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Airports Economic Regulatory Authority of India

Order No. 38/2013-14

AERA Building
Administrative Complex
Safdarjung Airport
New Delhi 110003

Date of Order 24th February, 2014

Date of Issue 24th February, 2014

In the matter of Determination of Tariffs for Aeronautical Services in respect of Rajiv Gandhi International Airport, Shamshabad, Hyderabad for the First Control Period (01.04.2013 to 31.03.2016)

1. Brief facts

1.1. Earlier Airports in India were developed, owned and managed by Airports Authority of India (AAI). To keep with anticipated air traffic growth, Government of India (GoI) initiated the process of upgrading the existing airports in the country through AAI and also encouraged the setting up of Greenfield airports through private sector participation (PSP). GoI also amended the Airports Authority of India Act, 1994 (AAI Act) allowing inter alia carrying out airport related activities through Public Private Partnership (PPP) model, except for certain reserved activities such as air traffic control, security, customs etc. GoI also announced several fiscal incentives and concessions such as the availability of land from respective State Governments, financial assistance by way of equity/interest free loans etc.

1.2. Like many airports in the country the then existing Begumpet airport in Hyderabad needed expansion of airside as well as landside facilities. To cater to the increasing demand of the passenger and the cargo traffic, a new international airport in Hyderabad was planned. The Government of Andhra Pradesh (GoAP), in association with GoI/AAI took initiatives in 1998 to develop a Greenfield international airport through PPP at Shamshabad near Hyderabad about 22 kms from the then existing Begumpet airport. GoI accorded its approval for a Greenfield airport at

Brief facts

Shamshabad, Andhra Pradesh also agreed for the closure of the existing airport for all civil and commercial operations once the new airport is operational.

- 1.3. In 1999, the GoAP invited global tender to set up a Greenfield international airport at Shamshabad through PPP model. The Authority is given to understand that bids were received by the State Government. These bids were processed through a two-stage bidding process and two consortia were shortlisted for the final round, which were GMR-MAHB (GMR Infrastructure Limited (GIL) and Malaysia Airports Holdings Berhad (MAHB)) and L&T Zurich Airport Real Estate Consortium. Based on the final evaluation, the GMR-MAHB Consortium was selected by GoAP in December 2000 as the private partner for development of the proposed International Airport at Shamshabad, Hyderabad.
- 1.4. GMR Hyderabad International Airport Limited (HIAL) was incorporated to design, finance, build, operate and maintain a world class Greenfield airport at Shamshabad, Hyderabad. HIAL is a joint venture company following the following shareholding pattern

Table 1: Shareholding Pattern of HIAL as on 31.03.2013

Holding Company	Percentage Shareholding
GMR Infrastructure Limited	63%
Govt through AAI	13%
GoAP through Transport Roads & Buildings (Ports) Department	13%
Malaysia Airports Holdings Berhad	11%

- 1.5. The airport, named as Rajiv Gandhi International Airport (RGI Airport Hyderabad), Hyderabad is one of the recent airports to be operationalized under the PPP model. The RGI Airport Hyderabad designed by Hong Kong architects Winston Shu and Gumund, Stockholm, was commissioned in 31 months designed for a capacity of 12 million passengers per annum (mppa) and 1,50,000 tons of cargo handling capacity per annum. The airport was inaugurated on 14th March, 2008 and started the commercial operations on 25th March, 2008. The

Brief facts

RGI Airport Hyderabad can be expanded to accommodate over 40 million passengers a year, 4,260 meter runway and a parallel standby runway.

- 1.6. Key dates from initiation of the International Competitive Bidding process to Commercial Opening Date of the Airport under,

Table 2: Key dates in development of RGI Airport, Hyderabad

Milestones in the Commercial opening	Date
International Competitive Bidding started	December 1999
Request for proposal documents	July 2000
Submission of final bid	December 2000
Selection of GMR led consortium as preferred bidder	31 st May 2001
Declaration of GMR led Consortium as JV partner	August 2001
Signing of SHA and other documents	30 th September 2001
Signing of Concession Agreement	20 th December 2001
Commencement of Construction	September 2002
Commencement of Commercial Operation	23 rd March 2004

- 1.7. The key agreements governing the work under the project include

- a) Concession Agreement
- b) Land Lease Agreement
- c) State Support Agreement
- d) o Agreement
- e) CNS/ ATM Agreement
- f) o " t

- 1.8. A brief on the above Agreements is presented below:

Concession Agreement

- < Nature of Agreement Concession agreement for Development, Construction, Operation and Maintenance of Hyderabad International Airport between Ministry of Civil Aviation Government of India and Hyderabad International Airport Limited
- < Date of Agreement 20th December 2004
- < Concession

Brief facts

- Gol grants HIAL the exclusive right and privilege to carry out the development, design, financing, construction, commissioning, maintenance, operation and management of the Airport (excluding the right to carry out the Reserved Activities and to provide communication and navigation surveillance / air traffic management services which are required to be provided by AAI)
- ◁ Scope of the Project
 - Development and Construction of the Airport on the site in accordance with the provisions of the agreement, Operation and maintenance of the airport and performance of the Airport Activities and NonActivities in accordance with the provisions of the agreement and performance and fulfilment of all obligations of HIAL in accordance with the provisions of the agreement
- ◁ Fee
 - HIAL shall, in consideration for the grant by Gol of the Concession pursuant to Article 3.1, pay to Gol a fee amounting to four per cent (4%) of Revenue annually on the terms specified.
 - Gross Revenue means all tax revenue of HIAL, excluding the following: (a) payments made by HIAL for the activities undertaken by Relevant Authorities pursuant to Article 8.4, 8.5 and 8.6; (b) Insurance; and (c) any amount that accrues to HIAL from sale of any capital assets or items payments and/or monies received in respect of air navigation and air traffic management services payments and/or monies collected by HIAL for and on behalf of any governmental authorities under applicable law.
 - The Concession Fee shall be determined in respect of each financial year of HIAL occurring on and after the Airport Opening Date.
 - The Concession Fee in respect of the first ten (10) Financial Years (the Deferred Payment) shall be payable in twenty (20) yearly half instalments in the eleventh (11th) Financial Year, with the remaining instalments each payable on each Reference Date falling thereafter.

Brief facts

- Payments made under Article 3.3 shall be treated of the operating expenses of the Airport with the exception of deferred payment under Article 3.3.5, which are in lieu of payments to be accounted for in the relevant year.
- ◁ Existing Airport. Begumpet Airport
 - HIAL shall, six (6) months prior to the anticipated Airport Opening Date, notify Gol of the date it expects Airport Opening to occur.
 - From and with effect from the date on which Airport Opening occurs Gol will ensure that the Existing Airport shall not be open or available for use for civil aviation operations.
- ◁ Charges
 - The Airport Charges specified in Schedule 6 (Regulated Charges) shall be consistent with ICAO (International Civil Aviation Organization) Public Use. The Regulated charges set out in Schedule 6 shall be indicative charges. Prior to Airport Opening HIAL shall seek approval from the Ministry of Civil Aviation for the Regulated Charges, which shall be based on the final audited project cost.
 - From the date the Independent Regulatory Authority (IRA) has the power to approve the Regulated Charges, HIAL shall be required to obtain approval thereof from the IRA.
- ◁ Term
 - Unless terminated earlier, this Agreement shall continue in full force and effect from its commencement in accordance with Article 4 until the thirtieth (30th) anniversary of the Airport Opening Date whereupon the term of the Agreement shall at the option of HIAL be extended for a further period of thirty (30) years.

Land Lease Agreement

- ◁ Nature of Agreement Land Lease Agreement
- ◁ Date of Agreement 30th September 2003
- ◁ Parties to the agreement Transport, Roads and Buildings (Ports) Department, Government of Andhra Pradesh and HIAL

Brief facts

- < GoAP agreed to provide on lease ~~5000~~ ⁵⁰⁰⁰ acres at Shamshabad near Hyderabad.
- < Term
 - o The lease initially for a period of 30 years from the ~~operations~~ ^{operations} date and shall be ~~terminus~~ ^{terminus} with the Concession Agreement.
- < Lease Rent
 - o Payable on yearly basis starting from 8th year after the Commercial Operations Date
 - o 2% per annum on the land cost of ~~Rs.155~~ ^{Rs.155} (Base Value)
 - o Base Value shall escalate ~~at a~~ ^{at a} compounded rate of 5% p.a. from 8th anniversary of the Commercial Operations Date

State Support Agreement

- < Nature of Agreement State Support Agreement
- < Date of Agreement 30th September 2003
- < Parties to the agreement Transport, Roads and Buildings ~~DP~~ ^{DP} Department, Government of Andhra Pradesh and HIAL
- < GoAP acknowledged and agreed that project is ~~only~~ ^{only} with support of GOAP. The support from the Government include the following:
 - o Provision of support infrastructure in terms of road ~~access~~ ^{access}, water power supply
 - o GoAP to provide Advance Development Fund Grant (ADFG) ~~of Rs.107~~ ^{of Rs.107} (interest free ~~non~~ ^{non} refundable)
 - o Interest Free Loan (IFL) of Rs.315 ~~by~~ ^{by} GoAP to HIAL.

Sponsors Agreement

- < Name of Agreement Sponsors Agreement
- < Date of Agreement ~~me~~ ^{me} 30th September 2003
- < Parties to the agreement GMR Infrastructure Limited and Malaysia Airports Holdings Berhad
- < Term of the Agreement Effective upon its execution and is in effect till terminated by either party.

Brief facts

- ◁ Terminate upon The Agreement started terminated upon either of the following conditions:
 - MAHB ceasing to hold shares in HIAL
 - GMR ceasing to hold at least 10% shareholding in HIAL
- ◁ The Agreement also specifies the role of GMR and MAHB in the JV.

CNS / ATM agreement

- ◁ Nature of Agreement CNS/ATM Agreement
- ◁ Date of Agreement 11th August 2005
- ◁ Parties to the agreement Airports Authority of India and Hyderabad International Airport Limited
- ◁ Scope of services defined for Commissioning Phase, Commissioning Phase and Operation Phase defined
- ◁ Revenue
 - AAI shall be entitled to recover the Route Navigation Facilities Charges directly from airlines and HIAL shall incur no liability in respect of charges.
 - Terminal Navigation Landing charges payable by airlines shall be paid directly by airlines to AAI and HIAL shall incur no liability in respect of charges.
 - AAI shall pay a Rental Fee to HIAL in consideration of the facility and office space. Rental fee shall be mutually agreed and shall not be increased by more than 10% once in every three years.

Shareholders Agreement

- ◁ Nature of Agreement Shareholders Agreement
- ◁ Date of Agreement 30th September 2003
- ◁ Parties to the agreement Transport, Roads and Buildings (Ports) Department, Govt of Andhra Pradesh, Airports Authority of India, GMR Infrastructure Limited, Malaysia Airports Holdings Berhad and Hyderabad International Airport Limited
- ◁ GOI approved the new Greenfield Airport proposed to be constructed at Shamshabad, Hyderabad and vide its letter dated May 29, 2000 addressed to GoAP confirmed that existing airport at Begumpet, Hyderabad shall be closed for

Brief facts

- all civil operations. Following a process of competitive bidding, the Private Promoters have been selected as Joint venture partners for the Project.
- ◁ GoAP issued a notification dated 26 July 2008 appointing GMR/MAHB Consortium as the developer of the project.
 - ◁ The Private Promoters had proposed that the Project is feasible only with State Support and lease of Land on concessional terms, as financing for the Project could not be fully met through their contributions and the debt financing from Lenders. In view of the aforesaid, GoI and GoAP have agreed to support the Company in terms of Concession Agreement, State Support Agreement and Land Lease Agreement.
 - ◁ AAI Equity Cap means the maximum Equity Contribution of AAI, not exceeding the lower of (i) Rs. 50,00,00,000 (Rupees Fifty Crore) or (ii) amount corresponding to 13% Shareholding percentage on a fully diluted and fully converted basis.
 - ◁ Authorised Share Capital : The authorised share capital of the Company was Rs. 50,00,00,000 (Rupees Fifty Crore) only, divided into 5,00,00,000 (Five Crore) equity shares of the face value of (Rupees Ten) each.
 - ◁ Shareholding and Capital Structure: Upon subscription to the Shares in accordance with this Agreement, the paid up capital structure of the Company shall be as follows:
 - Private Promoters and Other Investors (collectively) 74%
 - State Promoters (collectively) 26%
 - ◁ Lockin period: The shareholding of the Sponsors and State Promoters shall be subject to the following lock-in restrictions during the periods set out below ("Lockin Period"):
 - (i) The Sponsors shall subscribe to and hold at least forty five percent (45%) shareholding of HIAL (of which GMR will hold minimum 40% and MAHB will hold a minimum of 5%) until the expiration of three (3) years from the Commercial Operations Date, and in no event less than twenty six percent (26%) shareholding for a period up to seven (7) years after Commercial Operations Date.

Brief facts

- o (ii) The State Promoters shall hold to and hold at least twenty six (26%) percent shareholding in HIAL until the expiration of seven (7) years after Commercial Operations Date.

1.9. The Concession Agreement, is one of the most important agreements for the development, construction, operation and maintenance of the Hyderabad Airport. The Concession Agreement was entered into between Gol through the Ministry of Civil Aviation (MoCA) and HIAL, on 20 December 2004. The Concession Agreement which defines the terms and conditions under which a private company, is entitled to build and run the airport. The parties to this agreement recognize and acknowledge that in matters of airport infrastructure and civil aviation, Gol has and must continue to have a major role and responsibility in determining the framework for the aviation sector. Further, the Concession Agreement sets out the terms and conditions upon which the project, being undertaken through a public-private sector approach, will be implemented. The term of the concession is for a period of 30 years from the Airport Opening date, i.e. 2008 extendable to 2038. The Concession Agreement provides that the activities of customs, immigration, quarantine, security and meteorological services will be performed by the relevant Government Agencies at the Airport and the communication, navigation & surveillance and air traffic management will be performed by AAI. HIAL shall, in consideration for the grant of Concession by Government of India to Government of India a fee amounting to four per cent (4%) of gross revenue annually.

