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**Bangalore International Airport Limited**

Administration Block  
Bengaluru International Airport  
Devanahalli, Bangalore - 560300 India

T +91 80 6678 2425 F +91 80 6678 3366 www.bengaluruairport.com



**14<sup>th</sup> September 2010**

**Shri Sandeep Prakash  
Secretary  
Airport Economic Regulatory Authority of India (AERA)  
AERA Building,  
Administrative Complex, Safdarjung Airport,  
New Delhi 110003.**

*Handwritten notes:*  
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SM (ARBS)  
Pl. check, we have already find the soft copy to PWC  
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**Sub: BIAL's response to Consultation Paper No.05/2010-11 dated 2<sup>nd</sup> August 2010.**

Dear Sir,

Please find herewith BIAL's response to AERA on the specific points for your needful consideration at your end.

Thanking You

Yours faithfully  
For Bangalore International Airport Limited

*Handwritten signature of Bhaskar Bodapati*

**Bhaskar Bodapati  
Director-Finance**

Encl: a/a

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## **Bangalore International Airport Limited**

**Response to Airports Economic Regulatory Authority of India  
(Terms and Conditions for Determination of Tariff for Services  
Provided for Cargo Facility, Ground Handling and Supply of  
Fuel to the Aircraft) Guidelines, 2010**

**14<sup>th</sup> September 2010**

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## 1. Introduction

Bangalore International Airport Limited (BIAL) welcomes the opportunity to provide its viewpoints to the Consultation Paper No. 05/2010-11 on “Economic Regulation of Services Provided for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft”.

At the outset, BIAL has always kept the interests of passengers as paramount, and at every step of planning and execution, consumer delight has been given the highest importance. BIAL considers that provision of world-class quality of service to its passengers is its *raison d’être*, and it has enshrined this as one of the key parameters of evaluation in selecting the Service providers. Auxiliary service providers of Ground Handling, Cargo and Fuel Services are our partners to creating a world class airport, and their performance to the extent stipulated was one of the prime reasons for BIAL to continuously achieve a service quality rating much beyond what has been mandated in the Concession.

As highlighted by us in our previous submissions, the Authority is at the threshold of defining regulations for the industry for the long term and its decisions will provide strong signals that will encourage or discourage investment in the airport industry.

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

BIAL would like to compliment the Authority on a well-researched paper that seeks to discuss several issues that are important for the industry.

However, in BIAL’s opinion, the Authority’s assessment on many issues is generic in nature and there is a need for greater clarity and articulation in dealing with several important issues, many of which are unique to the context of the individual airports.

Through this letter we would like to discuss our concerns on the proposed regulatory approach from a BIAL-specific perspective.

## 2. Continuing ambiguity and conflicts between proposed regulatory approach and the Concession Agreements

i. As explained by us in our earlier responses to the Consultation paper on airport economic regulation, BIAL has serious concerns on the scope of airport regulatory framework, and its likely impact on the contracts that have already been entered to with service providers. We wish to reiterate the content of our Concession Agreement signed between BIAL and the President of India which clearly deals with various charges that BIAL can charge or impose.

Please refer Annexure-1, wherein definition of ‘Airport Charges’ as per concession agreement explained. Further, according to Schedule 6 of the Agreement (Regulated charges section), it is clearly evident that the charges which are proposed to be regulated by AERA, viz. cargo facility, ground handling and supply of fuel do not form a part of the “Regulated Charges”.

Please refer Annexure-1 part (ii) wherein the explanation of ‘Other charges’ as per concession agreement explained. Article 10.3 of the Concession Agreement empowers BIAL to determine

“Other Charges” at the airport freely and without any restrictions for facilities other than which the Regulatory Charges are levied. Thus, Article 10.3 gives BIAL a clear and unambiguous authority to levy and determine the charges related to cargo facility, ground handling and supply of fuel as they are not covered within the definition of “Regulated Charges”.

BIAL requests complete adherence to its concession agreement, which clearly specifies that cargo, fuel farm and ground handling services are not covered within definition of “Regulated Charges”. All service providers at BIAL had established business assumptions, considering provisions of concession agreements (Schedule 6), at the time of commitment of their investments. Any variations with these business assumptions can work to the detriment of the service providers.

ii) Further BIAL refers to the AERA’s approach in determining the treatment of consideration payments to airport operators as reproduced below:

“The Authority shall take into consideration payments required to be made by independent service providers of cargo facility, ground handling, fuel farm / access facilities to the airport operators as part of the passenger yield cap calculation for airport operators”

In this regard BIAL requests authority to consider that the Cargo revenue & general passenger related revenue are two separate businesses and due consideration to be given accordingly. As per BIAL concession agreement the above services are considered as non-aeronautical revenues and hence above consideration payments need to be excluded from subsidizing aeronautical revenues.

**3. The retrospective regulation - resulting negative effects & complete clarity required on the philosophy & approach for entire Cargo & other businesses**

It is further important to note that the AERA Act actually acknowledges the complexity caused by the existence of these agreements by mandating that the regulator consider the “effect of any concession agreements” already signed in its decision process. BIAL would like to submit that this necessarily means that the Authority should consider the Concession Agreements holistically, and not just by the direct effects that have been discussed already.

