (ITP Operator, Airport Operator etc) and therefore airlines are not required to take Aviation Refuelling Liability Insurance (ARLI), thus leading to a cost saving for the airlines. This market structure cannot be interpreted to reach the conclusion that there is no competition in real terms.

Catering to requirements of own clients and / or promoters is not prohibited in any manner under the Companies Act or Indian Competition Law. Therefore, it cannot be construed to mean that there is no competition in real terms.

IOSL has also sought the Legal Opinion of M/s Link Legal, Advocates on the correctness of AERA's proposal to adopt the 'price cap' approach. Link Legal, vide their opinion dated April 26, 2021, has reinforced IOSL's position that the approach adopted by AERA was not in consonance with the CGF Guidelines and that AERA should have proposed to adopt the 'light touch' approach.

Link Legal has observed that the CGF Guidelines mandate a stagewise analysis, which has not been followed in true letter and spirit by AERA in determination of tariff, even though AERA has adverted to the stagewise process in its Consultation Paper. It has also been observed that the factors considered by AERA in determination of the competitiveness of the service provided by IOSL, extrinsic to Clause 5 of the AERA guidelines.

In fact, the opinion also states that the service provided by IOSL is competitive even if the CGF Guidelines were not binding on AERA and factors foreign to Clause 5 could be considered by AERA to determine competitiveness. In this regard, the Opinion has, inter alia, placed reliance on the competitive bidding process conducted by MAFFFL, the selection criterion for which was the lowest ITP Fee. As the ITP Fee quote was arrived at pursuant to a competitive price discovery process, it is not open to intrusive regulation. A copy of the Legal Opinion from Link Legal, dated April 26, 2021 issued by Link Legal, Advocates is annexed herewith at **Annexure IV.**

Further we sought the Opinion of the Solicitor General of India on the same subject. A summary of the Opinion of the Solicitor General of India on the same matter is mentioned below.

"IOSL has sought the legal opinion of the Solicitor General of India on the correctness and the legality of AERA's proposal to adopt the 'price cap' method for determination of aeronautical tariffs in the case of IOSL at CSIA.

The Solicitor General, vide his opinion dated May 8th, 2021 has concluded that "...AERA's approach and proposal to adopt the 'price cap' method is not correct and not in compliance with the CGF Guidelines." In arriving at this conclusion, the Solicitor General has observed that the CGF Guidelines contemplate a stagewise approach and once the service provided by IOSL has been assessed to be 'material', the said guidelines mandate assessment only of the Stage 2 criterion - 'competition' only in terms of Clause 5. Thus, the approach adopted by AERA which appears to be a simultaneous assessment of Stage 2 and Stage 3 is incorrect. Further, the Opinion also clarifies that when assessing 'competition', upon the correct application of Clause 5 of the CGF Guidelines, the service would be deemed to be competitive. The Opinion expressly states that the factors considered by AERA in the assessment of Stage 2 i.e.

(i) IOSL mainly caters to its own promoter; and (ii) IOSL does not have user agreements with airlines, "...are extraneous to Clause 5 and thus are not relevant to determine whether the service being provided by the Querist is competitive or not."

It has also been observed that the CGF Guidelines assume statutory force and are to be thus treated as supplementary to the AERA Act, making it binding on all concerned including AERA.

In view of the above and upon a careful and detailed analysis of the CGF Guidelines (which are binding on AERA) and the facts in issue, the Solicitor General has categorically opined that "...if AERA complies with the provisions of the CGF Guidelines, it would come to inescapable conclusion that 'light touch' approach would have to be adopted in the case of the Querist."

A copy of the Opinion dated May 08th, 2021 issued by the **Solicitor General of India** is annexed herewith at **Annexure V.**

It will not be out of place to mention that the Opinion of the Solicitor General also reenforces this position as it points out that "Further, though one cannot step out of the ambit of Clause 5, but even if the case were to be examined de hors Clause 5, it cannot be said that the services are not competitive as the two service providers were selected through a competitive bidding process, the selection criteria for which was the lowest ITP Fee quoted. In a competitive bidding process, any fee or rate quoted is impacted by market forces and thus necessarily competitive rates are offered."