1.10. Schedule 6 of the Concession Agreement provides the Regulated Charges including User Development Fee. It is mentioned under this Schedule that:

to levy UDF w.e.f. Airport opening Date, duly increased in the subsequent years with inflation index as set out hereunder from embarking domestic and international passengers, for the provision of passenger amenities, services and facilities and the UDF will be used for the development, management, maintenance, operation and expansion of the

Brief background on Revision of UDF Determination for RGI Airport, Hyderabad

Brief facts

- 1.11. Based on the above provision in the Concession Agreement, HIAL made a UDF application before the Ministry of Civil Aviation (MoCA). MoCA allowed a levy of UDF @ Rs. 1,000/ (inclusive of taxes) per international departing passenger w.e.f. 23.04.2008 and @ Rs. 375/ (inclusive of taxes) per departing domestic passenger w.e.f 18.08.2008 (vide letters No.AV.20015/01/2008 dated 28.02.2008 and No.AV.20036/28/2004 (Vol.IV) dated 18.08.2008 respectively), on basis. Excluding the service tax component, the UDF worked out to be Rs. 340/ per departing domestic passenger and Rs. 907/ per departing international passenger.
- 1.12. HIAL, vide their letter no. GHIAL/UDF/Domestic/04/2008 dated 01.09.2008, has submitted to MoCA that in their original business plan furnished to MoCA, the average UDF amount was arrived @ Rs. 725/ per passenger for both international and domestic passengers and since the UDF for international passengers was approved for Rs. 1,000/ by MoCA, the corresponding amount for domestic passengers should be Rs. 600/ to be in consonance with the submission. HIAL submitted that in the meanwhile, they had started collecting the provisional approved domestic UDF @ Rs. 375/ per departing passenger, under protest. HIAL also stated that as a result of the lower UDF approved for domestic passengers they were incurring a substantial loss of Rs. 230/ per month.
- 1.13. HIAL vide their letter Ref: GHIAL/F&A/UDF/2009 dated 02.08.2009 addressed to MoCA, requested for upward revision of UDF as under:
- 1.13.1. If 28.54% hike in Landing Housing and Parking Charges is allowed: Domestic UDF @ Rs. 450/ plus taxes and International UDF @ Rs. 945/ plus taxes.
- 1.13.2. If 28.54% hike in Landing, Housing and Parking Charges is not allowed: Domestic UDF @ Rs. 150/ plus taxes and International UDF @ Rs. 298/ plus taxes.
- 1.14. Pursuant to the coming into force of the AERA Act with effect from 01.01.2009 and the notification of the powers and functions of the Authority with effect from 01.09.2009, MoCA transferred the issue of determination of UDF for RGI Airport Hyderabad for the Authority vide letter No. AV. 01/2009 dated 06.10.2009 along with copies of extracts of some files and correspondences.

Brief facts

- 1.15. Upon scrutiny of the said application made by HIAL, the Authority observed that its certificate for classification of assets was not available and the methodology of calculation of UDF was not clear. The Authority, vide its letter AERA/20010/ HIAL/2009 dated 09.12.2009, requested HIAL to furnish above information at the earliest.
- 1.16. The Authority had noted that in addition to the initial project cost of Rs. 2,47 crore MoCA had approved the proposal of HIAL for additional investment to the tune of Rs.442 crore (at the project execution stage) subject to the following conditions (Ref. letter No.AV.20014/003/2006 dated 02.04.2008):
- 1.16.1. It will not require any additional contribution from stakeholders
- 1.16.2. There will not be any additional liability to the user. No additional UDF considered on this account;
- 1.16.3. All the works may be taken through competitive bidding process.
- 1.17. MoCA had, vide its letter No.AV.20014/003/2006 dated 09.08.2010, conveyed that the conditions imposed by Ministry vide its letter of even no. dated 02.04.2008 on the investment of Rs.442 RGI Airport Hyderabad, stand withdrawn.
- 1.18. Subsequently, HIAL vide its letter dated 18.08.2010, submitted an application for revision in UDF seeking approval of the Authority for rates of Rs.500/- per departing domestic passenger and 2,835/- per departing international passenger, w.e.f. 01.09.2010, including service tax. HIAL stated that the UDF proposed by them had been worked out on single till basis and had been calculated for five years (from FY 2009 to FY 2013) including last two completed years 2009 and FY 2010
- 1.19. Further, vide its clarifications dated 13.09.2010, HIAL submitted the following points to be considered by the Authority in its appraisal of the UDF proposal:
- 1.19.1. A hotel asset existing in the books of account of HIAL had been merged through a 100% owned subsidiary named GWR Hotels & Resorts Ltd. The capital cost of the hotel had been assumed in the asset base. Revenues and cost of the same had been excluded from projections of HIAL.

Brief facts

- 1.19.2. As per scheme of demerger, an amount of Rs.110 crore was treated as equity investment of HIAL in the subsidiary whereas an amount of Rs.40 crore was considered as unsecured loan extended to the subsidiary. GMR Hotels & Resorts Ltd by HIAL.
- 1.19.3. The unsecured loan of Rs.40 crore (advanced by HIAL to subsidiary, i.e. GMR Hotels & Resorts Ltd) was considered by HIAL received from the subsidiary and repaid to the existing lenders during the year 2010.
- 1.19.4. No land cost associated with the hotel was considered for determination of UDF. However, HIAL proposed to charge a lease rent of Rs. 35 per acre per month for the land occupied by the hotel (i.e. 7.03 acres).
- 1.19.5. As per HIAL submissions, the project cost of, including the hotel was Rs. 2,920 crore which consisted of Rs.2,120 crore loan and Rs.800 crore equity and quasi-equity. The bifurcation of equity and loans was as under

Table 3: Bifurcation of Equity and Loans

Equity and Loans	Rs (in Crore)
Equity	378
Interest Free Loan from Government	315
Advance Development Fund Grant	107
Total Equity	800
Term Loan 2005	960
Term Loan 2007	718
Additional Term Loan required	442
Total Debt	2120

- 1.19.6. Concession fee (payable @ 4% after 10 years) considered an expense for each financial year and accounted for on accrual basis as per the accounting standards.
- 1.19.7. The inflation figures in the original proposal dated 18.08.2010 changed to correct factual errors. The WPI increase was set to 5.33% per annum which was incorporated in the revised calculation.
- 1.19.8. Dividends in general did not form part of the core activity (operations) of the airport operator and were not included in tariff calculation. Telecom

Brief facts

Disputes Settlement and Appellate Tribunal (TDSAT) has in an Order dated 30.08.2007 held that dividends do not constitute part of Adjusted Gross Receipt (AGR).

- 1.19.9. Landing, Parking and Housing (LPH) charges were taken as per existing rates for the year 2010 and the 10% escalation was considered, year on year, starting from 2011/12.
- 1.19.10. The reduced discount of 2% on domestic was considered w.e.f. 01.11.2010.
- 1.19.11. Similarly, a landing charge of Rs. 4000/- for aircraft with less than 80 seats was considered w.e.f. 01.11.2010.
- 1.19.12. The revenue share from the Cargo was considered as aeronautical revenue whereas Rs. 5.77% without any escalation was considered as rental revenues and considered as Non Aeronautical.
- 1.20. Based on the above points, HIAL revised its earlier submitted proposal for levy of UDF and requested approval for levy of UDF at the revised rate of Rs 500/- per departing domestic passenger and Rs 700/- per departing international passenger, exclusive of service tax, w.e.f. 01.11.2010.
- 1.21. The Authority had examined the proposal submitted by HIAL for levy of UDF in respect of various aspects including Regulatory Asset Base, Weighted Average Cost of Capital, Traffic projections, Aeronautical and Non Aeronautical Revenue projections and Operating Cost projections.
- 1.22. The Authority thereafter has issued Consultation Paper No. 07/2010 dated 23.09.2010 representing its examination of HIAL submissions and its views on the UDF rates. A stakeholder consultation meeting was also held on 29.09.2010 at Novotel Hotel, RGI Airport, Shamshabad, Hyderabad which was attended by a wide range of stakeholders including GMoCA, AAI, National Aviation Company of India Ltd (presently Air India), Jet Airways, Indigo, Kingfisher, Association of Private Airport Operators (APAO), Blue Dart Aviation Ltd, Federation of Indian Airlines (FIA), Federation of Indian Chambers of Commerce and Industry (FICCI), Federation of Andhra Pradesh Chambers of Commerce and Industry, Federation of Indian Export Organization (FIEO)

Brief facts

1.23. Based on the stakeholder consultation and examination by the Authority, it issued Order No. 06/2010 dated 26.10.2010 (Ad-Hoc UDF Order) in the matter of Revision of User Development Fee (UDF) at Rajiv Gandhi International Airport, Hyderabad, wherein the Authority stated as under,

In exercise of powers conferred by Section 13(1)(b) of the Act read with rule 89 of the Aircraft Rules, 1937, the rate of User Development Fee (UDF) to be levied at Rajiv Gandhi International Airport, Hyderabad is revised to Rs.- 430/- (Rupees Four Hundred and Thirty only) per embarking domestic passenger and Rs. 700/- (Rupees One Thousand Seven Hundred only) per embarking International passenger (exclusive of service tax, if any), purely on non-cost basis, with effect from 01.11.2010 based on the figures for a period of 5 year. -This ad hoc determination would be reviewed at the stage of tariff determination for the first cycle and thereafter at such intervals as the Authority may determine, from time to time.

1.24. As per the above Ad-Hoc UDF Order dated 26.10.2010, the Authority is required to review its determination of the UDF in respect of RGI Airport, Hyderabad at the stage of determination of the first Control Period. This Ad-Hoc UDF Order dated 26.10.2010, has not been challenged either by HIAL or any of the stakeholders. The Consultation Paper No. 07/2010 dated 23.09.2010, the minutes of the stakeholder consultation Meeting held on 29.09.2010 and the Ad-Hoc UDF Order are available on the website of the Authority (www.aera.gov.in).

1.25. Meanwhile, the Authority was in the process of finalizing its approach for economic regulation that culminated in issue of Order No. 113/2010 dated 10.01.2011 wherein the Authority finalized the approach in the matter of Regulatory Philosophy and Approach in Economic Regulations of Airport Operators (i.e. the Airport Order). Further, the Authority vide its Direction No. 51/2010 dated 28.02.2011, finalized the Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators), Guidelines 2010 (i.e. Airport Guidelines).

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- 1.26. As per the Airport Order, the Authority decided that the first control period determination of tariffs for airport operators will be the five year period from 01.04.2011 to 31.03.2016 i.e. the period 01.04.2011 to 31.03.2016. Further, as per Clause 3.1 of the Airport Guidelines, all Airport Operator(s) were required within four months of the date of issue of the Airport Guidelines (i.e., 28.02.2011), to submit to the Authority for its consideration, a Multi Year Tariff Proposal (MYTP) for the five year Control Period in the form and manner specified in the said Guidelines. The last date for submission of the MYTP in terms of the Guidelines was 30.06.2011.
- 1.27. Further, in terms of Section (1) (a) of the ERA Act, the Authority shall, inter alia, determine the tariff for the aeronautical services, development fees including user development fees and passengers services fees to be levied as per the Aircraft Rule, 1937.
- 1.28. The Authority was conscious of the fact that in the nature of the timelines specified in the Airport Guidelines would not be possible to determine the tariff in respect of any of the major airports before 01.04.2011. In this light, the Authority had proposed to permit the concerned airport operators to continue charging the tariffs for aeronautical services provided by them, at the existing rates, in the interim period for which a separate order was issued as a result of stakeholder consultation (Order No.17/2010 dated 31.03.2011).
- 1.29. HIAL filed an appeal before the Airports Economic Regulatory Authority Appellate Tribunal (i.e. the Appellate Tribunal AERAA) against the Airport Order and the Airport Guidelines issued by the Authority. The Appellate Tribunal, vide its Order dated 11.05.2011 in the matter of Appeal No 08 of 2011 and 10 of 2011, directed HIAL to furnish the requisite Tariff Proposal to the Authority and directed the Authority not to make the final determination without leave of the Appellate Tribunal.

In the meantime, without prejudice to the stands taken, let the requisite information/details/data/tariff proposal be furnished by the appellant to the Regulatory Authority. It may continue the process of the determination, but shall make a final determination without leave of this Court. Time for submission of information/details/data/

tariff proposal details is extended till 31st July, 2011. It is clear that since the tariff proposal/information/data/details are being directed to be given without prejudice to the involved, they shall be treated as confidential by the Regulatory Authority.

1.30. GHIAL/AERA/2011/01, submitted its MYTP in respect of RGI Airport, Hyderabad on 31.07.2011. The Yield Per Passenger (YPP) under this MYTP submission was calculated by HIAL following dual till approach for the first control period mentioned that it, being the fuel farm operator, has filed a tariff proposal for the fuel farm facility separately. HIAL stated as under,

The yield per pax calculated in MYTP is worked on the dual till with control period of 5 year

The fuel farm tariff proposal has been filed separately; as GHIAL being the fuel farm operator making a separate 5 year filing with yield per KL calculation

The current proposal is for the approval of Yield Per Pax (computed by dividing the Aggregate Revenue Requirement by the total number of passengers in the control period. The yield has computed for the control period effective from April 2011 to March 2016. This yield per pax will require suitable upward adjustment based on the shortfall in collection as a result of actual date of charging being a future date rather than April 2011. After this approval from AERA, we shall submit a detailed pricing proposal to achieve this Yield Per Pax which will be a combination of various aeronautical charges, UDF, Discounts etc.

Inflation has not been factored in our forecast for future years. It is assumed that AERA will give year on year a WPI based increase over and above yield per pax calculated, based on WPI

1.31. Subsequently HIAL, vide its letter dated 05.08.2011, submitted additional information / data to the Authority and stated as under,

Brief facts

u is in continuation to our letter no. AERA2011201 dated 31st July, 2011 in respect of furnishing Multi Year Tariff Proposal of GHIAL. Further to our application, we are submitting Form(s)/information/data required as prescribed in the guidelines

- 1.32. The Authority pointed out that the submission of HIAL under dual till was not in accordance with the Airport Guidelines issued by GHIAL, vide its letter dated 30.08.2011, ~~sited~~ ^{in response} that it would file a tariff proposal under the single till and vide its letter dated 13.09.2011, submitted its MYTP in respect of RGI Airport Hyderabad under single till. HIAL's submission dated 13.09.2011, stated as under,

u in continuation to our letter number AERA2011203 dated August 30 2011 on the aforesaid subject wherein we had submitted to provide for GHIAL tariff filing for the first control period based on Single Till.

*U u h
The fuel farm tariff proposal has been filed by us separately
The current Tariff proposal has not been approved by the Board of GHIAL and same will be presented to board in the next board meeting in October 2011. We have also not submitted a 10 year business*

We are making this MYTP in the manner and formats prescribed by AERA in its guidelines.

- 1.33. Subsequently HIAL, vide its letter dated 14.12.2012, submitted revised MYTP under single till stating as under,

*U u h
AERA2011204 dated September 13th 2011 under Single Till.
Substantial period has elapsed since our earlier filing and there has been material change in the filedensinibus necessitates a revision of our application. The actual audited financials of 2011 now*

Brief facts

available and the same will give us a better insight in future forecasts. As such it will be prudent to incorporate the actual numbers of 2011

In light of the aforementioned reasons we hereby enclose our revised MYTP under Single Till.

Detailed tariff proposal along with financial model is submitted to the Authority for determination of MYTP of GHAL. The period of charging is reduced to 3 years, ~~and~~ condensed the charging period from 5

We also reserve our right to revise our filing under dual till.

- 1.34. Meanwhile, the Appellate Tribunal, vide its Order dated 15.02.2013 in the Appeal No 08/2011 and 10/2011 of HIAL against Order No 1 dated 28.02.2011 and Direction No 5/2010 of the Authority, stated as under,

u

that in spite of the guidelines the directions issued pursuant thereto yet there would be no impediment for the AERA to consider all the relevant issues and then to finalise the order regarding the determination of tariff of airports. Shri Nanda, Counsel appearing on behalf of the AERA categorically says that though these guidelines are binding yet it would still be possible to the contesting parties to canvass their views regarding the principles to be applied in determination of the tariff and that the Authority had only indicated its mind prima facie, in the impugned orders.