One of the clear “effects” of the Concession Agreement was to provide to BIAL the Authority to enter into various contracts with the Service Providers. We wish to highlight the fact that the Consultation Paper has not addressed the problem of conflicts between possible regulatory positions and the terms of these private contracts.

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

From the airport operator’s perspective, several issues underlying this Consultation paper are closely intertwined with the larger issues that remain to be discussed in the guidelines for airport regulation. Further, the Authority has indicated a separate discussion forum for those cases where these given services will be performed by the airport operators themselves. BIAL notes with concern that in the evolving regulatory regime, there is a risk that the complexities and uncertainties will be increased manifold. In the absence of a holistic perspective of how the various Agreements, Contracts, the ground assumptions and specific business dynamics in

an airport affect the viability of operations, the regime could raise costs of regulation much beyond the purported benefits.

BIAL requests AERA to provide complete clarity on philosophy & approach of regulating the airport operators who are also service providers in above cases before finalizing the regulation guidelines for independent service providers. Such clarity required for service providers to know & understand the regulator philosophy & approach for entire Cargo & other businesses.

#### **4. Concession Agreement as basis for clauses in private contracts**

As indicated above, the private contracts signed with the service providers of Ground Handling, Cargo and Refueling services at the airport derive their authority from the concession agreement. For example, please refer the preamble to the contract (Refer Annexure- 2 which contains the necessary extract) as mentioned in various contracts with the service provider which illustrates that the spirit, in which the contractual award process was conducted was assuming the authority of the Concession Agreement, which clearly indicates all these services as non-regulatory services. The service providers, who were party to the contracts, have participated in the competitive bid process under the same assumptions.

While BIAL acknowledges the legal reality that Ground Handling and Cargo have now been defined as aeronautical services, a price cap system independent of the contracts is not the only regulatory solution. On perusal of BIAL's private contracts, the Authority will find that BIAL has consciously adopted checks and balances in order to ensure that the service providers are selected to provide the best service standards and at prices that are competitive.

BIAL's opinion is that any further regulation beyond the extent envisaged in the contract is a violation of the spirit of the contractual bid process and would also increase the costs of regulation and compliance for all stakeholders, which may outweigh the benefits.

In subsequent sections, we illustrate the elements of the private contracts, where BIAL has already created appropriate elements of regulatory oversight.

#### **5. Service Quality Standards and its derived issues**

We would like to draw the Authority's attention to the Minimum Service Levels in our private contract (Schedule-D of Cargo contract and Schedule-E of the Ground Handling contract-attached as Annexure-3).

The listing of Minimum Service Levels in all these contracts is derived based on the stringent objective service quality requirements in BIAL's own Concession and also to meet the subjective service quality, in terms of ASQ ratings. In mandating these requirements, BIAL was predominantly guided by the need to provide the best service quality standards for the airlines and air cargo users.

As indicated in Sections 3(g) and 3(h) of the Preamble of the AERA Consultation Paper (please see Annexure- 4 ), the Authority has already expressed its satisfaction at the existing description of service levels in the contract with the Airport and the Airport users, and its decision not to impose any further service standards.

We wish to compliment AERA on this decision, which we believe is the wise course of action. However, we also note that the linkage between meeting these service quality requirements and



the consequent increase in risks and costs for the Service Provider has been missed to be discussed. The bidders to the Service Provider Rights have priced in their bids - the risks associated with undertaking these service levels, costs associated with mitigation of such risks and the choice of operating models based on their ability to meet these requirements. As a further step to ensure that the Service Providers adhere to these service quality requirements, BIAL has in some cases also prescribed the list of equipment that has to be brought in by the service providers (for an example, please refer to Schedule H of the Ground Handling contract-Annexure-5).

Enforcement of these service quality requirements will not be possible, if there are any divergent objectives for the Service providers created through alternate modes of regulation. For example, the Authority's indication of a Cost Efficiency target (similar to the CPI-X system), on an annual basis, if not informed by its impact on service quality, will prove to be counter-productive. The efficiency target that has been indicated is more suited for a utility industry, rather than for an industry like Airport that needs to handle softer aspects of service quality.

Further, it is to be noted that different service providers at the same airport may have different service quality requirements, cost structures and demand characteristics. It could be possible that a service provider may offer a premium service depending on the value perceived for the same by the end user. However, in the event that the Service Provider's price is benchmarked against a competitor who uses lesser mechanization, and lead to a lowered prices, that will disallow such services from being offered.

BIAL requests AERA to consider the existing contractual agreements with independent service providers as grandfathered and twin controls - on service levels & corresponding prices, as explained in detail in next section, clearly enmeshed in the existing contracts.

## **6. Price Controls**

We now bring the Authority's attention to the controls that BIAL has built in to the pricing aspects. Please refer Annexure-6 wherein the principles of levy of charges as incorporated by BIAL with service providers (Ground Handling contract-Schedule-F and the Cargo Services contract-Schedule-E reproduced).

A reading of the above annexure indicates that with the twin controls on Minimum Service Levels and Prices, BIAL has taken all measures necessary to ensure world class services at competitive rates. Non-compliance on both these above parameters would lead to alternate Service providers being introduced, or termination of the contract or both. At this juncture, BIAL would like to reiterate its position explained in our previous responses that regulation is only second best to competition. In airport industry, competition need not be simulated only through independent economic regulation but also through the following means:

### **a) Competition for the market**

BIAL's bid process to select the Service Providers was both transparent and competitive on all clauses on Service Quality and Prices, and therefore ensured that only the best service providers were selected.

