Federation of Indian Airlines
E-166, Upper Ground Floor,
Kalkaji,
New Delhi - 110019.
Website: www.fiaindia.in

MOST URGENT

20 July 2021

To,
The Chairperson,
Airports Economic Regulatory Authority,
AERA Building, Administrative Complex,
Safdarjung Airport,
New Delhi – 110003.

Kind Attention – Shri. Balwinder Singh Bhullar

Sub: In the matter of determination of aeronautical tariffs in respect of Kempegowda International Airport, Bengaluru for the Third Control Period (1 April, 2021 to 31 March, 2026)

Ref: 1. AERA Consultation Paper No. 10/2021-22 dated 22 June, 2021; and
2. AERA stakeholder consultation (virtual) meeting dated 9 July, 2021.

Dear Sir,

We, Federation of Indian Airlines (FIA), write in response to the Consultation paper No. 10/2021-22 dated 22 June, 2021 issued by the Airports Economic Regulatory Authority of India (AERA) in the matter of determination of aeronautical tariffs in respect of Kempegowda International Airport, Bengaluru (BLR) for the Third Control Period (1 April, 2021 to 31 March, 2026) ('Consultation Paper') and Annual Tariff Proposal/Tariff Card (Tariff Card) submitted by Bangalore International Airport Limited (BIAL) vide AERA Public Notice No. 13/2021-22 dated 1 July, 2021.

At the outset, FIA would like to express our sincere gratitude to AERA for inviting stakeholder comments on the Consultation Paper, and further acknowledging the impact of COVID-19 on the aviation sector.

The Consultation Paper read with Tariff Card, inter alia, proposes an increase/hike in the aeronautical tariffs at BLR as more particularly mentioned under Annex – A hereto.
In this regard, FIA humbly requests AERA to not implement any increase in the aeronautical tariff in the Third Control Period and defer any increase in the same to the subsequent control period, given the scenario described below.

Sir, as you would be aware, due to the impact of the second (major) wave of COVID-19 as experienced across India since March, 2021 the airlines have again started witnessing a sharp decline in the demand for air travel. This coupled with the government restrictions on fare & capacity on inter/intra State travel as applicable ('Government Restrictions') is preventing airlines from generating adequate passenger revenue to sustain.

Federation of Indian Airlines
E-166, Upper Ground Floor,
Kalkaji,
New Delhi - 110019.
Website: www.fiaindia.in

In such a scenario, the airlines continue to incur high operational costs on account of higher airport charges and taxes, and this has aggravated the imbalance in the cash flow position and is adversely impacting the gradual financial recovery of the airlines.

At present, the airline operations are barely at 35% of the pre COVID-19 capacity and the passenger traffic at around 30% of pre COVID - 19 levels. As per industry estimates issued by IATA and CAPA, airlines are likely to undergo losses of USD 8.0 billion for the FY 2020-21 and 2021-22 and it may take 2-3 years for airline operations to reach the pre COVID-19 level, in terms of number of flights and passengers. Also, with limited financial support from the Government, airlines are constrained to implement severe cost control measures to sustain its operations.

In the given circumstances, it is imperative that AERA does not take any steps, including by way of increase in aeronautical tariff, during the Third Control Period, which precipitates any further adverse financial impact on the airlines.

Without prejudice to the above, and as desired by AERA, please find attached FIA's recommendations/ comments on the Consultation Paper, under Annex – B. We hope that your good self will positively consider such recommendations/ comments as it will help in achieving the affordability and sustainability of the airline, which is also outlined as a key objective in the National Civil Aviation Policy, 2016.

We look forward to your continued support in these challenging times.

Thanking you,

Yours faithfully,

For Federation of Indian Airlines,

Ujjwal Dey
Associate Director

Copy to:
Director (P&S Tariff), Airports Economic Regulatory Authority of India (AERA)

FEDERATION OF INDIAN AIRLINES

Federation of Indian Airlines
E-166, Upper Ground Floor,
Kalkaji,
New Delhi - 110019.
Website: www.fiaindia.in