In that view, we would dispose off these appeals with the direction the AERA to complete this exercise of determination of tariff and while doing so, the AERA would give opportunities to all the stakeholders to raise all the plea and contentions and consider the same. The impugned orders herein would not come in the way of that exercise. We would however, request AERA to complete the determination

Brief facts

exercise as expeditiously as possible. We have taken this view as we are of the firm opinion that it would not be proper to entertain appeals on different stages of determination of tariff and to give the finality to the question of determination of tariff.

- 1.35. In pursuance to the above Order of the Appellate Tribunal, HIAL, vide its submission dated 20.02.2013, submitted its dual tariff model prepared on dual till basis. Further, HIAL also submitted an application to the Authority vide its letter dated 15.03.2013 to make a presentation to the Authority with its requests on certain aspects including request for consideration of dual till for RGI Airport, Hyderabad. Subsequently HIAL made a presentation to the Authority on 01.04.2013 requesting the Authority to take into consideration the points made in the said presentation. HIAL during the presentation also reiterated the points made in the presentation which were also raised by it as part of its appeal before the Appellate Tribunal. In addition to these points, HIAL also made certain additional submissions.
- 1.36. The Authority noted that HIAL's submission before the Appellate Tribunal, had argued in favour of dual till on various grounds. The Authority had also filed its reply in the form of counter affidavit before the Appellate Tribunal. As part of the present tariff determination and in line with the Order dated 15.02.2013 of the Appellate Tribunal, the Authority carefully considered the submissions of HIAL. The submissions, which specifically related to the regulatory building blocks of tariff determination, were reconsidered and analysed/discussed in the respective building blocks. In addition, HIAL also made certain general submissions in support of dual till. These general submissions in support of dual till were carefully analysed and discussed (presented in Para 4.3 below).
- 1.37. Further, HIAL vide its letter No. Ref: GWA/CA/regulatory/2013/001 dated 20.04.2013, requested the Authority to issue a direction to AERA under Section 42 of the AERA Act, for fixation of Regulated Charges at RGI, Hyderabad in line with Concession Agreement and particularly with respect to the following (vide submission of HIAL dated 20.04.2013):

Brief facts

(a) To adopt a Dual Till in compliance with provisions of Concession Agreement.

(b) Not to deduct the value of land meant for Non Airport Activities from RAB and also not to consider the revenues generated therefrom while fixing the Regulated Charges, as per Concession Agreement at RGIA Hyderabad.

- 1.38. These submissions were also analysed (presented in Para 4.4 below). These discussions were presented in the Consultation Paper No 09/2013 dated 21.05.2013 as part of the Stakeholder Consultation. The views of the stakeholders including HIAL, received vide comments on Consultation Paper No 09/2013 dated 21.05.2013, were also considered and analysed as part of this Tariff Order.
- 1.39. The Authority got the tariff models submitted by HIAL as a part of its tariff application, vetted by the Consultants. The scope of assignment for the Consultants included review and assessment of the models' arithmetic accuracy, check for logical and calculation integrity of the models and assistance in undertaking certain sensitivity analyses. The Consultants were further required to provide assistance to the Authority in identifying such elements that may need to be certified from auditors/ Chartered Accountants of HIAL for key aspects of assumptions and also assist the Authority in reviewing the implications/change in results through sensitivity analysis of various factors, to be conducted with respect to specific changes to assumptions for a factor.
- 1.40. During the course of the review and duplication of the tariff model, HIAL was requested to furnish to the Authority, certification by Statutory Auditors in support of figures considered in the tariff model including those taken as the base for their projections/ forecasts. At the stage of issuing the Consultation Paper No 09/2013 dated 21.05.2013, HIAL, in preparing the tariff model, followed the approach of using the actuals till FY 2011-12, extrapolating the actuals for the first 6 months of FY 2012-13 for the remaining 6 months of FY 2012-13 and then making projections for the remaining years of the Control Period, namely, FY 2013-14, FY 2014-15 and FY 2015-16. Accordingly, HIAL was asked to furnish the auditor certificates for the historical numbers for FY 2011-12 and first 6 months of FY-2012

Brief facts

13 used in the model. In case of difference between the numbers in the tariff model submitted by HIAL and those in the respective auditor certificates, the numbers in the auditor certificates were considered by the Authority.

1.41. The tariff model submitted by HIAL with its submissions on 06.02.2013, was considered by the Authority for its review. This tariff model was updated for the numbers from the auditor certificates and the tariff model was updated during various meetings. Based on the auditor certificates submitted by HIAL at various stages before the issue of Consultation Paper No. 40/2013 dated 21.05.2013, a tariff model was frozen on 09.05.2013 and was considered as the Base Model for the Consultation stage. The components of Base Model are given in Table 4. The Authority had noted that the YPP numbers stated by HIAL (in the tariff model as submitted by it on 06.02.2013) were Rs. 863.30 under single till and Rs. 1,048.23 under dual till. The Authority incorporated the figures for various building blocks as per auditor certificates / clarifications submitted by HIAL, in this model submitted by it on 06.02.2013. After incorporating these figures, the YPP number as per the Base Model worked out to Rs. 861.99 under single till and Rs. 1,042.41 under dual till. This Base Model was based on single till and the functionality to perform calculations on dual till also. The considerations under single till and dual till, as made by HIAL for calculation of above YPP in the Base Model are presented below:

Table 4: Various factors under Single Till and Dual Till = @ ° 0 " (with U actuals till FY 20112)

Parameters	Value under Single Till	Value under Dual Till
100% subsidiary for SEZ Hyderabad Aviation SEZ Limited	Included in calculation	Not included in calculation
100% subsidiary for Hotels & Resorts Limited	Included in calculation	Not included in calculation
100% subsidiary for Duty Free Retail Limited	Included in calculation	Not included in calculation
Forex Loss Adjustments	Included in calculation	Included in calculation
Non-aeronautical revenues of HIAL other than those captured by the 100% subsidiaries	Included in calculation	Not included in calculation

Brief facts

Parameters	Value under Single Till	Value under Dual Till
Cost of Equity	24%	24%
Past Losses	455.19	537.18
Date of Tariff Hike	01.04.2013	01.04.2013
Inflation on YPP number	Not considered	Not considered
Final Calculated YPP	Rs 86199	Rs 1042.41
* - Based on corrections from the Auditor Certificates		

1.42. However, at the stage of issuing this Tariff Order, audited Annual Report for FY 2012, approved and adopted by its Board, is available. Hence to make the determination of tariff more realistic, the Authority sought from HIAL the actual numbers to be considered in the tariff model for FY 2012. Accordingly, HIAL was asked to furnish the auditor certificates for the historical numbers till FY-2012 used in the model. HIAL has submitted the Auditor Certificates for the same. The Authority considered these submissions in the tariff model.

1.43. The Authority has carefully gone through the comments received from the stakeholders on its Consultation Paper No 09/2013. The Authority's decisions on these aspects are discussed in the following sections.

1.44. The remaining part of this Order is structured as follows:

1.44.1. Discussion on each issue has been segregated into sections.

1.44.1.a. The first section presents the comments made by the stakeholders on the Consultation Paper No 09/2013 dated 14.05.2013.

1.44.1.b. The second section presents the comments made by the stakeholders on the issue, as presented in the Consultation Paper No 10/2013 dated 21.05.2013.

1.44.1.c. The third section presents the comments made by the Stakeholders to the Authority on the issue, as presented in the Consultation Paper No 09/2013 dated 14.05.2013.

Brief facts

1.44.1.d. Fourth section presents the response made by HIAL to the comments made by the Stakeholders on the issue.

1.44.1.e. Fifth section presents the comments made by HIAL itself on the issue in addition to its responses to the Stakeholder comments.

1.44.1.f. o Stakeholder =@O =@O issue.

1.44.2. Decisions taken by the Authority on various issues in respect of RGI Hyderabad are summarized in ~~27~~ below

Investments

2. Investments

2.1. The Authority understands HIAL has incorporated some subsidiary companies. As per the audited balance sheets of HIAL for FY 2013, the subsidiary companies are as below:

- 2.1.1. Hyderabad Muzes Air Cargo Private Limited
- 2.1.2. GMR Hyderabad Aerotropolis Limited
- 2.1.3. GMR Hyderabad Airport Resource Management Limited
- 2.1.4. Hyderabad Airport Security Services Limited
- 2.1.5. GMR Hyderabad Aviation SEZ Limited
- 2.1.6. GMR Hyderabad Airport Product SEZ Limited
- 2.1.7. GMR Hotels and Resorts Limited
- 2.1.8. Hyderabad Duty Free Retail Limited
- 2.1.9. GMR Hyderabad Airport Power Distribution Limited
- 2.1.10. GMR Airport Handling Service Company Limited

a Stakeholder Comments on Issues pertaining to Investments

2.2. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the tentative proposals presented by the Authority with respect to various elements of determination of aeronautical tariffs. Consultation Paper No 09/2013 dated 21.05.2013. Stakeholders have also commented on consideration of investments made by HIAL. These comments are presented below:

2.3. FIA on the issue of investments by HIAL stated as under

@ # been revealed that HIAL has three (3) wholly owned subsidiaries, namely (a) GMR Hyderabad Aviation SEZ Limited; (b) GMR Hotels and Resorts Limited; and (c) Hyderabad Duty Free Retail Limited. Authority has considered HIAL as a standalone entity without any consolidation with its subsidiaries and accordingly, for the purpose of computing aeronautical tariff has not

Investments

included the revenue and assets of any of the three wholly owned subsidiaries (except revenue share from Duty Free)

By creating the wholly owned subsidiaries leading to low rates, HIAL is channeling out the revenue stream while allowing wholly owned subsidiaries to operate on a location which is highly valuable. Hence, the market value of land on which Hotel and SEZ are constructed should be subtracted from RAB, which in effect will bring down the aeronautical tariffs.

2.4. On the issue of investments by HIAL, AAI stated that

AERA has proposed to determine the tariff taking the Airport only as the single entity without taking into account its subsidiary in SEZ and hotel considering them as non Airport activity. AERA need to define the airport activity and non airport activity that the entire land has been acquired for airport.

It has not been stated whether HIAL has received any interest free security deposit from its concessionaire, which has been used in the Project

b = @ ° 0 ing to Investments

2.5. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2013 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to

2.6. HIAL exclusion of wholly owned subsidiaries of HIAL is as under:

u of GHIAL.

The other than wholly owned ventures of GHIAL may not be relevant for the current consultation. All relevant details requisitioned by Authority in this regard have been submitted to the Authority.

Investments

GHIAL had filed for inclusion of all the wholly owned subsidiaries in tariff determination of GHIAL. However the Authority has considered

2.7. In response to the petition filed by GHIAL regarding airport activity, HIAL stated as under:

We had made filing wherein the subsidiaries were also included.

However AERA has taken a viewpoint relating to exclusion of subsidiaries from tariff filing.

As regards to land, the airport and Non airport activity is already defined in concession:

< on a conjoint reading of Section 13(1)(a) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement and not regulate any Other Charges in respect of the facilities and services provided at the Airport using the revenue therefrom to subsidize the Aero Charges.

< The value of the land earmarked for Airport Activities (market or notional) cannot be included in nor deducted from the RAB and accordingly the revenue generated therefrom cannot be taken into account for cross subsidizing aeronautical tariff at airport.

< In fact the GoAP had given the land on lease for two independent purposes i.e. (i) for Airport and (ii) For development of non activities.

The Section 13 of AERA Act defines the role of the Authority. The scope is to regulate the Airport charges only not the Non activities.

The list of Airport and non airport activities are clearly listed out in the Schedule 6 of the Concession agreement

c = @ ° 0 pertaining to Investments

2.8. HIAL has not provided its own comments on the issue.

Investments

d Examination of Stakeholder Comments on Issues pertaining to Investments

2.9. The Authority has carefully examined the comments of the stakeholders on the issue of investments made by HIAL and its analysis of the comments is presented below:

2.10. The Authority has detailed the guiding principles for appraisal of MYTO submitted by HIAL Para 3 below wherein it is stated that the Authority has considered HIAL as a stand alone entity without any consolidation with its subsidiaries or taking into account the balance sheets and income statements of other subsidiaries. Having demarcated such boundary, the Authority has included financials pertaining to HIAL as a stand entity in its appraisal of the MYTO. The Authority has also deliberated on the RAB Boundary applicable for HIAL Para 3.7 below. Further the Authority had sought auditor certificates from HIAL to get a confirmation on the deployment of the means of finance for the purpose of the project and not for the purpose of equity investment in the subsidiary. HIAL provided auditor certificates stating under

Investments in 100% subsidiaries i.e. GMR Hotel and Resorts Limited (GHRL), GMR Aviation SEZ Limited, Hyderabad Duty Free Retail Limited have been made either from the debt funds or from the internal accruals of GHIAL.

GMR Hotel and Resorts Limited was funded as part of GHIAL project through 100% debt. Subsequently upon demerger of hotel property, Rs.130 Crores was transferred as debt and Rs.110 Crores as Equity debt was subsequently raised by GHRL and was repaid to GHIAL in turn repaid to its lenders.

Equity investment in GMR Aviation SEZ Limited and Hyderabad Duty Free Retail Limited are funded through internal accruals of GHIAL.

Investments

- 2.11. Based on the above, the Authority considers that the shareholding of HIAL in its other subsidiaries / companies, at present, does not impact the tariff determination for HIAL and is not required further examined.
- 2.12. The Authority views that the entire land has been acquired for airport and non airport activity. The commercial exploitation of land has been presented below. As regards defining airport activity and non airport activity for the purpose of treatment of land, the Authority derives its legislative guidance for factors to be considered in determination of tariff for aeronautical services from the AERA Act. The Act provides consideration of revenue from other than aeronautical services as a factor in this determination. The Act also provides guidance on consideration of certain services as aeronautical and non aeronautical.
- 2.13. Further, the Authority is set up to regulate any aspect of airport activities. Hence, even going by the relation to the airport, of the activities set out in Schedule 3 as amended from time to time, pursuant to ICAO guidelines, the remit of the Authority would thus be what the legislature has given to it and this has already been embodied and expressly provided for in the Concession Agreement. The consideration of the use of land presented in Paragraph 10 below, the Authority does not consider it necessary to separately define the airport activity and non airport activity for the purposes of use of land.
- 2.14. As regards the other comment of AAI, the Authority understands that the security deposit received by HIAL from the concessionaires in the terminal building are of short term duration and hence have not been considered towards means of finance.

Investments

2.15. As far as the suggestion of FIA regarding *and SEZ are constructed should be subtracted from RAB, which brief* is concerned, such mechanics of linking the lease of land by the GoAP to HIAL (for the airport project) with the feasibility of the airport project is not considered. Since the land is acquired by the GoAP and leased to HIAL, the Authority has separately sought the views of the CAG on this issue. The views of the CAG have been presented in Paras 10.38 and 10.39 below.