**b) Competition in the market**

- i. BIAL consciously created competition in the market by selecting multiple service providers in the same airport (2 Ground, 2 Cargo providers in addition with an express cargo provider and two Fuel Service providers). Further, an option to facilitate entry of more service providers (one more in the case of Ground Handling and re-fuelling providers and 2 more in the case of Cargo Providers) are also enshrined in the contract. Further, a certain set of associated services that are deemed to be unrestricted, may be thrown open to any number of service providers
- ii. The nature of business in which service providers are operating are very competitive and end users are quite conscious of level of service that can be demanded and the rates that can be paid. Increase in rates cannot be implemented by service providers on their own without taking end users into confidence. In the given above scenario any attempt by authority to control tariff only weakens the negotiation power of service provider.

**c) Contract and Benchmark Regulation**

Having created the above checks and balances, BIAL, also has additionally mandated in the contract with the service providers that they

- a. should charge fees that have a direct and reasonable correlation with costs incurred,
- b. should ensure that they manage costs in an efficient manner and minimize cost escalations to the extent possible and
- c. should further ensure that their prices are at no point more than what can be benchmarked with airports of comparable volumes.

On the other hand, if AERA were to independently set prices for the service providers, it would necessarily have to take a position on the submitted information on investment, costing, efficiency, pricing and other input factors. BIAL would like to point out that all these factors are finely enmeshed into the existing contractual obligations of the service, and cannot be independently viewed.

Service quality is a critical parameter in the hands of the airport operator to judge the performance of the service provider. By design, it is one of the key tools in the hands of the airport operator to ensure compliance with its own performance obligations. Therefore, AERA may not find it feasible to take an independent view on the inputs necessary to ensure compliance of these obligations.

In practice, AERA may find that in its efforts to constantly seek coherence between the contractual obligations and the submitted information on costs at every review, the regulatory costs may outweigh any perceived benefits. Under parallel streams of regulation, the service provider's cost of compliance will inevitably be raised, and lead to an increased risk perception in their businesses and a diminished ability to make business decisions in an environment of actual and threatened competition.



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In lieu of above details, BIAL proposes to AERA the following:

- i) In BIAL's opinion, AERA's best course of action would be to regulate the service provider, through the provisions of the existing contract.
- ii) The form of regulation suitable for BIAL's context would be a light touch regulation, by monitoring adherence to the existing Service Provider Agreement with BIAL.
- iii) In the Consultation Paper, the Authority has indicated a light touch regulation for the Service Providers where competition is deemed to exist, measured by the number of operators. We propose an extension of this clause to cover special cases including BIAL.

BIAL has in fact within its powers, the ability to introduce more competition at any point in time, so that in effect the competitiveness threshold is crossed, and light touch regulation is brought in. However, while BIAL retains the option to introduce more providers, it finds that such a necessity has not arisen so far. BIAL believes that if such options are introduced prematurely, it may affect the economic scale of operations for the Service Providers that may in fact increase the fixed costs and hence the costs of providing the facilities to the users.

In summary, BIAL would like to reiterate that several of AERA's indicated positions, while commendable, already find their place in BIAL's contracts. The Authority may monitor compliance with the contract as part of a "light touch regulatory framework", and in partnership with BIAL, will be able to realize its regulatory objectives, resulting in a win-win situation for all stakeholders.

#### **7. Invocation of the change in law clause**

In this regard, it is necessary to note the treatment of the "Change in Law" clause in the Concession Agreement which got explained in **Annexure- 1 part (iii)**.

While the AERA Act, 2008 does not define the term "Regulated Charges" (which is a defined term in the Concession Agreement), Section 2(a) of the Act covers the charges towards cargo facility, ground handling and supply of fuel. Looking at the spirit of the components of Sec. 2 (a) in the AERA Act and the components of "Regulated Charges", it can be derived that both mean one and the same, except for the change in number of the components in the definition of "Aeronautical services". Further, on plain reading of Concession Agreement, it is evident that apart from the "Regulated Charges" mentioned therein, "Other Charges" were never intended to be subject to any regulation.

Considering that the Concession Agreement was signed in 2004 and that the AERA Act was passed in 2008, the inclusion of additional criteria in the definition of "Aeronautical services" has to be interpreted considering the time factor involved. Therefore, according to this understanding, even though AERA is mandated to regulate Other Charges connected with "Aeronautical services" falling under an exception to Change in law, as defined in the Concession Agreement, the harmonious interpretation is that the same amounts to Change in Law and thereby would attract provisions entailing due to Change in Law.

Further, it is apprehended that the bringing in of regulation by AERA of charges towards cargo facility, ground handling and supply of fuel would bring a negative cash flow to BIAL thereby resulting in reduction in net after tax. Any such reduction is covered by Article 15.5 of the Concession Agreement as reproduced in **Annexure-1 part (iv)**.

If AERA intends to bring in the regulation of charges towards cargo facility, ground handling and supply of fuel, which is expected to result in a negative cash flow, the same will have to be made good in terms of Article 15.5 of the Concession Agreement elucidated in **Annexure-1 part (iv)**.