Moreover, both opinions also rely on AERA's previous orders in the case of IOSL at CSIA where AERA has decided to adopt the 'light touch' approach and specifically to Order No. 01/2019-10 dated 01.04.2019 where AERA has ensured that the services provided by IOSL and BSSPL remain competitive to conclude that there is no material on record or change in circumstances which warrants the deviation now being proposed by AERA.

In view of the foregoing, we believe that competition exists in ITP Services at Mumbai Airport due to the following:

- The contractual arrangements IOSL has had in place with its counterparties have not changed since the commencement of ITP services in Mumbai since 2015. Neither has any other market condition changed with the exception of varying market share of ITP Agents. In this situation wherein no change in ground realities has taken place, if AERA determined tariffs under "Light Touch" approach in the 1st and 2nd control period, then the same practice should also continue in the 3rd control period.
- As per AERA Guidelines, in case there are two ITP service providers, the services are deemed "Competitive". This condition is being met at Mumbai Airport as two service providers, IOSL and BSSPL provide ITP services at Mumbai Airport.
- The two ITP Agents were selected based on a competitive bidding process. BSSPL was the lowest bidder and IOSL had to match the rates quoted by BSSPL.
- Airlines and Oil Companies are free to avail the services of any ITP Service provider. Whether they exercise this choice is beyond the control of the ITP service providers.
- Both the ITP service providers are NOT free to charge the customers based on commercial factors, as the business is regulated by AERA. Therefore, undue profits cannot accrue to the service provider even if they may have a dominant market position.

4) ***Clause No. 2.10*** - *The Authority also examined the projected accounts of IOSPL, Mumbai and noted that the Return on Average RAB is 19.35% in 2022-23 which has increased to 59.22% in 2024-25 and 76.72% in 2025-26 (Refer Table 2 above). The Authority noted that projected Return on Average RAB by IOSPL, Mumbai is very high.*

   IOSL Reply: Return on Average RAB or otherwise known as Return on Assets (ROA) is not the correct metric to evaluate the ITP business which is manpower intensive. Return on Average RAB is more suited for capex intensive businesses. Furthermore, no benchmark of high or low return on average RAB has not been specified in AERA guidelines. Therefore, in the absence of any benchmarks it cannot be said that the return on average is high

5) ***Clause No. 2.11*** - *IOSPL, Mumbai is not carrying out any Non-aeronautical service apart from the regulated ITP service at CSIA, Mumbai. Further as per the user agreements with the users of ITP service, IOSPL, Mumbai is entrusted to carry out only the regulated service. As per the Annual Accounts of IOSPL, Mumbai, the service provider does not have other source of revenue except meagre revenue from bank deposits. Thus, the income generated from surplus cash, fundamentally has no relationship with any kind of service. Therefore, the Authority has decided to adopt Price Cap Approach under 'Single Till' methodology which will be more appropriate and reasonable for tariff determination process of IOSPL, Mumbai. Accordingly, the Authority also proposes to consider the entire other income as recorded as 'income from non-regulated services' i.e., NAR for cross subsidizing the main revenue in the interest of all the stakeholders/users.*

   IOSL Reply: Bank deposits are essential to meet the working capital needs of the business. Therefore, in order for the business to run smoothly, bank deposits for working capital needs are essential and therefore have a direct relationship with the underlying service. Since the revenues from this service comprise of only 0.72% of the ARR, there is no meaningful benefit to the stakeholders in cross subsidizing the main revenue. For the purpose of ease of calculations, it is proposed to exclude Non-Aeronautical Revenues from subsidizing the main revenue stream.

   The proposed single till mechanism should not be applicable, as the Authority should consider tariff determination under the Light touch approach as the Regulated Service in question is 'material but competitive' as admitted in the CP in accordance with provisions of the CGF Guideline 2011 and the reasonableness of the user agreements stands justified under the 2011 Guidelines.

   Furthermore, The National Civil Aviation Policy 2016 at paragraph 12 (c) states: 'To ensure uniformity and level playing field across various operators, future tariffs at all airports will be calculated on a 'hybrid till' basis, unless otherwise specified for any project being bid out in future. 30% of non-aeronautical revenue will be used to cross-subsidise aeronautical charges. In case the tariff in one particular year or contractual period turns out to be excessive, the airport operator and regulator will explore ways to keep the tariff reasonable and spread the excess amount over the future.