3. Guiding Principles for the Authority

Legislative Policy Guidance and Principles

- 3.1. The legislature has provided policy guidance to the Authority regarding the determination of tariff for the aeronautical services under the provisions of the AERA Act. The Authority is required to adhere to this legislative policy guidance in the discharge of its functions in respect of the major airports. These functions are indicated in Section 13(1) of the AERA Act:
 - 3.1.1. Determination of the tariff for the aeronautical services;
 - 3.1.2. Determination of the amount of the development fees including User Development Fee;
 - 3.1.3. Determination of the amount of the passenger service fee levied under rule 8 of the Aircraft Rules, 1937 made under Aircraft Act, 1934; and
 - 3.1.4. Monitoring the set performance standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorised by it in this behalf.
- 3.2. Further to the specification of functions to be performed by the Authority, the legislature also provides policy guidance on the factors, which are to be considered by the Authority in performing these functions. Under Section 13 (1) of the AERA Act, the legislature requires the Authority to determine tariff for the aeronautical services taking into consideration the following factors:
 - 3.2.1. the capital expenditure incurred and timely investment in improvement of airport facilities;
 - 3.2.2. the service provided, its quality and other relevant factors;
 - 3.2.3. the cost for improving efficiency;
 - 3.2.4. economic and viable operation of major airports;
 - 3.2.5. revenue received from services other than the aeronautical services;
 - 3.2.6. concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;
 - 3.2.7. any other factor which may be relevant for the purposes of the Act

Guiding Principles for the Authority

- 3.3. Thus the Authority is acting in accordance with the legislative policy guidance above. To operationalize the mandate of the legislature, the Authority has issued the Airport Order and the Airport Guidelines. In normal course it would have proceeded to determine the aeronautical tariffs in accordance with the Airport Order and the Airport Guidelines. However, in the Airport Order dated 15.02.2014 (refer Para 1.34 above) the Authority examined the submissions of HIAL both under Single till and Dual Till, with reference to various Regulatory Building Blocks. The Authority also presented a calculation of the different Regulatory Building Blocks in both Single Till and Dual Till with the financial implications including the tentative estimates in the Consultation Paper No 09/2014 dated 21.05.2014. Thereafter, the Authority carefully analysed the various submissions made by HIAL in support of Dual Till as those of the other stakeholders. These discussions are presented in A Below As presented there, the Authority decided to determine the aeronautical tariff for RGI Airport, Hyderabad for the current period under single till.

HIAL as a Standalone entity

- 3.4. The Authority has considered HIAL as a standalone entity based on the accounts of HIAL without any consolidation with subsidiaries or taking into account the balance sheets and income statements of other subsidiaries. Hence the equity of HIAL at Rs 78 crore as on 01.04.2014, a standalone entity, taken into account for further consideration.
- 3.5. In calculations of tariffs, therefore, the revenue from aeronautical services as well as non-aeronautical services (without considering the two subsidiaries of HIAL, SEZ and SEZ) are taken into account, along with the expenses. The calculations are made with respect to the BBA boundary (Para 7 below). These are summarized in Table 5 and are discussed in the relevant paragraphs.

Table 5: Various factors under Single Till per the Authority

Parameters	Value under Single Till
100% subsidiary for SEZ Hyderabad Aviation SEZ Limited	Not Included in calculation
100% subsidiary for HOTA Hotels & Resorts Limited	Not Included in calculation

Guiding Principles for the Authority

Parameters	Value under Single Till
100% subsidiary for Duty Free Hyderabad Duty Free Retail Limited	Included in calculation (Revenue share from Duty Free to HIAL considered for cross-subsidization)
Non-aeronautical revenues of HIAL other than those captured in the 100% subsidiaries	Included in calculation

Taxation

- 3.6. As regards taxation, the general principle adopted by Authority is to consider taxes paid on actual by the regulated, ~~entirely~~ HIAL as a stand alone entity. The Authority has, therefore, ~~considered~~ the tax paid by the ~~stand~~ alone entity of HIAL. The Authority has also ~~decided~~ to true up the taxes actually paid by the ~~stand~~ alone entity of HIALs presented in relevant section below.

RAB Boundary

- 3.7. The AERA Act requires the Authority to take into consideration received from services other than the aeronautical services. Hence the Authority can take into calculation, all revenue arising from all the services other than aeronautical services. Such services could include even those outside the ~~airport~~ terminal and the ones that are generally associated with commercial exploitation of land leased to the airport operator that is in excess of requirement of a ~~(Generally referred to as Real Estate Development)~~. The Authority had addressed this ~~in its~~ Airport Order (See Para 3.10 below) and after ~~stakeholders~~, decided on the RAB boundary that it would generally follow in its tariff determination of aeronautical services.
- 3.8. Regarding delineation of ~~RAB~~ boundary for the purposes ~~of~~ determination of charges for aeronautical services, the Authority has considered HIAL as a stand alone entity ~~it~~ has therefore, considered both aeronautical and non-aeronautical services that such ~~stand~~ alone entity would be providing at HIAL. As an illustrative list, the non-aeronautical services and activities would include duty free shopping, food and beverages, retail outlets, public admission fee for entry into the terminal hotel, if any provided inside the terminal ~~including~~ banks, ATMs, airlines offices, commercial lounges, spa ~~and~~ gymnasium facilities, car parking, etc. The Authority is

Guiding Principles for the Authority

aware that this is not an exhaustive list. In addition to the above, individual airport operator may innovate and add more aeronautical services so as to improve the passenger conveniences or enhancing ambience of the airport and terminal building.

3.9. The real estate development by the airport operator through commercial exploitation of land leased or granted which is in excess of the airport requirement would normally be outside RAB boundary. This means that the revenues from commercial exploitation of such lands would, in normal course, enter into the calculation of revenues required for a tariff determination. However, there may be such circumstances where the Authority may be required to take into account (like special covenants in the Concession Agreement or Lease Deed, etc.) which require separate consideration for taking revenues from real estate development into calculation of aeronautical tariffs. An illustrative list of such developments include hotels (outside the terminal building), Aerotropolis, convention centre, golf course, shopping complexes and residential areas, etc. Again this is an exhaustive list and the airport operator may develop such real estate for other users. The Authority understands that the real estate development for that matter commercial development on such land is subject to the relevant land zoning restrictions of the local bodies and other specific covenants or special aspects like the Airport Authority of India Act, etc. may also be governed, additionally, by the covenants of other agreements entered into by the public authorities with the airport operator (for example, OMDA or Lease Agreement, etc.). The treatment considered by the Authority in respect of land in excess of airport requirement for HIAL has been discussed in Paras 10.2 to 10.8 below.

3.10. The Authority, in its Airport Order, has outlined the principles for inclusion / exclusion of assets from the aeronautical RAB to be considered for tariff determination. The principles for exclusion of assets from RAB Boundary are presented below:

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- 3.10.1. The assets that substantially provide amenities/ facilities/ services that are not directly related to, or not normally provided as part of airport services, may be excluded from the scope of RAB;
- 3.10.2. The assets that in the opinion of the Authority do not derive any material commercial advantage from the airport (for example from being located close to the airport) may be excluded from the scope of RAB;
- 3.10.3. The Authority will not include working capital in the RAB
- 3.10.4. Work in Progress (WIP) assets would not be included in the RAB until they have been commissioned and are in use.
- 3.10.5. The investment made from funding levy (DF) would not be included in the RAB.

Considerations specific to Building

3.11. Apart from the above,

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Revenue Recognition from Cargo, Ground Handling and Fuel Throughput (CGF)

- 3.12. As per the provisions of the AERA, the Authority considers the services rendered in respect of cargo, ground handling and supply of fuel (CGF) as the aeronautical service. The recognition of revenue accruing to the airport operator in respect of the CGF services has been that if the service is being provided by the airport operator himself, the revenue accruing to it on account of the provision of the service would be considered as aeronautical service and if the service is outsourced by the airport operator to a third party concessionaire and the revenue accruing in the hands of the airport operator through revenue share rental etc. from such third party concessionaire would be considered as aeronautical revenue.
- 3.13. In respect of HIAL, while the service is being provided by the third party concessionaire, certain assets being utilized for the provision of this service are in the books of the airport operator. HIALs HIAL is not providing the cargo service itself, it has classified the assets pertaining to cargo facility service in

Guiding Principles for the Authority

books as non-aeronautical assets. HIAL has considered revenue from the third party cargo service provider as non-aeronautical.

- 3.14. The Authority believes that the primary consideration for determination of classification of an asset or the revenue therefrom as aeronautical or non-aeronautical is the classification of the service itself. If a service is being considered as aeronautical service, the assets utilized for provision of that service would also qualify to be aeronautical assets. The Authority believes that the assets being utilized for provision of an aeronautical service should be considered as aeronautical assets. In view of the above, the assets pertaining to provision of cargo facility service at RGI Airport, Hyderabad are aeronautical assets and in case of HIAL, appear on the books of HIAL and would thus enter into aeronautical RAB.
- 3.15. The Authority observes that revenue accruing to the airport operator on account of these aeronautical assets pertaining to cargo facility service forming part of RAB should therefore be considered as aeronautical revenue in this case if =@0 i.e. the revenue received by HIAL from aeronautical service (i.e. cargo service) is treated as non-aeronautical while the assets pertaining to this aeronautical service of cargo facility (in the books of HIAL) are treated as aeronautical, then a situation would arise where (1) aeronautical assets pertaining to cargo service would be included in the RAB (these aeronautical assets are in the books of HIAL) (2) the revenue accruing to HIAL from third party cargo service provider would be treated as non-aeronautical, (3) the airport operator (HIAL) would claim depreciation as well as proportionate interest cost and WACC on these assets that would go into the overall costs for aeronautical services and eventually paid for by the passengers. The revenue obtained by the airport operator, under dual till would not however be counted towards income. (4) Hence under dual till, there will be no corresponding (aeronautical) revenue stream accruing to HIAL to reckon towards the passenger charges (despite passengers bearing the burden thereof). This is an anomalous situation, where despite aeronautical assets entering the RAB, the revenue therefrom has been considered by HIAL as non-aeronautical.

Guiding Principles for the Authority

3.16. The Authority is aware that this distinction of certain assets therefrom being considered as aeronautical or non-aeronautical would not be material (in a financial sense) in case of tariff determination under single till, however the same would be material in case of tariff determination under the Authority, therefore proposes to reckon the revenues accruing to airport operator on account of aeronautical assets on its books to be aeronautical regardless of whether the aeronautical service is provided by the airport operator or has been concessioned out by third party concessionaires. Hence in case of HIAL revenue from cargo service provided by third party concessionaires proposed to be reckoned as aeronautical revenue.

3.17. The Authority further notes that Ground Handling service has been concessioned out by HIAL a third party concessionaire as per information available, the assets (mostly buildings) pertaining to this service are in the books of HIAL IN this regard, HIAL has submitted an auditor certificate stating as under,

As on 31st March, 2013 these assets such as Baggage Conveyor Belt and Baggage Make up Area are in the Books of GHIAL only. These assets are not owned by any external Ground Handling company. They are used by various Users and is part of the Aeronautical Asset Base of

3.18. Thus, following the above principle, the Authority proposes to consider revenue from such third party Ground Handling service provider accruing to HIAL as aeronautical revenue in the hands of HIAL. It is noted that HIAL is providing fuel farm service (i.e. fuel under the supply of aeronautical service) itself and the assets of which are in the books of HIAL. The Authority proposes to consider revenue from the aeronautical service of fuel farm as aeronautical revenue in the hands of HIAL.

3.19. In addition to the above, the Authority also notes a letter issued by the Ministry of Civil Aviation (MCA) dated 14th February 2013 (U-14/2013) regarding the 5-year Tariff for Bangalore International Airport Limited (BIAL). The Authority has consulted the Ministry of Civil Aviation (MCA) and the Ministry has informed its views to the Authority under,

Guiding Principles for the Authority

4. Furthermore, in view of the various provision of AERA Act, 2008 with respect to the Aeronautical Services, the Fuel Throughput Charge that is levied by Airport Operator may be reckoned as Aeronautical revenue in the hands of the Airport Operator. The revenues from cargo, ground handling services and fuel supply which are defined as Aeronautical Services in the AERA Act, 2008 may be reckoned as Aeronautical Revenues and considered accordingly irrespective of the providers of such Aeronautical Services.

3.20. The revenues from cargo, ground handling services and fuel supply which are defined as Aeronautical Services in the AERA Act, 2008 may be reckoned as Aeronautical Revenues and considered accordingly irrespective of the providers of such Aeronautical Services.

3.21. As regards the revenue accruing to HIAL on account of services provided at RGI Airport, Hyderabad, the Authority indicated in its Consultation Paper No 14/2013 dated 20.06.2013 in respect of Kempegowda International Airport at Bengaluru (Para 4.20.1) that it could be taken that the revenues earned by BIAL from these Cargo, Fuel Farm and Ground Handling services is caused to be provided by airport operator. Similarly in Para 18.64 of the same Consultation Paper, the Authority had stated that if these three services (CGF) are provided by the airport operator through third party concessionaire, a view could be taken that still it is the airport operator who has caused these three services to be provided by such appointed third party concessionaire.

3.22. The Authority had reiterated the above view in its meeting held on 22.07.2013 in respect of Consultation Paper No 14/2013 for Kempegowda International Airport at Bengaluru. The Authority had clarified that if these three services (CGF) are provided by the airport operator through third party concessionaire, it

It was also indicated in the said minutes that the next Control

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3.23. Having regard to the above as well as taking into account the contents of the letter dated 24.09.2013 by MoCA to the Authority, the Authority has taken the revenues accruing to HIAL on account of aeronautical services of aircraft handling and fuel supply to the aircraft as aeronautical revenues though these services may have been provided by third party concessionaires.

Treatment of dividend received by HIAL on investment made by it in ventures'

Subsidiaries

3.24. As indicated in Para 2.1 above, HIAL has invested in a large number of its subsidiaries. The Authority has noted that each of the subsidiaries has its own financial statements including relevant Assets. As also indicated above, the Authority has considered HIAL as a standalone entity for the purposes of aeronautical tariff determination. Hence the assets of the subsidiaries are not considered towards RAB of HIAL.

3.25. The Authority has noted from audited financial statements of HIAL that Hyderabad Menzies Air Cargo Private Limited (HM/CPL) has not received dividend from any of the other subsidiaries. (Summary of Transactions with related parties) Note 29 to the Financial statements of HIAL for FY-2011-12 (Transactions with related parties) of Note 29 to the Financial statements of HIAL for FY 2011-12. However it has received dividend income of Rs 1.04 crore in 2011-12 and Rs 5.98 crore in 2012 from its subsidiary company namely, Hyderabad Menzies Air Cargo Private Ltd.

3.26. For the purposes of calculation of ARR, the Authority has taken into consideration only the RAB in the books of accounts of HIAL and has accordingly not reckoned the assets of Hyderabad Menzies Air Cargo Private Ltd. in RAB for the purposes of tariff determination. The dividend received by HIAL from HM/CPL is likewise not included in the ARR calculations for HIAL.

a Stakeholder Comments on Issues pertaining to Guiding Principles for the Authority

3.27. Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the tentative proposals presented by the Authority with respect to various elements

Guiding Principles for the Authority

determination of aeronautical tariff. Consultation Paper No 09/2013 dated 21.05.2013. Stakeholders have also commented on the guiding principles of the Authority. These comments are presented below:

3.28. FIA stated that O

In support of the argument, FIA stated that UDF has been conceptualised as means of not only as a revenue enhancing measure but also to meet the capital expenditure incurred in developing and expansion of the airport which is not in consonance with the AERA Guidelines.