#### **8. Other specific issues arising out of the Consultation Paper**

Without prejudice to our preferred approach for regulation by existing contracts, BIAL would also like to highlight specific anomalies that we find in the Consultation Paper that may need to be re-looked by AERA in the areas of:

- A. Term of regulation
- B. Request for clarity on exit clause of regulation
- C. Materiality Assessment
- D. Competition Assessment
- E. Anomalies in Efficient Cost Estimation
- F. Cross-Subsidization from non-regulated services
- G. Fair Rate of Return and
- H. Asset Base Calculation

The detailed concerns on the above areas are explained in the **Annexure-7** which forms part of this response.

#### **9. Conclusion**

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

- Cargo, Fuel farm and other services that do not form a part of the regulated charges as provided in BIAL's concession agreement and same needs to be respected.
- In the long term interest of the sector, it is necessary that AERA should treat the airports concessioned out already and in existing operating agreements on a separate platform for evaluation. In BIAL's opinion, the best possible method of ensuring this would be to consider the clauses of the agreements as grandfathered.
- Similarly all reasonable bid assumptions taken by the independent service provider, in the absence of certainty, should be respected. The respective agreements should not only be respected in the first review period, but for the entire tenure of the agreement.
- We request the regulator to look into the relationship between the number of service providers and the sustainable available volumes at the airport for the competition rather than applying a blanket philosophy across all the airports. If at all minimum players have to

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be defined for competition then it should be minimum two and not three as defined by regulator in the draft guidelines.

- As demonstrated in this letter, BIAL's contracts with the Service Providers for Ground Handling, Cargo and re-fuelling have adequate control factors to warrant a light touch regulation, and regulation by contract.
- Further, we request that AERA must provide greater clarity on various aspects of regulation that has been discussed in the Consultation Paper.

We are confident that AERA would appreciate BIAL's position in the letter and would be favorably poised to make the right decisions.

## 10. Annexures

### Annexure- 1

#### Relevant extracts of Concession agreement between BIAL & President of India

(i) Definition of Airport charges:

According to the Agreement, **"Airport Charges means:**

- (i) *amounts charged or imposed by BIAL in respect of the provision or use of the facilities and services which are included within Airport Activities;*
- (ii) *amounts charged or imposed by BIAL on or in respect of passenger and cargo movement or aircraft traffic into, on, at or from the Airport; and*
- (iii) *any other amounts deemed by this Agreement to be Airport Charges and further including any amounts to be collected by BIAL on behalf of Gol, GoK or AAI."*

(ii) Explanation of 'Other charges' as per clause 10.3 of above concession agreement:

**"10.3- Other Charges**

*BIAL and/or Service Provider Right Holders shall be free without any restriction to determine the charges to be imposed in respect of the facilities and services provided at the Airport or on the Site, other than the facilities and services in respect of which Regulated Charges are levied."*

(iii) Definition of 'Change of law':

A **change in law** is defined as

*"the occurrence of any of the following (other than in respect of any laws of GoK, any Tax laws (except for those that relate to any Tax benefits provided to BIAL and/or the Airport pursuant to Gol's infrastructure policy and as more specifically set out in Schedule 12)*

- i) *the modification, amendment, variation, alteration or repeal of any existing Indian law or the enactment of any new Indian law;*
- ii) *the commencement of any Indian law which has not yet entered into effect except to the extent where such Indian law was enacted prior to the date hereof with a commencement date after the date hereof and such Indian law takes effect on that commencement date without any material amendment or a change in the interpretation, application or enforcement of any Indian law by the supreme Court of India or Gol;*
- iii) *after the date of grant of any Clearance a material change in the terms and conditions attaching to such Clearance or the attachment of any new material*

terms or conditions or such Clearance ceasing in part or in whole to remain in full force and effect.

*Provided that the creation or introduction of an Independent Regulatory Authority (including the framing of rules and regulations in relation thereto or thereunder but, for the avoidance of doubt, shall exclude any amendments and/or changes relating to the Regulated Charges) having jurisdiction over all Major Airports shall not constitute a Change in Law."*

- (iv) Change in law - resultant available course of action to BIAL:

**"15.5- Change in Law**

*If as a result of Change in Law, BIAL suffers an increase in costs or reduction in net after tax return or other financial burden, loss, liability or damage in connection with its development or operation of the Airport, the aggregate financial effect of which exceeds Rupees ten million (10,000,000) in any year, BIAL may notify Gol and propose amendments to this Agreement so as to put BIAL in the same financial position as it would have occupied had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden, loss, liability or damage as aforesaid. Upon notification by BIAL as aforesaid, the parties shall meet as soon as reasonably practicable as but no later than 30 (thirty) days following notification from BIAL and either agree on amendments to this Agreement or on alternative arrangements to implement the foregoing.*

**Annexure- 2**

BIAL contracts with various service providers contains preamble which got reproduced below:

- A. Pursuant to a Concession Agreement(defined later), the Government of India has granted BIAL the exclusive right and privilege to carry out the development, design, financing, construction, commissioning, maintenance, operation and management of the Airport, in accordance with the terms contained herein
- B. "The Concession Agreement recognizes that BIAL may, subject to the Concession Agreement, grant Service Provider Rights to any person for carrying out the activities mentioned in the Recital A above, on such terms and conditions as BIAL may determine are reasonably appropriate.
- C. One of the key requirements for the Airport is the provision of [Cargo/Ground Handling/Fuel services, variously described in the contract] at standards compliant with Good Industry Practice and competitive prices [...]
- D. Pursuant to BIAL's objective of ensuring competitive prices being charged at the Airport through multiple services providers, BIAL had invited tenders for granting Service Provider Rights to Cargo/Ground Handling/Fuel services entities to provide the Services at the Airport.