Annex – A: Increase in Aeronautical Tariff

S.No.	Particulars	2021	Proposed Tariff for Traffic Proposed by AERA - Third Control Period					Proposed Tariff for BIAL's updated traffic projection - Third Control Period				
			2022	2023	2024	2025	2026	2022	2023	2024	2025	2026
1	**Landing Charges – Up to 100MT**											
a	Domestic	207	280	364	550	570	595	280	364	550	605	665
	Year on Year % Increase		35%	30%	51%	4%	4%	35%	30%	51%	10%	10%
	Variance Base Year 2021		35%	76%	166%	175%	187%	35%	76%	166%	192%	221%
b	International	410	410	437	660	684	714	410	437	660	726	798
	Year on Year % Increase		0%	7%	51%	4%	4%	0%	7%	51%	10%	10%
	Variance Base Year 2021		0%	7%	61%	67%	74%	0%	7%	61%	77%	95%
2	**Parking Charges – Up to 100 MT**											
	Dom & Intl	4	14	15	16	16	17	14	15	16	16	17
	Year on Year % Increase		250%	7%	7%	0%	6%	250%	7%	7%	0%	6%
	Variance Base Year 2021		250%	275%	300%	300%	325%	250%	275%	300%	300%	325%
3	**Housing Charges – Up to 100MT**											
	Dom & Intl	7	25	26	27	28	28	25	26	27	28	28
	Year on Year % Increase		257%	4%	4%	4%	0%	257%	4%	4%	4%	0%
	Variance Base Year 2021		257%	271%	286%	300%	300%	257%	271%	286%	300%	300%
4	**UDF**											
a	Domestic	184	450	450	550	555	555	450	560	650	675	675
	Year on Year % Increase		145%	0%	22%	1%	0%	145%	24%	16%	4%	0%
	Variance Base Year 2021		145%	145%	199%	202%	202%	145%	204%	253%	267%	267%
b	International	839	1,350	1,350	1,650	2,220	2,220	1,350	1,680	1,950	2,700	2,700
	Year on Year % Increase		61%	0%	22%	35%	0%	61%	24%	16%	38%	0%
	Variance Base Year 2021		61%	61%	97%	165%	165%	61%	100%	132%	222%	222%

Federation of Indian Airlines
E-166, Upper Ground Floor,
Kalkaji,
New Delhi - 110019.
Website: www.fiaindia.in

Annex – B: Comments on Consultation Paper and Tariff Card

S. No.	Para	Particulars	Comments/Submission
1.	2.2	True Up of Pre-Control Period	FIA submits that AERA was established by the Central Government through its Notification dated 12.05.2009. Further, Chapter 3 of the Airports Economic Regulatory Authority of India Act, 2008, as amended (AERA Act) which stipulates the powers and functions vested in the AERA inter alia including determination of Aeronautical Tariff, was notified on 01.09.2009. Accordingly, AERA cannot retrospectively determine the BIAL's Aeronautical Tariff when the aeronautical tariff for the period prior to its formation was being determined by the Ministry of Civil Aviation (MoCA) on an ad hoc basis. Without prejudice to the above, it is submitted that passengers/airlines travelling cannot be burdened unnecessarily on account of the losses suffered by the BIAL prior to the First Control Period. It is a settled position of law that (a) future consumers cannot be burdened with additional costs as there is no reason why they should bear the brunt; and (b) the regulatory authority is required to take into consideration the efficient working of a utility as also the interests of the consumers while deciding the claims of the utilities. AERA being a creation of the statute is duty bound to balance the interest of all the stakeholders and consumers in terms of the AERA Act. In view of the above, FIA requested AERA to kindly disregard/exclude claims of pre-control period losses claimed by BIAL. Without prejudice to the above, it may be noted that true up of pre-control, if considered by AERA, should be done on Single Till instead of 30% Shared till.
2	3.12.7/3.13	True Up of Second Control Period	FIA submits that as per Table 46 of the Consultation Paper, it appears that in the Second Control Period, BIAL has made an over recovery of INR 1030.21 Cr., excluding pre control period shortfall. As mentioned by AERA, such over recovery is primarily due to delay in capitalisation of projects and higher aeronautical revenue of BIAL as compared to forecast in the Second Control Period.