Authority has proposed to allow UDF on embarking passengers based on the Clause 10.2 read with Clause (iii) of Schedule of the Concession Agreement.

A perusal of the relevant clause of the Concession Agreement reflects that UDF has been conceptualised as means of not only as a revenue enhancing measure but also to meet the capital expenditure incurred in developing and expansion of the airport

It is to be noted that Clause 6A of AERA Guidelines in no uncertain terms provides that UDF is a revenue enhancing measure to allow Fair Rate of Return to the Airport Operator. It is not clear as on what basis the Authority has proposed to levy UDF at RGI Airport for the purpose of development and expansion work undertaken in the past. The Concession Agreement cannot be relied upon to allow levy of UDF (a revenue enhancing measure) in view of the expressed provisions of AERA Guidelines. It is settled position of law that regulations override

3.29. Further, FIA stated that it is unfair to bear the brunt of investment for improvement of system or expansion to meet the demand including upgradation and maintenance and it cannot pass it on to consumers

Further, in a long term PPP project, it remains unclear as to how the Authority can allow the funding to be borne by the unsuspecting rate payers, whereas the equity holders in control of the assets. It is imperative to note that the lack of diligent cost supervision and

reporting, if any, by HIAL, cannot lead to the detriment of the consumers at large. It is well recognised regulatory position that utilities are free to decide their own investment for improvement of system or expansion to meet the demand in upgradation and maintenance for a better and quality supply. In appropriate cases, the Regulator may disallow such cases of utility and it is for the utility to bear the cost of such investment and it cannot pass it on to consumers

@ *Consumer Online Foundation vs. Union of India & Ors* reported as (2011) 5 SCC 369 categorically noted that there can be no contractual relationship between the passengers embarking at an airport and the airport operator with regard to upgradation, expansion or development of the airport which is to be funded or financed by UDF. Those passengers who embark at the airport after the airport is upgraded, expanded or developed will only avail the facilities and services of the upgraded, expanded and developed airport. Similarly, there can be no contractual relationship between the airport operator and passengers embarking at an airport for establishment of a new airport in lieu of the existing airport or establishment of a private airport in lieu of the existing airport. Thus, it is submitted that in the absence of such contractual relationship, the liability of the embarking passengers to pay UDF has to be based on a statutory provision. At this juncture, it is to be noted that UDF has no statutory foundation and at RGI Airport has been levied and further proposed to be levied on the basis of Concession Agreement.

In fact the UDF which is being levied at the RGI Airport towards development and expansion of the airport facilities is in the nature of cess or tax. It is settled position of law that any levy or compulsory exaction which is in the nature of tax/cess levied without a statutory foundation/charging section, as laid down in a catena of

compulsory charge can be imposed by ~~any~~ by law, by or regulation unless the statute under which ~~subordinate~~ legislation is made specifically authorises the imposition. There is no room for

3.30. FIA concluded by stating that the Authority has not deliberated upon the rationale for levying UDF

In view of the foregoing, it is submitted that:

(a) Neither AAI Act, Aircraft Act, 1934 nor AERA Act nowhere provide for provision ~~of~~ termination or levy of UDF on passengers.

(b) Authority in the present Consultation Paper has not deliberated upon the rationale ~~for~~ levying UDF. It is submitted ~~that~~ Authority is bound under Section 13(4)(c) ~~AERA~~ Act to fully document and explain its decision.

3.31. FIA further stated that any increase in UDF ultimately affects the interests airlines as passenger is concerned with the total cost of his ~~and not~~ ~~with~~ the specific ~~break~~ of charges and such enhancements in costs not only works as a deterrent for the prospective traveller but also reduces the ability of the airline to recover its costs and thus affecting the business interests ~~of~~ airlines and aviation industry.

It is also noteworthy that UDF is recovered ~~from~~ traveling passenger through ~~the~~ air ticket as a component of the price of such air-ticket and the same is payable by ~~the~~ ~~airline~~ to the airport operator (HIAL in ~~the~~ present case) ~~is~~ reiterated that any increase fees payable directly by passengers ultimately ~~affects~~ interests of airlines. It ~~is~~ submitted that any passenger is concerned with the total cost of his travelling and not ~~the~~ specific ~~break~~ of charges. Such enhancement in ~~cost~~ of the ~~air~~-ticket not only works as a deterrent for the prospective traveler but ~~also~~ ~~the~~ ~~reduces~~ the ability of the airline to recover its costs and thus affecting the business interests ~~inter~~ alia of airlines and ~~air~~ industry.

3.32. FIA further stated that

It is submitted that under the competition law, an enterprise is under an obligation to extend its essential infrastructural facility at a reasonable price to its competitors.

the city Hyderabad. The requirement of access to essential facility was first articulated by the Supreme Court of United States of America in United States vs. Terminal Railroad Assn, reported as 224 U.S. 383 (1912). Under the principles of access to essential facility, the following four factors must be proven:

(a) Control of the essential facility by a monopolist;

essential facility;

(c) The denial of the use of the essential facility to a competitor; and

(d) The feasibility of providing the essential facility to competitors.

Further, it is submitted that to seek access to essential facility, the asset in question also must not be available from other sources or capable of duplication by the firm seeking access. Reliance is placed on the case of Apartment Source of Pennsylvania vs. Philadelphia Newspapers, reported as 1999 WL 191649. In view of the foregoing judicial precedents, it is submitted that HIAL assumes the position of a monopolist since it exercises control over RGI Airport which is a crucial infrastructural facility for a city like Hyderabad due to its financial and economic significance at both national and international levels. Airport is an essential facility, and thus, per this doctrine, the monopolist should not be allowed to charge an exorbitant price for accessing its facility.

It is submitted that such enormous hike in tariff by a monopolist HIAL may be viewed

under section 4 of the Competition Act, 2002.

things protect the interests of the consumers. Levy of such exponential charges by a monopolist clearly against consumer interests, and thus, is against the basic premise of competition law in India.

- 3.33. APAO stated that the Concession Agreement clearly bifurcated and other charges and the Authority should not bring the other charges under the ambit of regulation.

Given the intent of the Government of India to attract private and foreign investments to improve infrastructure development in general and civil aviation infrastructure in particular as stated by the PMO in June 2013, the Regulator needs to consider strongly whether the approach to airport charges proposed is likely to achieve this National objective.

- 3.34. Additionally APAO stated that

It is evident from Articles 10.2 and 10.3 that the Concession Agreement has clearly defined as to which charges would be regulated and which charges would be free of regulation.

The Authority's view conflicts with the Concession Agreement which clearly bifurcates the regulated and other charges. Bringing the other charges under the ambit of regulation by imposing the Single Till approach goes against the letter and spirit of the Concession Agreement.

As per APAO's understanding, the GoAP has written a letter to the Authority wherein it has clarified that Article 10(3) of the Concession Agreement gives the right to HIAL to set tariffs for facilities and services and that the concession does not envisage cross subsidy from non-aeronautical revenues to defray aeronautical charges.

- 3.35. Further, CII stated that Concession Agreement should be complied in totality and any change in interpretation of the concession agreement post facto will send

wrong signal to the investor community and will be impediment in growth in the aviation sector. It further stated that

will send wrong signal to the investor community and will be impediment in growth in the aviation sector. Therefore, Concession Agreements should be complied in totality.

This becomes even more pertinent as altering the provisions of Concession Agreement might cause the following:

a) Triggering demand on the Government for a compensation and or renegotiation of the concession terms (as witnessed in many Sectors of the economy)

b) Creating doubts in the minds of Indian and International equity investors and debt providers over the sovereignty associated with future private public partnerships leading to reluctance to invest

3.36. ASSOCHAM also stated that Concession Agreement should be complied in totality and any change in interpretation of the concession document post facto will send wrong signal to the investor community and will be impediment in growth in the aviation sector. ASSOCHAM further stated that

Concession agreement is the prime agreement based on which all the business decision were made at the time of taking project. Any change in interpretation of the concession document post facto will send wrong signal to the investor community and will be impediment in growth in the aviation sector. Concession agreements should be complied in totality.

The concession agreements formed the basis of extended international bidding processes followed by major private sector investment in airports. The terms under which the airports would be regulated were a central component of both bidding and investment decisions. The extent to which they are abided by therefore is a key indicator of whether similar agreements entered into by the Government of India

(GOI) could reasonably be expected to be followed. In other words it will form the basis of investors' assessment of the risk.

The provisions of the concession agreements could not be worsened without significant collateral damage. Such damage would include:

- a) Triggering a demand on the Government for a compensation and or renegotiation of the concession terms (as seen in many Sectors of the economy)
- b) Creating doubts in the minds of Indian and International equity investors and debt providers over the sovereign risks associated with future private public partnerships leading to reluctance to invest and/or high

3.37. ASSOCHAM further stated that

The concession agreement was signed much prior to existence of the AERA Act hence the Authority should adhere to the concession agreement as it was the basic agreement on basis of which investment was made. After enactment of the act the basic premise contained in concession cannot be taken away.

3.38. FICCI stated that all the project related agreements including Concession Agreement, Land Lease Agreement and State Support Agreement should be adhered to. Further, FICCI stated as under

We understand that the key agreements governing the working of the Hyderabad International Airport Ltd (HIAL) include (a) Concession Agreement, (b) Land Lease Agreement, and (c) State Support Agreement among others. These agreements played a pivotal role in forming the business decisions at the time of taking up the project. We are of the view that such agreements should be honored so that confidence of the investors does not get weakened.

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b = @ ° 0 o pertaining to Guiding Principles for the Authority

3.39. Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 09/2014 dated 21.05.2013, the Authority forwarded these comments to HIAL seeking its response to these comments. HIAL has provided responses to

3.40. @ ' h \ that from non , HIAL has stated as under:

A conjoint reading Concession Agreement, State Support Agreement and the Land lease Agreement indicates that the following concessions and assurances have been granted to the GHIAL at the time of the grant of the right/concession to develop the Airport,

The Concession Agreement defines and differentiates between

nonaeronautical activities at the Airport and non - V undertake at the Land = @ ° 0 (as defined under the Land Lease Agreement).

Thus, in addition to the rights granted to the GHIAL for setting up and operating the RGIA, certain additional rights have been granted for the purpose of development of the additional in this regard, the

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provision, at or in relation to the Airport, of the activities set out at Schedule 3, Part 1 as amended from time to time, pursuant to ICAO guidelines, provided that any activities that are not materially similar to those contemplated in Schedule 3, Part 1 shall require the mutual agree - h V at or in relation to the Airport, of the services set out at Schedule 3,

h o h #
the Non-Airport activities which consist of state activities.

In view of the above, it is pertinent to note that the land earmarked for development of Non-Airport Activities as well as the cost of setting up and carrying out the Non-Airport Activities is not to be considered for the purpose of permitted to utilize the said land parcel out of the total Land for carrying out Non-Airport Activities totally unconnected with the Airport business.

3.41. In response to ASSOCH consideration of the Concession Agreement for tariff determination HIAL has stated as under:

The concession agreement laid down certain incentives and assurances based on which the investment was made into the sector. The said promises need to be adhered.

Section 13(1)(a)(vi) of the AERA Act read with Article 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement. As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport.

This clarifies that Cargo, Ground Handling and Fuel services should be kept outside the regulation. The rationale of the same is as under:

Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement mandates regulating the Regulated Charges as defined in the Concession Agreement.

o - k -
(1) The Authority shall perform the following functions in respect of major airports, namely (a) to determine the tariff for the aeronautical services taking into consideration (i) the capital expenditure incurred and timely investment in improvement of airport facilities; (ii) the service provided, its quality and other relevant factors; (iii) the cost for improving efficiency; (iv) economic and viable operation of major

airports; (v) revenue received from services other than aeronautical services; (vi) the concession offered by the Central Government agreement or memorandum of understanding or otherwise; (vii) any other factor which may be relevant for the purposes of this Act: Provided that different tariff structures may be determined for different airports having regard to all or any of the considerations specified at sub

perusal of Section 13 of the AERA Act makes it clear that while determining tariff for aeronautical services, AERA is statutorily obligated to consider the concession of the Airport Operators by the Central Government and the other agreements which form an integral and inalienable part of such concession. Reading of Section 13(1)(a)(vi) indicates that the concession granted by the Central Government has to be read in the AERA Act and all its provisions as well as limitations contained therein have to be considered by AERA while determining tariff including while deciding which services in a particular case and in terms of the relevant Concession, can be regulated by AERA. This is further confirmed by a reading of the proviso

structures may be determined for different airports having regard to all or any of the considerations specified in clauses

said section. In other words, the AERA Act recognizes that a straightjacket applicability of its provisions to all major airports is not intended and grants flexibility to AERA to determine tariff structures to different airports having regard to various considerations including the concession granted by the Central Government. Thus, even though the AERA Act empowers AERA to regulate tariff for Aeronautical Service as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is statutorily mandated to consider such concession. In the case of RGIA, since one of the concession granted by the Central Government is that save for

to determine all Other Charges. Thus, on a reading of Section 13(1)(a)(vi) of the AERA Act read with Article 10.2 and 10.3 of the Concession Agreement, AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement (as an exception to the mandate of the Act which is recognized and allowed by the Act itself) and cannot regulate any Other Charges in respect of the facilities and services provided at the Airport including the other Aeronautical Services defined in Section 2(a) of the AERA Act.

As such Authority is not mandated to regulate any Other Charges in respect of the facilities and services provided at the Airport.

This clarifies that Cargo, Ground Handling and Fuel services should be kept outside the regulation.

GoAP:

GoAP also has clarified that Cargo, Ground Handling and Fuel should not be regulated. GHIAL has accordingly classified Cargo assets as non aero and revenue from Cargo, Ground Handling and Fuel services has been classified as non-aero. In our view this is what is contemplated under the Concession Agreement and the same is requested to be accepted by the Authority.

The Authority should abide by the Concession Agreement otherwise this will send negative signals to the investor community.

3.42. It is stated that the Authority should regulate all charges levied on passengers, cargo, ground handling and fuel services provided at the Airport.

stated as under:

We appreciate that CII has highlighted an important aspect.

Concession Agreement is the most sacrosanct because that is the basis on which the bidding was done by GHIAL.

GHIAL had made investment based on the concession agreement and material shift in the conditions means that the investor is called in to invest based on certain promise and the same is not honored later.

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This can at best be termed as an trap for the investor.

This is against the healthy growth of sector and this will result in a poor infrastructure and inefficient operations.

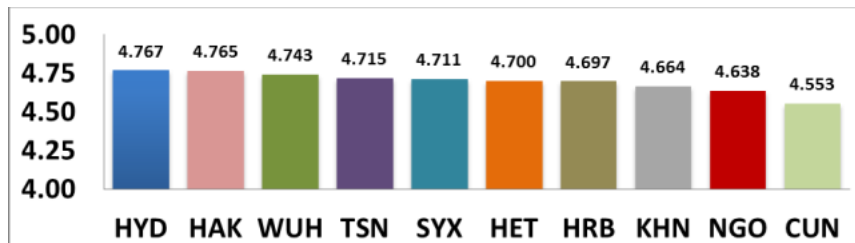
3.43. @ 7@#@ 8 h

Authority, HIAL has stated as:

Concession Agreement is the most sacrosanct because that is the basis on which investment has been made.