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### Annexure- 3

#### **SCHEDULE D** **Minimum Quality Standards**

Quality Measure	Standard	Target
<b>Acceptance and Delivery</b>		
Truck Queuing Time	30 min	95%
Export Cargo Reception	15 min	95%
Import Cargo Collection	30 min	95%
<b>Cargo Handling</b>		
Breakdown up to 10 tons	2 hrs	95%
10 – 50 tons	4 hrs	95%
> 50 tons	7 hrs	95%
Breakdown of Perishables	45 min	95%
Breakdown of Express	30 min	95%

Flights delayed caused by Cargo Service Provider 0.5%

#### **Definition:**

<b>Truck Queuing Time:</b>	Waiting time of a truck at the parking area access the truck dock.
<b>Export Cargo Reception:</b>	Waiting time of consignor / shipper / truck after registering at the Facility reception to lodge in the first piece of cargo.
<b>Import Cargo Collection:</b>	Waiting time of a consignee / truck after submitted shipment release form (SRF) at import collection point to receive the first piece of cargo (excluding time taken for Customs clearance).
<b>Cargo Breakdown time:</b>	The time to complete the break down of cargo after last unit of cargo acceptance at airside from ground handler (excluding time taken for Customs clearance).
<b>Flight delay:</b>	Percentage of flight delays directly caused by cargo facility operator.

DIAL - SPRH Agreement (for Cargo Facility)



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## SCHEDULE E

### Minimum Service Levels

- **Check-In**
  - Waiting time / Queuing : Max. 15 Minutes / 7 Passengers
  - Processing time : Max. 2 Minutes in average
  - Opening time : Min. 2 hours prior to Departure
  - Closing time (for PAX and baggage) domestic : Max. 30 minutes prior to Dep.
  - Closing time (for PAX and baggage) international : Max. 60 minutes prior to Dep.
- **Transfer Desk**
  - Waiting time / Queuing : Max. 15 Minutes / 7 passengers
- **Baggage delivery at arrival** : Last bag has reached the conveyor belt (before customs screening) 20 minutes after aircraft is on block for aircraft up to 200 seats and 30 minutes for larger aircraft
- **Friendliness of staff** : On a scale of 1 to 5, 5 being the best, an average of at least 3.5 must be achieved in passenger surveys
- **Passenger information in case of delays** : Proactive information of any flight with a delay of more than 15 min.

### **Minimum turn around and connecting time**

To be offered / respected by ground handlers if requested by its customers.

- Aircraft turn-around time (On Blocks – Off Blocks) : 45 minutes for domestic flights, 90 minutes for international flights
- Passenger Minimum Connecting Time (MCT) : 45 minutes

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#### **Annexure- 4**

##### **Preamble of AERA Consultation paper 3(g) and 3(h)**

*"As regards the quality of service provided by the ground handling service providers, the Authority notes that, normally, such services are covered by the service level agreements between the service provider and the airlines. Such service level agreements, inter-alia, lay down the performance/ quality of service parameters agreed to between the service provider and the user airline. The Authority considers such mechanism of service level agreements as reasonable safeguard to the airline users against under-performance or service levels that do not meet their requirement"*

*3(h) In respect of the services relating to the supply of fuel, the Authority considers that quality of service aspects relating to access to airside/ fuel supply infrastructure would be adequately covered under the commercially negotiated contracts between users and service providers.*

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## Annexure- 5

**SCHEDULE H**  
**Equipment / Quality of Equipment**

Sr. No.	EQUIPMENT TYPE	QUANTITY	SPECIFICATIONS	BRAND
1	Hybrid Tractor	5	Hauled Load 30t	Rofan/Hydro
2	Electric powered tractor	5	Hauled Load 10t	Still/Multicar
3	Diesel tractor	20	Hauled Load 30t	Mendray
4	Baggage trolley	100	500kgs payload	Aviation Support Company
5	Cargo Trolley	30	500kg payload	Aviation Support Company
6	Container dollies	270		Aviation Support Company
7	Pallet dollies	100	92x10ft; 8x20ft	Aviation Support Company
8	Passenger step (towed & covered)	12	1of1, 80 to 2, 60m; 3of2, 40to3, 60m; 8of3, 45 to5, 80m	TATA
9	Passenger Step (motorised and covered)	7	4of2, 40to3,80m; 3of2,45to5,80m	TATA
10	Baggage Conveyer	13	7of4,2m lenght, 5of6m length; 1of12m length	TATA
11	Towbarless aircraft towing tractor	2	1x30t; 1x50t	TLD/Schopf
12	Push Back Tractor	8	2x10t; 3x30t; 3x50t	TLD/Schopf