6) ***Chapter 3 – Clause No. 3.6*** - *The Authority proposes to adopt the above ATM traffic for projection of Fuel Throughput volumes for IOSPL, Mumbai. Based on assumption stated in Table 7 above, the Authority proposes the following projections of Fuel Throughput for domestic/ international flights for IOSPL Mumbai for the 3rd Control Period as shown in Table 8:*

   IOSL Reply: We understand the methodology proposed by the authority to project fuel volumes and as per their approach, 100% of IOSL's fuel volumes will recover by

FY22-23. The above two statements are contradictory. However, the authority in CP 33/2020-21 has remarked that revival in the aviation industry is only expected by FY23-24. Furthermore, the approach followed by the authority assumes that the market share of IOSL will remain constant throughout CP3. On the contrary we believe that IOSL's market share will reduce due to the following factors.

- A major airline which used to avail services of IOSL has now shifted to taking fuel supplies from IOSL's competitor. The loss of ITP Volumes for IOSL on account of this is approximately 200 KL / Day.
- The 2nd wave of COVID-19 infections has dampened the demand for air travel yet again and many foreign countries such as UAE, UK, Canada, New Zealand, and Hong Kong have temporarily suspended international flights to and from India. These business interruptions may happen in the future as well and has the potential to delay the recovery of ITP volumes for IOSL.
- Neither IOSL nor the authority have factored in the effect of a 2nd wave or a potential 3rd wave. On account of the 2nd wave and due to loss of volumes to competition, IOSL's volumes at Mumbai ITP were 39,214 KL in April 2021, compared to 51,882 KL in March 2021, representing a loss of -25%.
- During the past one year, many airlines have returned their old aircraft and induced newer ones in their fleet leading to higher fleet fuel efficiency. This has led to an overall reduction in sector fuel uplift.
- Fuel Volumes associated with International flights are likely to recover to Pre-Covid levels by 2024. This is based on projections made by IATA.
- Travel segments such as Visiting Friends, Family & Relatives (VFR) and leisure travel are likely to recover by 2023, however business travel is likely to be negatively impacted in the long term as more companies rely on e-meetings & video conferencing.
- IOSL's market share has been declining since FY18 and has reduced from 67.4% to 57%. We believe that IOSL's market share is likely to be rangebound between 57-59% in the 3rd Control period.

Since the issuance of the CP, there has been an unprecedent surge in COVID with the second wave and there are indications for the third wave. The Ministry of Home Affairs, via its Order dated 29th April 2021, has extended the restriction imposed by Order dated 23.03.2021 until 31.05.2021. The Government may continue to impose restrictions on extended basis and there is a looming uncertainty. Thus, the assumptions of ATM projections for MIAL, as stated in the CP could possibly be over-estimated and needs to scaled down further. Despite Ministry of Civil Aviation allowing 80% of domestic routes to be operated, there has been decrease in the domestic ATMs due to fall in passenger traffic post the second wave. It can be evidenced by MIAL deciding to close down T1 operations within a month of its opening. The long-haul routes under the Air Bubble arrangement have been severely affected with USA and European Airlines either discontinuing and/or scaling down operations. The commencement of scheduled international operations cannot be envisaged in the near future.

We noticed that the assumptions used by the authority for determining ATM's Traffic at CSIA in IOSL's CP Number 1 / 2021-22 are different from the same data used in BSSPL's CP Number 2 /2021-22. A snapshot of the two ATM projections for CSIA Airport in IOSL's and BSSPL's CP are shown below to highlight the differences in ATM Projections.

IOSPL CP

Table 7: Assumption used by the Authority for Determining ATMs Traffic at CSIA, Mumbai

Year	Assumption
2019-20	Actual ATM Traffic
2020-21	50% of FY 2019-20
2021-22	62% of FY 2019-20
2022-23	100% of FY 2019-20
2023-24	108% of FY 2019-20 For Domestic & 110% of FY 2019-20 For International

BSSPL CP

Table 5: ATM projections considered by the Authority for MIAL for 3rd Control Period (Tariff Order No. 64/2020-21 dated 27.02.2021).