This is critical in attracting the investment.

The private sector has given an airport which is ranked amongst best in world by ACI.



Airport Name	Country	Airport Code
HYDERABAD RAJIV GANDHI INT AIRPORT	INDIA	HYD
HAIKOU AIRPORT	CHINA	HAK
WUHAN AIRPORT	CHINA	WUH
TIANJIN AIRPORT	CHINA	TSN
SANYA AIRPORT	CHINA	SYX
HOHHOT AIRPORT	CHINA	HET
HARBIN AIRPORT	CHINA	HRB
NANCHANG AIRPORT	CHINA	KHN
NAGOYA CHUBU CENTRAIR INTERNATIONAL AIRPORT	JAPAN	NGO
CANCUN	MEXICO	CUN

INTERNATIONAL AIRPORT		
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3.44. @ ' 7@ ' that levy of UDF at RGI Airport is legally untenable
HIAL stated as under:

The direction 5 of AERA has clearly laid down that :

6.8.4.

The Airport Operator(s) shall alsots information relating to the list of services or charges having a within the overall yield per passenger, such as User Development Fee.

6.8.5.

The User Development Fee (UDF) and other aeronautical charges cover the same range of services, and the UDF shall be considered as a revenue enhancing measure to ensure economic viability of the airport operations and shall be allowed only in specific cases upon due consideration. Explanation: In a case where the Authority approves the proposal to levy UDF, it shall determine the rate of UDF so that the revenue is so enhanced so as to ensure that the Airport Operator is able to obtain Fair Rate of Return on the RAB, as per these Guidelines, over the relevant period.

A5.9.2

Airport Operator(s) shall deta the specification of tariffs in terms of tariff types proposed (tariff for Regulated Service(s), user development fee (UDF), development (DE), as well as tariff categories proposed for each tariff type (based on weight of aircraft, domestic / international passengers, etc.).

A5.9.4.

Where the Airport Operator considers that a UDF charge is required, it shall specify the proposed UDF levy for each Tariff Year of the Control h

The basis of the fair and reasonable return has been deliberated in detail in consultation paper and based on entitlement UDF has been approved.

3.45. Further in response to the question raised, HIAL has stated as under:

Investment for improvement of system or expansion of the airport including upgradation and maintenance and it cannot pass it on to consumers, HIAL has stated as under:

Investment for improvement of system or expansion of the airport including upgradation and maintenance and it cannot pass it on to consumers, HIAL has stated as under:

3.46. Further in response to the question raised, HIAL has stated as under,

UDF is not a funding or financing source. UDF is revenue stream from passengers to airport operators.

FIA has mixed up UDF and ADF. GHIAL is only levying UDF.

However we shall also like to clarify that any charge by way of UDF or ADF allowed by the Authority need to be implemented and the user need to pay the same.

GHIAL is levying UDF which is revenue in nature and is not used directly for development and expansion of airport facilities.

3.47. Further in response to the question raised, HIAL has stated as under:

Investment for improvement of system or expansion of the airport including upgradation and maintenance and it cannot pass it on to consumers, HIAL has stated as under:

UDF is allowed under Aircraft rules. Rule 89 reads as under:

User Development Fee. The licensee may (i) levy and collect at a major airport the User Development Fee at such rate as may be determined under clause (b) of section (1) of section 13 of the Airports Economic Regulatory Authority of India Act, 2008;

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(ii) levy and collect at any other airport the User Development Fees at such rate as the Central Government may specify.

[Substituted by GSR No. 732(E) dated 10/02/2004 Amended by GSR No. 757 dated 10/02/2009]

3.48. The Authority has adopted a non-antagonistic approach and has not shown any monopolistic power being abused.

These are baseless allegations.

There is nothing to show any monopolistic power being abused.

The regulatory framework and scrutiny by the regulator is meant to ensure avoidance of dominance, if any.

3.49. HIAL has not provided its own comments on the issue.

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3.50. The Authority has carefully examined the observations of the stakeholders on the issue of Guiding Principles and its analysis observations is presented below:

3.51. The Authority in its Order No 32-132012 in the matter of Determination of Aeronautical Tariffs at Chhatrapati Shivaji International Airport, Mumbai. The Authority has examined the observations of the stakeholders and has taken into account the same. The Authority has also taken into account the observations of the stakeholders on the issue of Guiding Principles and its analysis observations is presented below: Aircraft Rules Paras 33.20 to 33.36 of the referred Order.

3.52. The expression "User Development Fee" defined in Section 13(1)(b) of the AERA Act which reads as under;

3.53. The legislature has specifically required the Authority to determine the amount of the development fee. The Development Fee as is normally understood is either the airport development fee (pre funding of the airport facilities) under Section 22A of the AAI Act and is a capital receipt or the user development fee as defined in the

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Aircraft Rule No. 89 which has been also specifically referred to in Section 13 (1) (b) of the AERA Act and is primarily in the nature of a revenue receipt.

3.54. In view of the above, the Authority is of the opinion that the User Development Fee, which reads as under

User Development Fee The licensee may,
(i) levy and collect at a major airport the User Development Fee at such rate as may be determined under clause (b) of sub-section (1) of section 13 of the Airports Economic Regulatory Authority, of India Act

3.55. In view of the above, the Authority is of the opinion that the User Development Fee, which reads as under, is in the nature of a revenue receipt, whereas the Section 13(1)(b) of the AERA Act, which reads as under, mentioned in the AERA Act, does not confer the power to levy the User Development Fee on the Authority. The Authority is of the opinion that the User Development Fee is in the nature of a revenue receipt. Rules 1937.

3.56. In view of the above, the Authority is of the opinion that the User Development Fee, which reads as under, is in the nature of a revenue receipt. Aircraft Rules 1937.

3.57. Further, as per Section 13(1)(a) of the AERA Act, the Authority has been given powers and jurisdiction to determine the tariffs for aeronautical services for major airports. Under Section 13(1)(b) of the AERA Act read with Rule 89 of the Aircraft Rules 1937, the Authority, therefore, has the legal mandate to determine the development fees in respect of major airports (including RGI Airport, Hyderabad being a major airport) namely the User Development Fee. The Authority further notes that FIA has not elaborated as to how UDF is being levied for development expansion in case of RGI Airport, Hyderabad.

3.58. In view of the above, the Authority is of the opinion that the User Development Fee, which reads as under, is in the nature of a revenue receipt. Essential Facilities, the Authority has recognized the monopoly granted to RGI Airport, Hyderabad by the Government of India through the exclusivity granted

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under the Concession Agreement for an aerial distance of 150 kms. Such exclusivity has been considered by the Authority as one of the risk mitigation measures towards determination of cost of service. The Authority observes that the monopolist should not be allowed to exploit its position, the Authority's approach is based on its consideration of various Regulatory Building Blocks presented under Para 7 below in respect of RGIA Airport, Hyderabad while keeping focus on lowering the burden on passengers and at the same time ensuring a fair rate of return on its investments.

3.59. The Authority has strongly whether the approach to airport charges as proposed is likely to achieve the objective of V. The Authority has followed the legislative guidance provided to it under the AERA Act in conducting the tariff determination exercise for RGIA, Hyderabad and therefore believes that its approach is in consonance with the legislative guidance and also in furtherance of attracting private investment consistent with the legislative guidance.

3.60. The Authority reiterates that the Concession Agreement defines the term "Airport" or IRA to mean the Airports Economic Regulatory Authority set up to regulate the activities of the Airport. The Authority reiterates that the Concession Agreement defines the term "Airport" or IRA to mean the Airports Economic Regulatory Authority set up to regulate the activities of the Airport. The Authority reiterates that the Concession Agreement defines the term "Airport" or IRA to mean the Airports Economic Regulatory Authority set up to regulate the activities of the Airport.

Schedule 3 Part 1, as amended from time to time, pursuant to ICAO guidelines. Schedule 3, Part 1 mentions the airport activities to include services, facilities and equipment in relation to (i) Airside facilities, (ii) Air side/Land Side/Terminal facilities (iii) Infrastructure and utilities for the airport complex (mainly land side). Airside facilities include, inter alia, all the airport facilities listed in the Concession Agreement namely cargo, ground handling and fuel supply. Upon examining the provisions of the Concession Agreement, the Authority observes that the Schedule 3 Part 2 delineates Non-airport activities and, inter alia, includes airport hotels, restaurants, etc. Upon examining the provisions of the Concession Agreement, the

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Authority observes that the Schedule 3, Part 2 delineates Airport activities and, inter alia, includes airport hotels, restaurants, etc.

3.61. With respect to the charges that the parties have right to impose, the substance of this provision is embodied in Clause 10.5 of that agreement. This agreement states that *subject to applicable law, no person (other than HIAL, any service provider and the holder granted a relevant service provider right or the AAI) may impose any charge or fee (a) in respect of the provision at the airport of terminal and air services which are included within airport activities or (b) in respect of the movement of passengers, or vehicular traffic at the airport or site.*

3.62. It is noteworthy that the stated right of HIAL et al is specifically subject to applicable law. The applicable law is also defined in the Concession Agreement meaning as

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regulations and notifications made thereunder and judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect

The Airport Regulatory Authority Act is clearly such an applicable law, and more so, is the specific mention of the Act mentioned in the Concession Agreement itself as the Authority has been set up to regulate any aspect of airport activities.

3.63. The above is quite apart from the fact that provisions enacted by the Parliament take primacy over covenants of an agreement (even if entered into by the government) and that the Sovereign has no power to stop the operation of the AERA Act, services like Cargo, Ground Handling and Fuel Supply are defined as Aeronautical Services for which charges are required to be determined by the Authority. Cargo, Ground Handling and Fuel Supply are aeronautical services and are required to be regulated in terms of fixation of tariffs thereof.

3.64. Further, the Authority notes that CII, FICCI and ASSOCHAM to the effect that the Concession Agreement is a prime agreement and was the basis of a business decision made by the airport operator while making the investment in the airport project and should be adhered to by the Authority. CII and ASSOCHAM stated that *interpretation of the concession document post facto will send*

wrong signal to the investor community and will be impediment in growth in t

The Authority notes that the comments from FICCI, ASSOCHAM and CII are to similar effect. The Authority further notes en-passant that the wordings of some of the comments provided by ASSOCHAM and CII are identical. The Authority would like to emphasize that covenants of the Congession and other project related documents have been appropriately considered during the exercise of determination of tariff for aeronautical services for RGIA, Hyderabad in line with the legislative guidance provided in the AERA Act.

- 3.65. On balance, the Authority decides to consider HIAL as a stand alone entity without considering its various subsidiaries (for example, GMR Hyderabad Aviation SEZ Limited and GMR Hotels and Resorts Limited) and to treat the revenues in the hands of HIAL from aeronautical services like cargo, ground handling and fuel farm services as aeronautical revenues.

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b of HIAL Submissions on Consideration of dual till in respect of RGI Airport, Hyderabad

4.3. All the grounds, considered by HIAL and presented above by the Authority in its Consultation Paper No 09/2013 dated 21.05.2013 are presented in the Paras below.

Concession agreement contemplated dual till

4.4. HIAL had (b) Concession Agreement means Dual Till (refer Para 7 above) As regards (a), the Authority had noted that the GMR Group had not wanted the provisions of the agreements like OMDA in respect of IGI Airport, Delhi to be strictly followed wherein OMDA had stipulated that tariffs of IGI Airport, Delhi must be brought by the joint venture company namely DIAL through equity and debt. Even so DIAL submitted application for grant of development fee first to the Government and thereafter to the Authority. The Government as the Authority considered the provisions of acts like Airports Authority Act (Section 22 A thereof) and AERA Act, 2008 (Section 13 (1) (a) (i) read with Section 13 (1) (b)) and determined giving primacy to the provisions of the Acts passed by the Parliament stipulations made over contractual agreements in this case, however, HIAL went to go by what is its interpretation of the Concession Agreement both in respect of regulatory till (it stated in its letter to the Hon Minister for Aviation that Concession Agreement mean till) as well as its interpretation that under Concession Agreement the services like cargo, ground handling and fuel supply are not to be regulated (though these services are defined as aeronautical services under AERA Act according to which the Authority is required to determine the tariffs for these services) applied to be selective approach.

4.5. Apart from the above, the Authority also noted that in its submission of tariff card, HIAL suggested charge of UDF for both embarking as well as arriving passengers. Even here HIAL not seem to have conformed to the Concession Agreement wherein it is clearly stipulated that O with effect from Airport opening date, based on the subsequent years with inflation index as set out hereunder, embarking (emphasis added) domestic

In its submission of the rate card, HIAL has a reason for charging UDF on both embarking and arriving passengers and giving the reason thereof was that this set of departing passengers was different from the set of arriving passengers. This assumption or might appeared that HIAL kept the interest of the passengers over the provisions of the Concession Agreement. The Government of India as well as the Authority consistently maintained that the burden on passengers should be kept in view in economic regulation of the airports.

4.6. As far as the UDF of Hyderabad airport is concerned, the Authority determined this quantum in October, 2010 under single till. This Order was not challenged by any stakeholder (including HIAL) before any Appellate or judicial forum. It would thus appear that at that time HIAL did not think that the Concession Agreement means dual till.

4.7. HIAL had referred to the provisions of the Concession Agreement and submitted that the Concession Agreement implied supporting its views as follows:

4.7.1. During the presentation made to the Authority in 2003, HIAL submitted that adoption of single till goes against the provisions of the Concession Agreement as it indirectly restricts the return on aeronautical and real estate activities, which are against the prudent commercial principles. HIAL requested the Authority to approve dual till for HIAL. The provisions of concession agreement, referred to by HIAL, follows:

4.7.2. Referring to Clause 10.2.4 under Airport Charges, HIAL submitted that Concession Agreement contemplate the regulation by Regulated Charges mentioned in the Schedule 6 of Concession Agreement. By adopting a Single Till, indirectly the aeronautical yield is also being regulated which is against HIAL presented the extract of the Clause 10.2, which is reproduced hereunder

10.2.4 From the date the IRA has the power to approve the Regulated Charges, HIAL shall be required to obtain approval thereof from the IRA. In this regard HIAL shall submit to the IRA, in accordance with any regulations framed by the IRA, details of the Regulated Charges proposed to be imposed for the next succeeding relevant period together with such information as the IRA may

4.7.3. Referring to Clause 10.3 on Other Charges, HIAL submitted a single till and using revenues from regulated charges, the Authority is indirectly regulating the Other Charges. This is conflicting with the provisions of the Concession Agreement. Fixing the return on entire RAB under single till leads to indirect regulation of Non Aeronautical charges which is against to the provisions of Concession Agreement presented the extract of the Clause 10.3, reproduced hereunder

HIAL and/or Service Provider/ 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

4.7.4. Referring to the list of Regulated Charges under the Concession Agreement HIAL submitted that only four charges, namely, landing charges, parking charges, housing charges and UDF are mandated to be regulated by the Authority. HIAL further submitted that the list of charges under the Concession Agreement clearly shows that concession has mandated a DUAL till. Hence all other charges should not be brought under the single till method as this goes against the provisions of the Concession Agreement.