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Sr. No.	EQUIPMENT TYPE	QUANTITY	SPECIFICATIONS	BRAND
13	Tow Bar	10	2xA319; 3xA320; 1xA330; 1xA340; 1xER7; 1xATR; 1x773; 1xA380 (For A380 as per operational need)	Aviation Support Company/Hydro/TLD
14	High Loader Large	6	4x7t; 2x20t	TLD/Trepel
15	High Loader Small	6	6x3.5t	TLD/Trepel
16	Ground Power Unit	17	140kVA	TLD/Trepel
17	Air Starter	3	3x400psi	TLD
18	Water Cart	3		TATA
19	Toilet Cart	3		TATA
20	A.C Passenger Bus (Low bed)	10		TATA/Volvo
21	A.C Passenger Bus with Handicapped facility	2		TATA/Volvo
22	Crew Bus	4		TATA/Volvo
23	Air Conditioning system	5		TLD
24	Fork lift	1		Voltas/Still
25	Water Catchment tank	6		Aviation Support Company
26	Container Rack	100		
27	Cars	17		TATA/Mazda
28	Van	1		Aviation Support Company
29	Towbarless aircraft towing tractor	1	A 380 operation	For A380 operation as per operational need
30	Fuel Browser	1	10.0001	

The above list indicates the minimum equipment provided at airport opening. The SPRH is obliged to procure any other equipment required by Air Carriers to provide the Restricted Services, and increase the number of equipment in line with the increase in passenger figure at the Airport. SPRH agrees that the above equipments being used by passengers shall be purchased new.



#### Annexure- 6

BIAL contracts with service providers - principles of levy of charges:

In the Ground Handling contract (Schedule F) and the Cargo Services contract (Schedule E), the principles of levy of charges for the services has been indicated as mentioned below.

- A. The SPRH shall levy the fees after a fair and reasonable assessment of the SPRH's costs incurred in relation to the Service Provider Rights granted hereunder; and
- B. The SPRH shall take all such measures and actions necessary to mitigate any cost increases/escalations in relation to the provision of the Services; and
- C. The SPRH shall only levy such fees that enable it to maintain a reasonable profit margin (comparable with the Industry Standards) over and above the costs determined in the paragraph 'a' above, only after complying with the requirements of Paragraph 'b' above; and

The SPRH shall ensure that the fees levied shall be competitive in the Indian environment and in no circumstances more than levied on other airports with similar volumes, adjusted by the cost structure of these airports."

#### Annexure- 7

##### Other specific issues arising out of the Consultation Paper

- A. **Term of regulation** - The Consultation Paper has proposed a Multi-Year Tariff (MYT) based approach, with a control period of 5 years, with an enshrined annual review. The service providers are further required to maintain a 10 year business plan, and align their applications (on investment, demand and cost projections) according to these timelines. We foresee the following issues with the proposed model:
  - a. One of the basic objectives of MYT regime is reduction of regulatory overhead and achievement of higher regulatory certainty. Further in the Indian scenario with a high degree of volatility in traffic and cost estimates, especially in the case of Cargo and Ground Handling services that are highly derived demand, the fluctuations can be much more pronounced. This may get affected because of the yearly review process. It may be better for the Authority to allow the dynamics of the business to handle the volatility for a longer period, and allow the correction factors to manifest at the end of the review period. This would bring in more predictability and less complexity to the tariffs, and make it more implementable in practice.
  - b. We propose that AERA may consider limiting the number of reviews and may have one at the end of the control period, to cumulatively decide on tariff adjustments based on the under/over-recovery of the previous years. However for the first control period, AERA may consider a 2 stage review process as MYT is being implemented for the first time in the sector i.e. one at the end of 3<sup>rd</sup> year and one

at the end of control period, to cumulatively decide on tariff adjustments based on the under/over-recovery of the previous years.

- c. Further, the contracts executed between airport operator and the service provider may not be co-terminus with the tenure of regulation. (For example, the tenure of Ground Handling contracts in BIAL as they stand today is for 7 years). This would create an obvious disconnect between the number of years in which they will be contracted to BIAL, and the forecast information that they would be required to provide. In the absence of an assured extension beyond the stipulated contractual period, it is difficult for any service provider to make appropriate assumptions and changes to the contracting structure.
- d. With reference to Clause 6.1 of the Consultation paper, a timeline of two months is provided for submission of the information, which in BIAL's opinion is too short a time to prepare and submit a detailed business plan for the next 5 years. Further, the Authority requires that the service providers should submit elaborate forms and formats, preparation of which would require a significant period of time. We therefore request the Authority to extend this period of time to a minimum period of four to six months.
- e. Further, BIAL requests that the Authority also commit to the possible time within which the submitted information will be acted upon and a tariff order arrived at. This commitment of timeline is important in order to allow the service providers to adapt their operations to the fast-changing business realities.

- B. Request for clarity on exit clause of regulation** - As currently indicated in the Consultation paper, competition is deemed to exist when there are three service providers. In the event of AERA's independent regulation, we note that the service providers would face increased uncertainty.

For example, when additional service providers are introduced to take the number beyond the minimum threshold within a tariff review period, the incumbent service providers would face an immediate demand shock, that will go contrary to their business assumptions. Therefore, the new entrant and the incumbent will not necessarily compete on a level ground. The new entrant and the incumbent service providers will be constrained by a differed ability to respond to the changing context. We request the Authority to clearly specify these exit clauses within the control period, as also to clarify on the events that would trigger a review of the tariff process.