Financial Year	International	Domestic	Average
2019-20	Actual ATM Traffic	Actual ATM Traffic	---
2020-21	29% of FY 2019-20	38% of FY 2019-20	33.50%
2021-22	63% of FY 2019-20	61% of FY 2019-20	62.00%
2022-23	100% of FY 2019-20	100% of FY 2019-20	100.00%
2023-24	111% of FY 2019-20	108% of FY 2019-20	109.50%

The discrepancy in arriving at the ATM projections for the two service providers, providing services at the airport, needs to be corrected and same approach needs to be followed for both the service providers.

In Our reasonable opinion, based on the facts and inferences stated above, the volume projections shown by the authority do not appear to be achievable in the present scenario and will lead to under recoveries for IOSL. We have therefore revised our volume projections for the consideration by the authority for the 3rd Control Period in the table below.

Volume Forecast	**FY22**	**FY23**	**FY24**	**FY25**
Forecast Volume for 3rd Control Period.	4,75,411	5,94,263	7,13,116	8,20,083
Revised Forecast Volume for 3rd Control Period.	4,70,568	5,34,837	6,77,460	8,20,083

7) ***Chapter 4 Capital Expenditure –*** *Clause No. 4.8 - The Authority, in order to ensure that IOSPL, Mumbai adheres to its Capital Expenditure plan, proposes to rework the RAB of the IOSPL, Mumbai for the 3rd Control Period, by reducing the RAB by 1% of the cost of the ITP depot / Computer Software (i6 System) / Vehicles as the case may be, if the IOSPL, Mumbai fails to commission and capitalize these assets by December 2022.*

IOSL Reply: As per AERA guidelines there is no provision for reducing the RAB by 1% or by any other number. The true up mechanism takes care of undue gains to the service provider, therefore the RAB reduction is not required. RAB reduction mechanism as a concept can only be introduced in the AERA guidelines after due public consultation and not arbitrarily. As per table 12 (capex) accepted by the authority, capex is proposed in FY22-23 and FY23-24, therefore it is not possible to complete all capex by December 2022. Therefore, we ask for the concept of RAB reduction to be deleted in entirety.

Further to IOSL's appeal pending in TDSAT regarding both ITP service providers having the same rate at a particular airport in the interest of fair competition, we once again urge the authority to consider same tariffs for both service providers at the same airport. Since the same service is being rendered by both companies, it is fair that both be allowed to charge the same tariff.

8) Discrepancies observed in Table no.18 of the CP – The referred table is reproduced below:

Table 18: RAB proposed by the Authority for IOSPL, Mumbai for the 3rd Control Period

Amount (Rs. in Lakhs)

Particulars	Amount (Rs. in Lakhs)			
	2021-22	2022-23	2023-24	2024-25
Opening RAB (A)	1.047.33	1,712.14	1,844.83	1,797.71
Addition (B)	1,176.02	700.00	418.00	345.00
Adjustment	0.00	0.00	0.00	0.00
Deletion (D)	0.00	0.00	0.00	0.00
Depreciation (E)	511.20	567.31	465.12	270.96
Closing RAB (F) = A+B-C-D-E)	1.712.14	1,844.83	1,797.71	1.871.75
Average RAB (ARAB)=(A+F)/2)	**1,379.73**	**1,778.49**	**1,797.71**	**1,834.73**

Comments by IOSL: In the snapshot above of Table 8, reproduced from the Consultation Paper, in the year FY2023-24 it is observed that closing RAB and Average RAB are same at 1797.71. This is an error, and the correct value should be (1844.83+1797.71)/2 = 1821.3. This error may be rectified by the authority and the tariff to be re-worked accordingly.