4.7.5. HIAL presented the extract of Para 13.5.2 of the Concession Agreement and inferred from this Para that the Concession Agreement contemplates a dual till. If a single till was envisaged the GOI would not have opted to take over the entire gamut of services including Non Aeronautical services. The extract of Para 13.5.2 is reproduced below:

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due diligence of the contracts and the agreements pertaining to Non-airport Activities, the rights and obligations of which it is assuming and shall not be bound to assume the rights and

- 4.7.6. Lastly presenting the extract of Para 8.9 of the Concession Agreement below, HIAL stated that concession envisage HIAL to operate as a commercial undertaking and that the single till approach was not in sync with this provision.

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- 4.7.7. Assigning reasons for this inference, HIAL submitted that

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Non Aeronautical revenues together, is capped. Single Till scenario leaves no incentive for the operator to maximize its non aeronautical revenue since any increase in the aeronautical income will be offset by an equivalent reduction in the aeronautical tariffs. Providing aeronautical services at artificially lower tariffs provides a distorted economic picture. Charges to passengers should be r

- 4.8. The Authority had carefully examined the arguments presented by HIAL to infer the Concession Agreement implied dual till. The Authority had gone into the Concession Agreement dated 20th December, 2004 between HIAL and Ministry Civil Aviation, Govt. of India. Its observations follows:

- 4.8.1. At the outset, it is well settled that an agreement needs to be explicit and unless clearly stated, one may not be able to impute certain meaning as of dual till being implied in the agreement was concerned as per HIAL according to Concession Agreement, HIAL is free to determine charges other than the regulated charges. Based on th

freedom to levy such other charges, appeared to have inferred that the Concession Agreement implies dual till framework.

4.8.2. In view of the Authority, such inference was unwarranted even within the

is not to say that the revenues therefrom should not be reckoned towards determination of aeronautical tariffs. A meaning cannot be imported into the Concession Agreement. Furthermore, as pointed out in Para 2 above, the AERA Act requires the Authority to take into consideration

include revenue from even those services outside the airport terminal and the ones that are generally associated with commercial exploitation of land to the airport operator that is in excess of requirement of airport. (See Para above). As indicated, the Authority has delimited RAB boundary so as not to normally include in it those services outside the airport while determining aeronautical tariffs should the Authority finally come to the tentative conclusion to adopt single till during the Control Period

4.8.3. The Authority has issued the Airport Order No. 13 of 2011 (dated 12th January, 2011) and Airport Guidelines Direction No. 5 of 2010 2011 (dated 28th February, 2011). The Airport Order gives in detail the rationale of adoption of single till by the Authority (as is well known, Single till takes a holistic view of the airport business, taking into account the revenues from Non aeronautical services to arrive at the tariffs for aeronautical services. Dual till, on the other hand, takes into account revenues only from aeronautical services to determine tariffs for such aeronautical services).

4.8.4. The Authority, therefore, did not, in the Consultation Paper No 09/2013, go into the details and reasoning as to why it adopted the Single till framework for aeronautical tariff determination in its Airport Order and limited its analysis to the points and submissions brought before it by HIAL support of dual till.

4.8.5. Apart from classifying the charges into regulated charges and other charges, the Concession Agreement does not have any other covenants with regard to the methodology for the determination of the regulated charges. The Concession Agreement also provided for a separate tariff for aeronautical services. The Authority also noted that the Non-aeronautical services were outsourced to third party concessionaires. The charges of such third parties (with the exception of those providing the aeronautical services of Cargo, Ground Handling, and Fuel Supply) are not determined by the Authority. This was also consistent with the provisions of the Concession Agreement.

4.8.6. Section 13(1)(a) of the AERA Act details legislative policy guidance as to the factors that the Authority needs to take into consideration while determining the tariffs for aeronautical services. The concession offered by the Central Government was one such factor. The Authority thus taken into consideration the Concession Agreement dated 20th December, 2004 signed between the Central Government and HIAL. After analysing the covenants of the Agreement, the provisions of the AERA Act, the Authority reached the conclusion that the dual value implied in the Concession Agreement and the inference of HIAL that the Concession Agreement implies dual value was unfounded.

4.9. The Authority noted that the Concession Agreement provided for the Authority to take over the entire gamut of business including Non-aeronautical and Real Estate activities. However, the Authority had noted that the wording of the paragraph defining 'Real Estate Activities' were redefined in Schedule 3 Part 2 of the Concession Agreement as Landside Airport Activities that has been seen to generally pertain to the real estate development. Some of the activities mentioned in Schedule 2 also found in Schedule 3 Part 2 of the Concession Agreement. As indicated by the Authority, in normal course, the real estate development would be outside the RAB Boundary (See Annexure 7) and the

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Authority would not normally be taking these into account while determining t under single till. Its proposed treatment of commercial exploitation of land in excess of airport requirements is separately given in 2nd Para 8 below

- 4.10. That apart, HIAL seemed to have selectively quoted the paragraph in the Concession Agreement because just after the wordings , the following wordings appeared:

ably onerous, and would 8 @ be considered onerous at the time that the contracts were entered into. Gol shall conduct the due diligence and identify the contracts and agreements that it is prepared to assume within 45 days of the opening of a data room by HIAL for these purposes following the exercise of a right of termination by Gol or HIAL under Article 13.4. For the avoidance of doubt, to the extent Gol opts to take over Non Activities calculation of Termination Amount or Settlement Amount shall include investments amounts or costs of such Airport

- 4.11. The clear wordings of clause 13.5 of the Concession Agreement indicate that Gol has the right to examine the contracts pertaining to airport activities. The same paragraph also indicates that if satisfied, the Gol may take over such airport activities (Emphasis added). Thus it can be inferred that this paragraph

is in support of single till. On the contrary, the wordings of clause 13.5 do not indicate that Gol can take over Non Airport activities. It is clear that the wordings of clause 13.5 do not indicate that the Concession Agreement did not contemplate dual till. Going further, if the Gol can take over entire airport activities, again going to support of single till.

- 4.12. The Authority then proceeded to examine HIAL submission in support of dual till based on documents other than Concession Agreement.

ICAO policies on economic regulation

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4.13. HIAL, in its presentation dated 01.04.2013, to the Authority referred to the revised ICAO guidelines and stated that in Doc 9082^{8th} Edition removed the ambiguity related to the choice of till. ICAO has clarified that it does not endorse Single Till regulation as the most preferred form of regulation. ICAO leaves it to respective member states to adopt their choice of till based on suitability to their circumstances. The clauses of ICAO 9082 presented by HIAL are reproduced below:

ICAO 9082 8th Edition

The Council also states that in determining the cost basis for airport charges the following principles should be applied:

i) The cost to be shared is the full cost of providing the airport and its essential ancillary services, including appropriate amounts for cost of capital and depreciation of assets, as well as the costs of maintenance, operation, management and administration, but allowing for all aeronautical revenues plus contributions from non-aeronautical revenues accruing from the operation of the airport to its operators.

ICAO 9082 9th Edition

The cost to be allocated is the full cost of providing the airport and its essential ancillary services including appropriate amounts for cost of capital and depreciation of assets, as well as the costs of maintenance, operation, management and administration. Consistent with the form of economic oversight adopted, these costs may be offset by non aeronautical revenues.

4.13.1. Based on the above, HIAL requested the Authority to review its conclusion that ICAO recommended single till.

4.14. The Authority had noted the provision of the Concession Agreement for RGI Airport, Hyderabad which states that the charges specified in Schedule 6 shall be based on the ICAO Policies. Further the Concession Agreement defines the ICAO Policies as follows:

ICAO Policies means the first statement of the ICAC Council on the subject of ICAO Policies on Charges for Airports and Air

of the Council of ICAC on 22 June 1992, at the 14th Meeting of its 136th Session, subsequently amended on 8 December 2000, the 18th Meeting of the 161st Session and which is published as ICAO document 9082/6 as may be amended from time to time;

4.15. As far as the issue of regulatory till was concerned, the Authority, in detail, considered the ICAO position from ICAO documents based on the opinions of aviation experts and academics. The documents and positions were presented in the documents issued by the Authority, namely, White Paper No. 01/2000 on Regulatory Objectives and Philosophy Economic Regulation of Airports and Air Navigation Services and Consultation Paper No.3/2009 on Regulatory Philosophy and Approach Economic Regulation of Airports and Air Navigation Services.

4.16. The Authority had had reference to ICAO Policies in terms of its prescription for any form of regulatory approach. The Authority noted the guidance provided in ICAO Document 9082/6 which recommended the following:

According to their specific circumstances, while keeping regulatory interventions at a minimum and as required. When deciding on an appropriate form of economic oversight, the degree of competition, the costs and benefits related to alternative forms of oversight, as well as the legal, institutional and governance frameworks should be taken

4.17. While the above guidance was regarding the selection of an appropriate form for economic oversight, the Authority also had references to other provisions of ICAO documents to establish its preference, if any, for any specific regulatory till. While doing so it considered the opinions of aviation experts and academics. It had come to a conclusion that the single till recommended or supported by ICAO and presented in the White Paper 01/2000 Consultation Paper 03/2009, which were put forth for stakeholder consultation.

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- 4.18. Stakeholder consultation was undertaken on these documents and the view of the stakeholders was duly considered by the Authority while developing its Guidelines for determination of Aeronautical Tariff for major airports.
- 4.19. HIAL, vide its presentation dated 01.04.2013, submitted to the Authority that as per the revised edition (9th edition) of ICAO 9082, ICAO has removed the ambiguity related to the choice of till.
- 4.20. The Authority had had reference to the revised edition of ICAO 9082. The Authority had noted the change in wording of the referred clause. Based on its reading of the changed words, the Authority concluded that ICAO is not favouring any particular form of regulatory till whether single till / dual till. The Authority believed that if ICAO had any inclination towards any particular form of regulatory till, it would not have left it to the fertile imagination or interpretation by interested parties. Hence if any inferences drawn by HIAL that ICAO favoured dual till, the same was misplaced.

Provisions of the AERA Act, 2008

- 4.21. HIAL, in their presentation on 01.04.2013, referred to the provisions of the AERA Act, 2008. HIAL presented arguments to support its view that single till was not envisaged under the AERA Act. HIAL first took reference to the preamble of the AERA Act and presented extract from the preamble as under,

to provide for the establishment of an Airports Economic Regulatory Authority to regulate tariff and other charges for the aeronautical services rendered at airports and to monitor performance standards of airports and also to establish Appellate Tribunal to adjudicate disputes and dispose of appeals and for matter connected

- 4.21.1. Based on the above reference to the preamble, HIAL inferred that it was contemplated that Aeronautical Charges will be regulated and the performance

- 4.21.2. HIAL also referred to the Section 13 (1)(a) of the AERA Act, vide which the following factors to be considered by the Authority in its determination of tariff for

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aeronautical services. Referring to these factors, HIAL stated that *empowers AERA to consider only the revenues from services other than aeronautical while determining tariffs. There is no provision under the Act wherein opex and capex of aeronautical is to be considered while determining tariff for aer* HIAL further stated that *clearly goes on to prove that Single Till was not envisaged under AERA Act. AERA also need to consider concession given by Govt.*

- 4.22. The Authority had carefully examined this ground of HIAL. The Authority believed that in terms of clause (a) of sub-section (1) of section 13 of the AERA Act, 2008, the Authority is required to determine the tariff for aeronautical services taking into consideration several factors illustrated thereunder including revenue received from non-aeronautical services. Therefore, the issue of consideration of the revenue received from services other than aeronautical services, i.e., non-aeronautical services has been legislatively taken into account by the Authority while determining aeronautical tariffs thus not open to other interpretations.
- 4.23. Going by the interpretation ascribed by HIAL, that while the AERA Act requires the Authority to consider revenue received from services other than the aeronautical services it does not require the Authority to consider the expenses associated with such non-aeronautical services. Under such a novel interpretation, one possible scenario was to consider the revenue received from services other than the aeronautical services towards cross-subsidization of aeronautical services without including the expenses pertaining to such services in the determination of aeronautical tariff. Most of the non-aeronautical services were outsourced by HIAL to third party concessionaires. As regards duty free shopping including actual and projected revenue from duty free shops, Rs. 155.88 crore for the current Control Period. The expenditure incurred in providing these services is Rs. 153.36 crore for the current Control Period. Under the above interpretation made by HIAL the Authority would be required to take an amount of Rs. 155.88 crore for the current Control Period without taking into account the cost associated in providing this service of Rs. 153.36 crore for

On a very rough calculation this would mean that its impact on the passenger charges would be to reduce the 72(Rs. 155.88 crore) as income for the current Control Period by approximately 2.16 crore as the number of departing passengers for the current Control Period. The Authority, on balance and for the time being propose to resort to this possible and plausible literal interpretation although it flowed from the submissions.

Legislative background and intent

4.24. In its presentation HIAL quoted the preamble of AERA Act and stated that,

Regulatory Authority to regulate tariff and other charges for the aeronautical services rendered at airports and to monitor performance standards of airports and also to establish Appellate Tribunal to adjudicate disputes and dispose of appeals and for matter connected therewith or incident

4.25. Based on the above, HIAL inferred that

Aeronautical Charges will be regulated and the performance standards will be

The Authority proposed to determine only the tariffs for aeronautical charges in accordance with Section 13 of the AERA Act. However, that whereas the preamble stated that the Authority should regulate tariffs and other charges for the aeronautical services, Section 13 (a)(1) of the AERA Act detailed legislative policy guidance to the elements that the Authority ought to consider while making such determination. Taking into account was clearly specified as one such element. Regulating only aeronautical charges was conflicted with taking into account revenue from non-aeronautical services whose charges are not regulated by the Authority.

4.26. *Legislative history*. The Authority had also noted the legislative history as to how the clause came to be included as one of the factors that the Authority should take into consideration while determining aeronautical tariffs. Section 13 (1) (a) The Authority had been

pointing out time and again that clause 6(c)13(1)(a) requiring the Authority

did not appear in the initial bill of AERA Act that MoCA introduced in the Lok Sabha on 5th Sept 2007. When the Bill referred to the Department related Standing Committee, the Standing Committee made a

...The economies of airport operation depend on both revenue streams i.e., aeronautical revenue and non

Government may amend the Bill in order to include aeronautical services in the ambit of the Bill

recommendation were important and worth noting. The Government said that

important to notice that internally major airports earn bulk of their revenues through non-aeronautical stream. This enables them to moderate the aeronautical

charges. In India also, there is an increasing realization that aeronautical

revenue has to increase so that core users, i.e., airlines, passengers and cargo

facility users do not have to bear high aeronautical charges. Keeping this in view it

is felt that one of the factors relevant for consideration to determine the tariff for

the aeronautical services could be revenue generated by the subject airport

operator through non aeronautical stream

Accordingly,

following clause was added in Section 13 (1) (a) of the Bill by way of official

amendments:

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4.27. The intention of the legislature clearly was not only to regulate the non

aeronautical services but express recognition that the economies of airport operation depend on both revenue streams i.e., aeronautical revenue and non

aeronautical revenue

The Government

that the airport user is one of the factors relevant for consideration to determine the tariff for the aeronautical services could be revenue generated by the subject airport operator through

non aeronautical stream.