- C. Materiality Assessment** - In Section 4 of the Consultation Paper (Page 8 of 85), the approach to determination of materiality of the charges has been indicated. As defined in Section 4.1

*"The materiality index for service provided for supplying fuel to the aircraft at an airport A shall be defined as the ratio of aircraft movements in the airport to the total aircraft movements across all major airports."*

- a) BIAL would like to submit that the materiality index defined for refueling does not take into account the element of discretion in usage of refueling services, based on the cost of fuel provided and the routes taken by



aircraft. For short and medium haul flights, aircrafts have a choice of refueling at either of their ends. Aircraft fuel is also more economical on certain international airports abroad that flights originating or destined to those airports may prefer to refuel in those airports. It is BIAL's opinion that the ratio of the number of flights actually refueling at a particular airport, or the proportion of flights refueled when compared with other major airports can be better metrics in assessing the materiality of tariffs.

- b) BIAL requests the authority to clarify the reason behind the choice of 5% as the threshold for materiality assessment. In BIAL's opinion, it is too low a threshold and will increase the cost of regulation for regulated entities. It would be better if the Authority adopts a more transparent measure to evolve entry criteria for regulation. For example, in the UK, the materiality assessment of airport services is defined based on the airport's revenue thresholds. The relevant extract from the paragraph 4 and 5 of the "Economic Regulation of Airports - General Guidance" issued by the Civil Aviation Authority of UK, as an example where the threshold can be fair and transparent:

*"Economic regulation applies in general to airports at which annual turnover has exceeded £1 million in two of the last three financial years. Airports currently excluded from regulation under the Airports Act (or the Airports (Northern Ireland) Order) are those in the Isle of Man and the Channel Islands, those owned or managed by the CAA or a CAA subsidiary and those managed by the Government. Annual turnover is the aggregate of all sums received by the airport operator during the course of his business at the airport during the year including grants but excluding loans or capital receipts. A change of airport operator does not have any bearing on which years are taken into account. An airport becomes subject to economic regulation by the CAA nine months from the end of the financial year when it first meets the turnover qualification.*

*"Should the turnover at a regulated airport later fall below £1 million for two years the Secretary of State may determine that the airport shall cease to be regulated".*

Further, it is to be noted that competition in any industry in the long run is encouraged by the ability of the individual participants to respond to market signals flexibly. Rather than stricter regulation, enforcing a framework that enhances the viability of the industry will drive in competition as more number of players would be attracted.

Also BIAL observe that a policy on ground handling services is under due course of formulation by Government and AERA need to consider the same suitably before deciding on regulation.

Keeping in mind the nascent stage of the industry, BIAL requests that AERA should increase the threshold for materiality up to 10% and thus facilitate light touch regulatory environment for maximum number of players.

**D. Competition Assessment** - The Authority has indicated a minimum threshold of operators which will lead to the service to be considered competitive.

a) Different categories of service providers -& corresponding treatment: BIAL requests clarity on the question of whether all categories of cargo will be lumped together under the assessment. For example, the Authority may please consider a case where there is a dedicated Express Cargo operator or a perishable cargo operator, and clarify if these companies will be treated at par with end-to-end service providers.

b) Clarity on definition of fuel farm operator: The tariff guideline includes the fuel farm operator and fuel access providers as fuel service providers. However, clarity is required on the definition of a fuel service provider as to whether it includes both the service providers for common facilities used by oil companies to pump in the fuel at the airports and the oil companies themselves. Also, if the ambit of the regulation includes the fuel farm operators, the Authority needs to clarify which charges the Authority will regulate i.e. the charge levied by the service provider to the airport operator or the charge levied by the service provider to the fuel supply providers.

c) Further, the full-service provider may sub-contract a specific activity to a different entity. Under such cases, BIAL requests the Authority to clarify the entity which would be subject to price regulation.

d) It is BIAL's submission that the measure of competition for any service cannot be established simply by observing the number of the players in the market. The Authority must also factor in other elements in its estimation process. For example, Section 4 of the Competition Act of India has suggested criteria that include the following:

- Market share of the enterprise
- Size, resources, economic power and importance of the enterprise and the competitors
- Vertical integration of the enterprises or sale or service network of such enterprises
- Dependence of consumers on the enterprise
- Entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers
- Countervailing buying power
- Social obligations and social costs

International studies<sup>1</sup> performed on assessment of competition in airports have also cited measures that also include threat of new entrants and the market power of buyers in the industry.

e) Competition from dedicated cargo facilities & from nearby airports: It is to be noted by the Authority that dedicated cargo facilities in places including Nagpur, will greatly increase the competition for export and import air cargo for India. BIAL's proximity to Chennai airport and upcoming airports like Mysore and Hassan increase the possibility of split of air cargo that may use the same ground infrastructure for the sourcing and distribution supply chain.

**E. Anomalies in Efficient Cost Estimation** - The authority has indicated that it would consider only efficient operation costs in its cost-plus formula to calculate the Aggregate Revenue Requirement. There are the following anomalies observed in this approach:-

- a. It has indicated an incentive factor "X" for efficiency improvement on an annual basis. In performing this, AERA may be looking to move beyond its own estimation of efficient costs.
- b. Further, the "X" factor is benchmarked against the performance of the same service provider, which may not be a fair approach. Such a factor would push even the most cost-efficient service provider to beat their own performance year-on-year, notwithstanding the quantum difference between their performance levels and the levels of performance of less-efficient providers within or in any other airports. As explained earlier, an experience based industry with stringent service quality standards like airports cannot be expected to divert its attention to meeting its cost objectives, independently of evolving service quality obligations.
- c. The Authority is requested to clarify its stand on whether the airport operator fees will be allowed as a pass-through for the independent service providers.