			In view of the above, FIA submits that AERA and airport operators should undertake appropriate measures to ensure that there are no/minimal cases of over recovery, which will assist in lowering the burden of tariff on airlines/passengers. While FIA appreciates that independent studies have been conducted by AERA on efficient capital expansion, asset allocation, Operating Expenditure/O&M expenses, and Cost of Equity, FIA submits that the same may be undertaken prior to commencement of each 'Control Period' in order to minimise any large variations in projections and also ensuring suitable benchmarking of costs. Further, FIA requests AERA to apply the cost rationalisation measures, as indicated in such studies, to be applied retrospectively from the First Control Period. Further, the above submission is without prejudice to the right of FIA to challenge the Hon'ble TDSAT Order dated 16 December, 2020 regarding BIAL's First Control Period and Second Control Period, on merits.
3.	4	Traffic	FIA requests AERA to consider industry inputs/reports on traffic from agencies like IATA and ICAO and further conduct an independent study for traffic assessment, in accordance with the AERA Act.
4.	5.2.89 – 5.2.97	Analysis of RAB & Capital Expenditure	FIA appreciates that considering the reduced traffic owing to COVID-19, AERA has rationalised the capital expenditure and excluded certain proposed additions by BIAL to RAB. FIA further acknowledges AERA's decision to reduce 1% of the project cost from ARR/Target Revenue, as re-adjustment, in case any capex project is not capitalized by BIAL as per approval in tariff order. This approach is in line with the decision of Hon'ble TDSAT judgement dated 16 December, 2020 applicable for BIAL. FIA submits that in the current scenario post COVID-19, all the non-essential capital expenditure should be put on hold or deferred, and only such capital expenditure deemed critical from a safety or security compliance perspective may be undertaken. Further, as mentioned in para 5.2.80, FIA will await BIAL to complete the process of stakeholder consultation (by way of AUCC meetings) for capital expenditure projects for the Third Control Period. In case BIAL wants to

			undertake any capital expenditure, then it needs to be ensured that no additional expense is borne by the airlines until the project is completed and put for use to the airlines/passengers. Further, FIA requests that independent study for allocation of assets in the Third Control Period is undertaken by AERA.
5.	5.2.98	Depreciation	FIA submits that AERA should consider the useful life of Building including Terminal Building as sixty (60) years as envisaged in AERA Order No. 35/2017-18 read with Schedule II of Companies Act 2013, as applicable, and revise the amount of depreciation accordingly. It is pertinent to note that useful life of assets at various international airports like London Heathrow, Sydney airport and Amsterdam airport indicated that terminal buildings have useful life of as long as sixty (60) years and aprons have it for as long as ninety nine (99) years. FIA submits that the useful life of terminal building for Kannur and Cochin airports have been considered sixty (60) years by AERA. AERA should prescribe sixty (60) years for the Building including Terminal Building as is practiced by some of the developed aviation ecosystem Further, AERA to ensure that depreciation upto 100% of the value of the asset (based on the assumption that no compensation will be received towards the value of the Net Block of assets upon the transfer of airport on completion of the term), is not considered. It is humbly submitted that such approach will be contravention of Para 5.3.3 of AERA (Terms and Conditions for Determination of Tariff) Guidelines, 2011 (AERA Guidelines) which provides that depreciation is to be calculated to the extent of 90% of the assets. AERA may note that depreciation upto 100% value would result in an artificial increase in depreciation thereby having an adverse impact on the Aeronautical Tariff. In view of the above, we request the above recommendations are taken into account for all Control Periods at BIAL.
6.	6	Weighted Average Cost of Capital (WACC)/Fair Rate of Return (FRoR)	FIA appreciates that the AERA has considered a lower Weighted Average Cost of Capital of 11.59 % for the Third Control Period, including an independent study on Cost of Equity. However, FIA submits that fixed/ assured return favours the airport operators, and creates an imbalance

			against the airline, which are already suffering from huge losses and bear the adverse financial impact through higher tariffs. Further, due to such fixed / assured returns, service providers like BIAL have no incentive to look for the productivity improvement or ways of increasing efficiencies or take steps to drastically reduce costs as they are fully covered for all the costs plus their returns. Such a scenario may result in inefficiencies and higher costs, which are ultimately borne by the airlines. In the present scenario any assured return on investment (i.e., return on investment after the income tax), in excess of three (3) %, i.e., being at par with bank fixed deposits, will be onerous for the airlines. In view of the above, AERA is requested to immediately review WACC/FRoR by capping the returns to a maximum of three (3)%.
7.	7	Operating Expenses	While FIA appreciates that AERA has undertaken an independent study for Operating Expenditure/ Operations & Maintenance expenses has been done for the Second Control Period, AERA may undertake similar independent study for the Third Control Period. Without prejudice to the above: 1. AERA may advise BIAL to rationalize/re-negotiate all the cost/expenditure items or heads including 'Employee expenses', as deemed fit. Further, no escalations should be permitted under these items or heads. 2. Expenses on account of CSR may be excluded in line with previous decisions by AERA.
8.	8	Non-Aeronautical Revenue	FIA submits AERA to conduct an independent study on the Non-Aeronautical Revenues, in accordance with AERA Act. Without prejudice to the above, FIA submits that: 1. Increase in non-aeronautical revenue is a function of passenger traffic growth, inflationary increase and real increase/escalations in contract rates. AERA to ensure no adjustments are proposed to non-aeronautical revenue which is not dependent on traffic but are derived from agreements with concessionaires; and 2. 'Royalty' is in the nature of market access fee, charged (by any name or description) by the services providers under various headings.

