

Dated: 15<sup>th</sup> May 2023

Ref: AERA/Finance/2022-23/04

Director (P&S)  
Airports Economic Regulatory Authority of India  
AERA Administrative Complex,  
Safdarjung Airport, New Delhi -110 003

**Sub:** Response to Consultation Paper No. 1/2023-24 dated 24<sup>th</sup> April 2023

**Ref:** Determination of Tariff for WFS Bengaluru Private Limited (WFSBPL) in respect of Cargo Handling Services at Kempegowda International Airport (KIAB) for the First Control Period (FY2023-24 to FY2027-28)

Dear Sir,

We thank the Authority for providing an opportunity to Bangalore International Airport Limited (BIAL) for sharing its comments and suggestions on the proposed position taken by AERA in the said consultation paper.

BIAL is both the grantor of the concession for the development and operations of the cargo terminal operations to WFSBPL and a 26% shareholder in WFSBPL. Hence, BIAL is cognizant that, in its dual role of both the Grantor and a Shareholder, there is a need to strike a fine balance between ensuring development of cargo infrastructure, growth of cargo tonnages at KIAB and also the economic viability of its concessionaires.

BIAL has filed Civil Appeals 1798-99 of 2021 and 1806 of 2021 before the Hon'ble Supreme Court of India challenging the decisions dated 16th December 2020 passed by the Learned Telecom Disputes Settlement and Appellate Tribunal. The matter is currently sub judice. The below response to the Consultation Paper is without prejudice to BIAL's rights, submissions and contentions made in the said Civil Appeals.

With the above background, please find below our responses on the specific proposals contained in the above-mentioned Consultation Paper for the kind consideration of the Authority.

### **1) Change in Regulatory Framework from "Light Touch" to "Price Control"**

Authority, vide Order No. 12/2010-11 dated 10.01.2011 and Direction No. 04/2010-11 dated 10.01.2011, issued 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, 2011 ("Guidelines").

The above mentioned Guidelines clearly specify the manner of assessing an Operator based on materiality, competitiveness etc. In this case, WFSBPL has been evaluated to be under "Light Touch" approach correctly by the Authority. In a Light Touch approach, the Authority is required to evaluate the overall profitability etc. and approve the tariff, as the competitive environment ensures a level playing field of operations.

However, in the subject Consultation Paper, Authority has unilaterally decided to adopt an intrusive “Price Cap” regulatory approach. The Authority has claimed that even in “light touch approach”, it can examine all the regulatory building blocks & underlying assumptions/ basis thereof, including projections relating to revenue, expenses, volumes etc. and other relevant aspects of the case, to ensure that extraordinary gains do not accrue to the Service Provider and that the end Users are not unduly burdened with high Tariff.

We do not see anywhere in the Guidelines issued by the Authority that there is such a provision applicable for “light touch” regulatory approach.

The Guidelines have been issued pursuant to powers conferred on the Authority as contained in Section 15 of the Act. They form the guiding principles of the AERA’s tariff determination methodology for service providers like WFSBPL. These Guidelines and Orders have been issued under Section 15 of the AERA Act and they are binding as it is on the parties including AERA, unless it is amended or modified in a process known to law.

WFSBPL is a new Service Provider at KIAB who is filing the Tariff petition for the 1<sup>st</sup> control period and hence there is no case available for AERA to pre-judge that extraordinary gains will accrue to WFSBPL and that end users will be burdened by higher tariff. AERA’s reasoning mentioned in the Consultation Paper for changing the regulatory approach clearly exhibits that it has a “pre-conceived” notion, and such an approach is contrary to the role envisaged under the AERA Act.

In fact, the MYTP submissions clearly establish that there is a loss in the 1<sup>st</sup> two years of operations and the operator is only making profits in the last 3 years of the control period. Hence, there is no case to be made regarding “extraordinary gains” accruing to the operator. Further, the average PAT Margin for the 5 years as per MYTP submissions is only about 8% and this by no stretch of imagination can be termed as “extraordinary”.

It is also pertinent to note that Tariffs for Cargo operators at KIAB was last revised in 2014 and hence cargo operations at KIAB cannot be termed as “extraordinary gains” accruing business. BIAL feels that the above statement made by the Authority is generic in nature and is not specific to Cargo operations at KIAB.

The stance taken by AERA in regard to “regulatory philosophy” will deprive WFSBPL the flexibility granted under “Light Touch” approach to fix rates and also the downside protection of true up offered under a “Price Cap” approach. This is detrimental to the development of cargo business at KIAB and we request the Authority to have a re-look at the above position.

The Authority recognizes that Air Cargo has been a beneficiary of the Covid pandemic and is expected to grow rapidly, primarily supported by Government of India’s Make in India program and incentives aimed at boosting exports.

Since KIAB already accounts for nearly 40% of air cargo business in South India, the Authority is requested to relook its approach and adopt the “Light Touch” tariff philosophy that provides the WFSBPL with due flexibility and incentives to enhance the cargo infrastructure and bring in global best practices and operational efficiencies.

## 2) Uniform Price increase for Airlines and Shippers/Agents

AERA has proposed to apply a uniform tariff increase between the tariff for Agents/Freight Forwarders (FF) and Airlines. Denying the freedom to structure or allocate the tariff hikes between different customer segments (FF/Airlines) would result in artificially increasing the revenue projections but one which WFSBPL would not be able to achieve at all, in reality. This would further lead to increase in losses than that projected by AERA, making the entire operation of activities at WFSBPL totally unviable. BIAL requests the Authority to allow WFSBPL due flexibility to structure the rate card within the tariff eventually approved by the Authority.

## 3) Estimated loss, Unviable Operations and Risk of exit of Global Players

Private Airports Operators take a lot of initiatives to introduce Global market leaders, thereby introducing best practices and improving operational efficiencies resulting in higher overall cost efficiencies in the entire life cycle / value chain. These efficiencies bring sustained savings and better quality of operations in line with the global standards. These activities undertaken by the Airport Operators are in line with the objectives of GoI's National Air Cargo policy (NACP).

A proposition of a loss making scenario (with such low tariff resulting in a loss of Rs 12.54 crs for 5 years), as proposed by AERA would lead to unviable operations resulting in panic of the Global leaders entering the Indian Cargo market, which will risk the fulfilment of NACP through the entry of global leaders. This also will have a serious impact on FDI flows into India.

## 4) Treatment of Security Deposit

WFSBPL is required to deposit interest-free refundable security amounting to Rs 50 crores with BIAL during the concession period. The Authority has proposed 5% as the return on this Security Deposit. This is totally contrary to the Hon'ble TDSAT's decision dated 23rd April 2018 in AERA Appeal No 6 of 2012. The Hon'ble TDSAT has clearly stated in paragraph 106 of its order that "... At the least, the cost would be the rate of return made available by the approved funds having required ratings of CRISIL.". The Authority needs to consider the above mentioned principles for the Security Deposit provided to BIAL by WFSBPL.

We request and urge AERA to ensure that viability of operations of business and balancing of all stakeholders including the Cargo Operator is considered and suitable revisions be made to facilitate WFSBPL to earn reasonable profits thereby ensuring the continuity of operations.

Thanking you,

Yours faithfully,

**For Bangalore International Airport Limited**



**Bhaskar Anand Rao**  
Chief Financial Officer