**F. Cross-Subsidization from non-regulated services** - Section 7.2 of the paper (page 13 of 85) states that the aggregate revenue for regulated service(s) will be calculated based on (among other things), "*Revenues from services other than Regulated Service(s) (NAR)*".

Consistent with our earlier positions, BIAL opposes the principle of cross-subsidization in any aspect of airport regulation. Further, it is to be noted that autonomous service providers providing Cargo, Fuel Facilities and Ground Handling services would have little or no scope for generation of revenues from outside their core areas of operation. AERA should clarify as to what would be covered under these non-regulated service revenues.

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<sup>1</sup> "Market Definition of Airports" by David Starkie and George Yarrow presented during a recent CAA consultation process in the UK.

It should be noted that in Section 8.2.1 of the paper (Page no 17 of 85), the Authority has mentioned that *"The assets that substantially provide services not related to or not normally provided as part of Regulated Service(s) may be excluded from the scope of RAB by the Authority, in its discretion"*.

However, at the same time, the Authority has also adopted the position that revenues other than from services that are regulated will be deducted from the calculated target return. This mutually contradictory position will lead to a double impact in calculation of the Average Revenue Requirement

- G. Fair Rate of Return** - The Consultation Paper has asked for the Service Providers to provide their inputs on cost of capital in their tariff application through the Capital Asset Pricing Model (CAPM) approach. In BIAL's opinion, AERA may clearly define the factors that would be considered for determining the cost of equity through CAPM approach. Since there are no directly applicable market data to determine the fair rate of return, benchmark criteria would be necessary to bring certainty to this process. In case the decision is left unto the service providers, there would be a huge difference in approach adopted by different service providers.

Further, AERA has suggested that the service provider would have to submit the detail computation along with the sources and evidences of the data used and also the lower and upper bound of variation. This will lead to information asymmetry as most of the service provider would prefer to have narrow range of variation. Further, there would be a continuous conflict of interest between AERA and the service provider on the lower and upper bounds.

- H. Asset Base Calculation** - As indicated earlier, in all cases the investment plan made by the Service Providers have been according to their existing contracts with BIAL. In some cases, BIAL has mandated the investment of a set of equipment that would be necessary to maintain the service levels at the airport. BIAL requests that AERA should continue to authorize BIAL to have the final opinion and approval on the nature of the investments that are required for the purpose of provision of the Services.

Further, in section 8.2.4 (b) of the consultation paper, the original cost of assets has been defined as follows:

*"The original cost of fixed assets as indicated in the last audited accounts, (excluding any re-valuation other than adjustments for impairment or such other adjustments that the Authority may consider appropriate) shall be included in the scope of the RAB"*

BIAL requests AERA to clarify the meaning of "revaluation of existing assets". Due to the advent of new accounting standards, including IFRS, service providers will be required to re-compute their existing books, which may involve a substantial revaluation of the assets. AERA should clarify on the extent to which such revaluation will be considered in the regulatory asset, as against the historic cost approach, that may be available based on asset investment records.

BIAL also requests the Authority to review clause 8.2.1 (c) where it has been stated that *"The Authority may also, in its discretion, consider any other relevant factors for exclusion or inclusion of assets."* It is desirable to clearly mention the complete factors

for exclusion or inclusion of the assets right at the beginning in order to leave room for ambiguous interpretations.

Further, we invite the Authority's attention to the clause 8.2.4 (b) which reads as follows:

*"The original cost of fixed assets as indicated in the last audited accounts, (excluding any re-valuation other than adjustments for impairment or such other adjustments that the Authority may consider appropriate) shall be included in the scope of the RAB based on the following principles:*

- a. Evidence of competitive procurement for major capital investments of value more than 5% of the opening RAB of the first Tariff Year;*
- b. Evidence that investment was made in accordance with the capital investment plan duly approved by the competent authority."*

It should be noted by the Authority that the capital investment of the Service provider have been invested according to their judgment on the efficacy of the assets. Since the service providers were not constrained by a competitive procurement process prior to this investment, they either may not have undertaken a strict competitive tender process in all the cases, or where undertaken, may not have maintained records to the given level of exhaustion as may be asked by the regulator presently. Therefore, the regulator should consider past investment made by the service provider as "grandfathered" and not revisit them.

BIAL further notes that the Authority should define the term "competent authority". Since these investments were made in accordance to the service provider agreements in place between the airport operator and themselves, the Authority is also requested to consider the airport operator as a competent authority in approving these costs.

Also, if the infrastructure for a particular service is shared between the two competitors with one leasing it out to the other, under the price cap regime, this may lead to the lessor to charge an exorbitant amount to force the other to duplicate existing infrastructure and thus leading to gross inefficiencies in the system. e.g. storage space being shared between multiple cargo service providers. These inefficiencies will be a direct consequence of the proposed regulatory regime on a cost-plus basis.