			These charges are passed on to the airlines by the service providers. The rate of royalty at BIAL is upto approx. 30%. It may be pertinent to note that market access fee by any name or description is not practiced in most of the global economies, including European Union, Australia etc. In view of the above, we urge AERA to abolish such royalty which may be included in any of the cost items - aeronautical and non -aeronautical.
9.	10	Working Capital Interest	AERA to clarify whether any detailed assessment on working capital facility interest has been conducted to allow an interest of INR 29.44 crores on account of working capital interest. The above is required in relation to Para 5.4.3 of the AERA Guidelines which states that 'the Authority shall review and assess the levels of projected working capital requirements and shall consider cost of working capital loans as deemed appropriate'. FIA submits that an allowance of working capital interest would result in an artificial increase in the total operating expenditure and thereby have an adverse impact of increasing the tariff. Accordingly, AERA is requested to undertake a detailed assessment for allowing such interest.
10.		Methodology for Tariff Determination – Shared Till Vs. Single Till	FIA submits that in the Consultation Paper, it is stated that the AERA shall determine tariffs for using the 30/40% Shared Till model including for true ups as applicable. It is to be noted that FIA from time to time has advocated the application of a Single Till model across the airports in India. FIA submits that AERA should adopt Single Till basis across all Control Periods, including by way of true up, in view of the following legal framework: In the Single Till Order, AERA has strongly made a case in favor of the determination of tariff on the basis of 'Single Till'. It is noteworthy that the AERA has, inter alia, in its Single Till Order: (i) Comprehensively evaluated the economic model and realities of the airport – both capital and revenue elements. (ii) Taken into account the legislative intent behind Section 13(1)(a)(v) of the AERA Act. (iii) Concluded that the Single Till is the most appropriate for the economic regulation of major airports in India.

			(iv) The criteria for determining tariff after taking into account standards followed by several international airports (United Kingdom, Australia, Ireland and South Africa) and prescribed by ICAO. Further, AERA in its AERA Guidelines (Clause 4.3) has followed the Single Till approach while laying down the procedure for determination of ARR for Regulated Services. The fundamental reasoning behind 'Single Till' approach is that if the consumers/passengers are offered cheaper airfares on account of lower airport charges, the volume of passengers is bound to increase leading to more footfall and probability of higher non-aeronautical revenue. The benefit of such non aeronautical revenue should be passed on to consumers/passengers and that can be assured only by way of lower aeronautical charges. It is a productive chain reaction which needs to be taken into account by the AERA.
11.	13.	Aggregate Revenue Requirement/Aeronautical Tariff/Control Period	(i) <u>Overall Tariff/ARR</u> AERA is requested to review the suggestions/comments on the regulatory building blocks as mentioned under Annex – B, which is likely to reduce the ARR (including shortfall) of BIAL. This will further ensure the lowering of tariffs including UDF, which will be beneficial to passengers and airlines. (ii) FIA submits that the Hon'ble TDSAT Order dated 16 December, 2020 stated as follows: '100…However, there is substance in this grievance and AERA will do well to ensure that if delay is caused by the Airport operator, its consequences should not fall upon the users. Tariff orders should be prepared well in time so that the burden of recovery is spread over the entire period for which the order is passed...' In view of the above, AERA is requested to ensure that airlines/passengers are not burdened in view of the apparent shrinkage in the period of recovery of the aeronautical tariff from passengers/airlines, as the AERA Tariff Order for BIAL's Third Control Period will now be issued after the commencement of the Control Period i.e. 1 April, 2021.