9) Discrepancies observed in Table no. 36 of the CP– The referred table is reproduced below: -

Table 36: Revised Aggregate Revenue Requirement (ARR) proposed by the Authority for IOSPL, Mumbai for the 3rd Control Period

Particulars	Amount (Rs.in Lakhs)				
	2021-22	2022-23	2023-24	2024-25**	Total
Average RAB *(Refer Table 18)*	1379.73	1778.49	1797.71	1834.73	
Fair Rate of Return *(Refer Table 20)*	14%	14%	14%	14%	
Return on average RAB	193.16	248.99	251.68	256.86	**950.69**
O& M Expenses (Refer Table 30)	1672.50	1851.47	2002.18	1623.62	**7149.77**
Depreciation *(Refer Table 15)*	511.20	567.31	465.12	270.96	**1814.60**
Tax *(Refer Table 33)*	0.00	177.41	310.53	338.22	**826.17**
Less: NAR *(Refer Table 22)*	14.02	18.40	23.19	21.00	**76.61**
ARR per year	**2362.85**	**2826.78**	**3006.32**	**2468.67**	**10664.62**
Discount Rate	14%	14%	14%	14%	
PV Discount	1.00	0.88	0.77	0.67	
PV of ARR based @14%	**2362.85**	**2479.63**	**2313.27**	**1666.28**	**8822.03**
Sum Present value of ARR	8822.03				
Fuel Throughput (Lakhs KL) *(Refer Table 8)*	34.59				
Yield Per KL (in Rs.)	255.02				
Computation of Aeronautical Revenue (Revenue from ITP services)					
Particulars	**Amount (Rs. in Lakhs)**				
	2021-22	**2022-23**	**2023-24**	**2024-25****	**Total**
Projected Revenue (Fuelling)	1574.36	2539.29	2793.22	2285.36	**9192.22**
Projected Revenue (Re-Fuelling)	2.25	2.25	2.25	1.70	**8.45**
Total Projected Revenue	**1576.61**	**2541.54**	**2795.47**	**2287.06**	**9200.67**
PV Discount	1.00	0.88	0.77	0.67	
Discounted Aeronautical Revenue	1574.36	2227.45	2149.29	1542.55	**7493.65**
% Increase in Tariff	**10.55%**	**4.25%**	**4.25%**	**4.25%**	
Revised Revenue (with Tariff Increase)	**1740.45**	**2926.49**	**3355.95**	**2862.47**	**10885.37**
PV of Revised Revenue (with Tariff Increase)	**1740.45**	**2567.10**	**2582.30**	**1932.09**	**8821.94**

*** For nine months only as the concession term of IOSPL, Mumbai is valid till 1st January 2025*

Comments by IOSL: As per Table 36 above, discount factors applied are incorrect. A table showing discount factors used by AERA and the correct discount factors is shown below.

		FY21-22	FY22-23	FY23-24	FY24-25
Tariff Order Date (Assumed)	31-03-2021	31-03-2022	31-03-2023	31-03-2024	31-03-2025
Years from Tariff Order Date		1.0	2.0	3.0	4.0
Discount Factor: By IOSL		0.88	0.77	0.67	0.59
Discount Factor: By AERA		1	0.88	0.77	0.67

References to support our calculation of discount factors shown in the table above is drawn from previous AERA orders namely Order Number 32/2017-18, Order Number 29/2017-18 and Order Number 30/2017-18.

DAFFPL (Order 32/2017-18)	**FY17**	**FY18**	**FY19**	**FY20**	**FY21**
Fuel Throughput	17.14	17.65	18.18	18.72	19.28
Discount factor	1.08	0.95	0.84	0.74	0.65
PV ARR	46,516				
Yield: Sum Total of Volumes	511				
Yield PV of Volumes	605				
BLR FF (Order 29/2017-18)	**FY17**	**FY18**	**FY19**	**FY20**	**FY21**
Fuel Throughput	5.84	6.13	6.44	6.76	7.1
Discount factor	1.07	0.95	0.85	0.76	0.68
PV ARR	49,719				
Yield: Sum Total of Volumes	1541				
Yield PV of Volumes	1807				
MAFFFL (Order 30/2017-18)	**FY17**	**FY18**	**FY19**	**FY20**	**FY21**
Fuel Throughput	15.59	15.9	16.22	16.54	16.87
Discount factor	1.07	0.95	0.85	0.76	0.68
PV ARR	52,333				
Yield: Sum Total of Volumes	645				
Yield PV of Volumes	752				

In the above tables a discount factor of 1.07 was applied for FY17 for all three companies because the tariff order was issued in December 2017 and was applicable from a future date, therefore a higher value (1.07) was accorded to existing revenues. *The same approach has been used by IOSL to calculate the discount factor of 0.88 for FY21-22 whereas AERA has incorrectly calculated the same as 1.*

Furthermore, AERA in Table 36 has calculated Yield / KL of INR 255.02 using the formula, Yield / KL = Present Value (ARR) / Sum Total of Volumes for the control period. Once again, this approach is not consistent with the past workings done by AERA.

The approach used in the past by AERA to calculate Yield / KL = Present Value (ARR) / Present Value (Volumes). Reference is once again made to illustrate this calculation which is shown for MAFFFL, DAFFPL and BLR FF in the table above. *The table above shows Yield / KL based on both approaches i.e., Option 1: PV (ARR) / Total Volume and Option 2: PV (ARR) / PV (Volume). AERA has used Option 2 while issuing the three tariff orders cited above.*

Utilizing the same numbers from Table 36 as proposed by AERA, the Profit & Loss statement is created for FY21-22 which is shown below. As per the same, a PBT of -4.43 Crores or -25% is calculated. Therefore, the tariff proposed goes against the Objective and Functions of AERA i.e., *"Economic and viable operation of major airports"*.

Revenues (1) (Vol 5.92 x INR 293.75 / KL)	1740.45
O&M Expenses (2)	1672.5
Depreciation (3)	511.2
Profit Before Taxes (PBT) (1)-(2)-(3)	-443.25
PBT%	-25%

Considering the issues, highlighted above related to Table 18 and Table 36, IOSL has re-created the workings of Table 36 without changing any other data except for the issues highlighted above. As per this working, the Yield / KL is INR 312.87 which is significantly lower than INR 255.02 / KL calculated by the Authority.

Particulars	**2021-22**	**2022-23**	**2023-24**	**2024-25**
Volume (in Lakhs KL)	5.92	9.56	10.52	8.6
Average RAB (Refer Table 18)	1379.73	1778.49	1821.28	1834.73
Fair Rate of Return (Refer Table 20)	14%	14%	14%	14%
Return on average RAB	193.1	248.9	254.9	256.8
O& M Expenses (Refer Table 30)	1672.5	1851.47	2002.18	1623.62
Depreciation (Refer Table 15)	511.2	567.31	465.12	270.96
Tax (Refer Table 33)	0	177.41	310.53	338.22
Less: NAR (Refer Table 22)	14.02	18.4	23.19	21
ARR per year	2362.8	2826.7	3009.6	2468.6
Discount Rate	14%	14%	14%	14%
PV Discount	0.88	0.77	0.67	0.59
PV of ARR based @14%	2072.7	2175.1	2030.7	1461.1
Sum Present value of ARR	7739.6			
Fuel Throughput (Lakhs KL): PV of Volume	24.74			
Yield Per KL (in Rs.)	312.87			

A summary of key issues addressed in our response to CP 01/2020-21 are listed below: -

- Tariffs to be considered under "light touch" approach as compared to "Price Cap" approach proposed by the Authority. IOSL has sufficiently demonstrated that its services are competitive from the point of view of AERA Guidelines and other relevant factors explained in our comments and the Legal opinions.
- Volume forecast as prepared by the authority appears to be unrealistic considering the market dynamics of the ITP business at Mumbai Airport and due to the impact of the 2nd wave of COVID-19 infections on ITP Volumes. We therefore urge the authority to consider the revised volumes as submitted by IOSL.
- Issues highlighted in Table 18 and Table 36 to be checked and corrected by the authority and Yield / KL be re-worked considering the volume forecast as submitted by IOSL.

Submitted for the consideration of the Authority.

Thanking You.

For IndianOil Skytanking Private Limited.

21/05/2021

(T.S. Dupare)
Chief Executive Officer

Enclosures:

1. Annexure I – IOSL's letter dated 6th March 2021
2. Annexure II - Relevant page of Sub Concession Agreement for Clause No. 3.3.4
3. Annexure III - Relevant page of Sub Concession Agreement for Clause No. 4.3.4 & 4.4
4. Annexure IV - Legal Opinion from Link Legal
5. Annexure V - Opinion from Solicitor General of India