For a company, this is the total amount of money received by the company for goods sold or services provided during a certain time period.

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4.28. The Government through its various pronouncements have put passengers and cargo users as its main focus for economic regulation of airports and minimising passenger charges as its objective. The Planning Commission

infrastructure sector. MoCA had given its comments at the stage of White Paper vide its letter No.AV.2011/003-2009 dated 9th March 2010, where it stated inter alia that

The Authority, vide its letter dated 12.03.2010, furnished its comments on the observations made by the Government. The Authority, therefore believes that its approach of lowering burden on the passengers while determining aeronautical tariffs of the major airports

4.29. To minimize the burden of airport charges on the passengers, therefore, been the focus of the economic regulation of major airports (albeit consistent with giving a fair rate of return to the airport operator). To minimize the burden on the

16th October, 2012 when it asked AAI to contribute equity capital in DIAL as well as MIAL so as to do away with development fee with effect from 01-2013. Similarly, it also asked AAI not to ask for DF in the matter of tariff determination in respect of Kolkata and Chennai airports. This is in line with focus of the Govt. on minimizing passenger charges has important implication in the regulatory till.

4.30. The official amendment accordingly. Dual/Hybrid or shared till is not in consonance with that avowed focus repeatedly adopted by the Authority and also followed by the Authority as its primary anchor of economic regulation of airports (after the interests of the airport operator are fully addressed in terms of fair rate of return on his investments consistent with the risk profile and any mitigating measures)

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4.31. Presenting and referring to an extract of the affidavit filed by MoCA before the Appellate Tribunal, HIAL had submitted that adopting single till for Hyderabad Airport was not in consonance with the regulatory till (Shared Till) adopted for

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various other airports in the country namely, Jaipur, Amritsar, Udaipur, Varanasi, Mangalore, Trichy, Ahmedabad, Delhi and Mumbai. The extract from affidavit filed by MoCA, as presented by HIAL, is reproduced below:

@ y
of the Airports Authority of India managed airports (viz. Jaipur, Amritsar, Udaipur, Varanasi, Mangalore, Trichy, and Ahmedabad airports) has been approved by Respondent No. 1. In the determination of UDF at these airports, a hybrid / shared till approach has been adopted where only 30% of the non-aeronautical revenue has been accounted for in the calculation. This approach was adopted by Respondent No. 1 based on the philosophy specified in the State Support Agreement with the M/s Delhi International Airport Ltd and M/s Mumbai International Airport Ltd being a philosophy of econom

4.31.1. Having reference to the above affidavit and consideration of shared till in respect of Delhi and Mumbai Airports, HIAL submitted as under,

u , it is not correct to assume that Hyderabad Airport, a Greenfield investment, with significantly higher risks have been privatized and developed on a single till basis whereas for other Major Airports in India, like Mumbai and Delhi and for smaller airports like Jaipur, Amritsar, Udaipur, Varanasi, Mangalore, Trichy, Visakhapatnam and Ahmedabad, a Hybrid / Shared Till was

4.32. The Authority had carefully examined the submission of HIAL. At the outset, the Authority noted that the Government had not fixed any UDF for Ahmedabad and that the ad hoc determination of UDF for Ahmedabad Airport was made by the Authority under single till. However, the submission mentioned that Ahmedabad under shared till, which was not the case. Secondly, the ad hoc determination in respect of Hyderabad made by the Authority under till (and reckoning a period of 5 years) vide its Order No. 06/2010 dated 26.10.2010 was not appealed either by the airport operator (HIAL) or by any of the stakeholders.

would thus appear that calculation of UDF based on single till and for a period of 5 years had broad acceptance.

4.33.7 8 8

revenue till (and not hybrid till). From the extract quoted by HIAL in their submission, the Government appeared to have based 30% shared approach based on the State Support Agreement of Delhi and Mumbai Airports. The Authority had an occasion to consider this aspect that the covenants of State Support Agreement / Operation, Maintenance and Development Agreement in respect of Delhi and Mumbai Airports and those of the Concession Agreement in respect of HIAL and BIAL were materially different as under:

4.33.1. DIAL and MIAL are required to pay 45.99% and 38.7% of their gross revenue respectively, as revenue share to AAI (termed as Annual Fee) as per Article 3.1.1 of the State Support Agreement (SSA) in respect of Delhi and Mumbai airports, Annual Fee paid/payable by the DIAL or MIAL, as the case may be, shall not be included as part of costs for provision of Aeronautical Services and no pass through would be available in relation to the same. On the other hand, the concession fee in respect of Hyderabad and Bengaluru airports was 4% only which was a cost pass through, and the payment of this fee has been deferred for the first 10 years.

4.33.2. The SSAs in respect of Delhi and Mumbai airports provide 30% of revenue from services other than aeronautical services to be taken into account, i.e., shared while calculating aeronautical tariffs. However, it is specifically mentioned that costs associated in obtaining such non-aeronautical revenues shall not be treated as a pass through. There are no provisions to this effect in the agreements in respect of Hyderabad and Bengaluru airports.

4.33.3. In Delhi and Mumbai airports, the issue of Hypothetical Regulatory Asset Base (RAB) was clearly mentioned as an amount to be added to the Regulatory Asset Base at the beginning of the first regulatory period. There is no mention of any such Hypothetical RAB in case of Hyderabad and Bengaluru airports.

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4.33.4. The agreements in respect of Delhi and Mumbai Airports have clauses dealing with the regulatory till. Similar provisions existed in the agreements in respect of Bengaluru and Hyderabad Airports.

4.33.5. The agreements of Hyderabad and Bengaluru Airports were signed in 2004 while those of Delhi and Mumbai were signed in 2006. The agreements of Hyderabad and Bengaluru Airports, therefore, predate those of Delhi and Mumbai Airports. The Regulatory Till provisions included in the Agreements of Bengaluru and Hyderabad Airports did not make any mention of Concession agreements signed in respect of Delhi and Mumbai Airports, whether provisions of these agreements were to be the guiding principles even for Greenfield airports.

4.33.6. The Agreements of Delhi and Mumbai airports do not contain details of methodology of tariff calculations. Agreements in respect of Bengaluru and Hyderabad airports do not contain any such details.

4.34. In view of the above, it was noted that there was no parity whatsoever between the provisions of the agreements in respect of Delhi and Mumbai airports on one hand and the agreements in respect of Hyderabad and Bengaluru airports on the other. Moreover, even the agreements of Delhi and Mumbai differed from each other in respect of percentage of revenue share. (Delhi has 45.99% and Mumbai has 38.7%).

4.35. HIAL had selectively taken only one element namely, 30% IIR as support of its submissions. The Authority also noted that according to the submissions made by HIAL before the Appellate Tribunal, it had been stressing that the Concession Agreement implied dual till. Its letter to the government also stated as such (Para 1.37 above). It thus appeared that HIAL had been taking different positions in different fora in support of its contentions.

4.36. In view of the above, the Authority was of the view that the riskiness is a factor to be considered in determination of cost of equity for the concerned airport. Accordingly the Authority considered the

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riskiness of RGI Airport, Hyderabad in determination of cost of equity for HIAL and HIAL has presented its views in Para below

- 4.37. As far as the calculation of UDF by the Government for certain airports concerned, the Authority also understood that the Government took into account the effective cost of equity for AAI at 12% (in the absence of any debt component). On the other hand the Authority has determined fair rate of return on equity for HIAL at 16%. It has also determined similarly the cost of equity for Delhi and Mumbai at 16%. The characteristics of reckoning 30% of aeronautical revenue in calculation of aeronautical tariffs as obtained in Delhi and Mumbai are radically different from those of AAI Airports. In Delhi and Mumbai apart from 30%, the airports of Delhi and Mumbai were required to give, in addition, revenue share to AAI of 45.8% in Delhi and 38.6% in Mumbai. It is not proper to take only the percentage of 30% without other attributes which were required for determination of UDF (which constituted a very significant percentage of revenue receipts for the airport over two thirds in case of HIAL.)
- 4.38. The Authority had also recently determined aeronautical tariffs (including the Development Fee) at Chennai and Kolkata Airports under single till. It determined ad hoc UDF for Ahmedabad and Trivandrum under single till. The Government of Kerala thought the UDF rate as very high and had preferred an appeal before the Appellate Tribunal on this ground. This was despite the fact that the UDF under single till was found to be the lowest and these orders have been challenged on the ground of regulatory till. If hybrid or dual till to be followed the UDF rate would have been much higher.
- 4.39. Furthermore the Authority noted that the Government had determined ad hoc UDF for private Greenfield airports of Bengaluru and Hyderabad in 2008. For Hyderabad it determined UDF for domestic passengers at Rs. 375 per embarking passenger and Rs. 1,000 per embarking international passenger. For Bengaluru, the corresponding figures are Rs. 260 per embarking domestic passenger and Rs. 1,000 per embarking international passenger. The UDF for AAI airports mentioned by HIAL above was compared to the figures of UDF for

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Bengaluru and Hyderabad, it would be seen that the UDF for domestic passenger for Bengaluru and Hyderabad are substantially higher than those AAI Airports referred to by HIAL. It has also incorporated various factors like airport characteristics, capital requirements, financing arrangements etc. HIAL also made similar point as indicated in Para 4.94 below. The Authority has also been consistently stating that a comprehensive approach needed to be taken in the matter of economic regulation of airports. It

4.40. As far as the quantum of UDF required giving airport operator fair rate of return was indicated the following:

Table 6: UDF determined in respect of AAI Airports

Sl. No.	Airport	UDF in Rs. (inclusive of service tax and collection charges)		Effective date of levy	Till used for arriving at UDF	Cost of capital	No of year for which UDF will be levied
		Dom	Intl				
1	Jaipur	150	1000	01.01.10	Hybrid Till*	12%	15
2	Amritsar	150	910	15.06.10	Hybrid Till*	12%	10
3	Udaipur	150	Nil	15.06.10	Hybrid Till*	12%	13.66
4	Trichy	150	360	15.06.10	Hybrid Till*	12%	10
5	Vishakhapatnam	150	Nil	15.06.10	Hybrid Till*	12%	15.25
6	Mangalore	150	825	01.09.10	Hybrid Till*	12%	10
7	Varanasi	150	975	15.11.10	Hybrid Till*	12%	20
8	Ahmedabad	110#	415#	01.09.10	Single Till	12%	10
9	Trivandrum	Nil	755#	01.03.11	Single Till	12%	15
* - Hybrid Till means 30% of aeronautical revenue was considered towards cross subsidization							
# - Exclusive of statutory levies							

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4.41. As far as the ad-hoc UDF for Hyderabad was concerned, it has done so under single till (Rs. 450 per embarking domestic passenger and Rs. 700 per embarking international passenger). INITIAL proposal (not under single till) ad-hoc UDF was at Rs. 450 per embarking domestic passenger and Rs. 82 per embarking international passenger. Clearly the level of UDF under single till was seen to be the lowest taking into account the reasonable expectations of the airport operator.

4.42. The Authority has had reference to the Aeronautical Information Circulars (AICs) issued by the Director General of Civil Aviation (DGCA) SL No. 7/2010 and AIC SL. No. 5/2010. The Authority has noted the following aspects from the circulars:

4.42.1. The UDF to be levied on domestic passengers was fixed uniformly at Rs 150/- in respect of the airports at Amritsar, Udaipur, Varanasi, Mangalore, Trichy and Visakhapatnam and the UDF to be levied on international passengers was different for different airports including zero for those airports, where there was no international passenger traffic.

4.42.2. The Authority had further observed that the UDF approved for Varanasi Airport was an ad-hoc UDF, which indicated that a detailed assessment of requirement of UDF might not have been done at that stage.

4.42.3. The ad-hoc UDF at Varanasi Airport had been approved for a period of 20 years while the period of levy of UDF for the other five airports namely, Amritsar, Udaipur, Mangalore, Trichy and Visakhapatnam had not been mentioned in the AIC. The period of 20 years was mentioned in the AIC dated 16.11.2010 in respect of Varanasi Airport. The Authority did not find similar mention of period in the AIC for other five airports. The AIC mentioned the date of commencement of levy of UDF but not the duration / period thereof. Since the calculation of UDF was understood to be a revenue enhancing mechanism, this meant that the levels of UDF so determined would continue till the issue of any fresh AIC upon a possible future re-mediation of these charges. The Authority noted that a period of 20 years was a long horizon, which helped in keeping the UDF numbers at a lower level.

4.42.4. While the Authority was not cognizant of the calculations behind the UDF numbers for the airports which the Government had determined, it inferred from the available numbers that the approach for determination of UDF might have been to vary the period of levy and amount of levy on international passengers such as to keep the UDF number for domestic passengers fixed at 150. The Authority however understood that the period reckoned for calculation of domestic and international UDF in the calculations made by the Government go much beyond 5 years in the range of 10-15 years or so. This led the Government to keep the UDF at a lower number. Furthermore Authority understood that if the UDF for AAI Airports were to be calculated by the Government not for 10 years at 30%-non aeronautical revenue taken into account, but only for five years, taking the entire non-aeronautical revenue may not prove sufficient to arrive at similar levels of UDF. Such a determination would then tantamount to a single till approach and not 30% shared till approach.

4.42.5. In the case of ad-hoc UDF determination of AAI Airports (with 30% shared till), the remaining 70% of non-aeronautical revenue remained in the hands of the airport operator i.e. a public authority namely AAI. The purpose of such additional monies with AAI is clear in that it could be used for development of other airports in the country. If similar treatment were to be given to HIAL, this would mean that 70% of non-aeronautical revenue was left in the hands of a private party. This would result in higher UDF charge on the passengers. This meant that if 30% principle were to be adopted for HIAL, the passengers would be paying additional UDF only to enable the private party to earn higher than fair rate of return. This could be construed as unjust enrichment through operation of category framework and extracting higher UDF from the passengers under the provisions of UDF that are enshrined in Aircraft Rules, 1937 (this Rules alone gives the power to the Authority to determine the level of UDF). Hence if UDF were to be determined (under single till or for that matter under 30% principle) at a level higher than what required to give airport operators a fair rate of return under single till, this

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would be tantamount to using a legal provision merely to unjustly enrich a private party (airport operator), which in the understanding of the Authority was neither a public purpose nor in public interest. The Authority also noted that capital requirement for expansion of the Airport stated to be one of the purposes for charging UDF in the Concession Agreement and that the Authority might require using this provision in cases of airport expansion etc. Hence the purpose of higher UDF could be for a public purpose.

4.43. The Authority noted that it needed to determine the level of UDF taking into account the regulatory period of 5 years. It also noted that it needed to calculate the return on equity based on its approach of calculation of equity beta, risk rate, equity risk premium. Furthermore, it had determined ad hoc UDF rates at Ahmedabad and Trivandrum (AAI Airports) based on single till rates in the 4.38 above and Table 6. Similarly, it had also determined the ad hoc UDF for Hyderabad Airport vide Order 6 / 2010 at Rs. 430 per domestic departing passenger and Rs. 1,700 per departing international passenger on single till. The Authority had noted that none of these ad hoc UDF determinations had been challenged on the ground of application of regulatory till. The Govt of Kerala appealed against the UDF determination for Hyderabad Airport (Order 7 / 2010) being too high (it is to be noted that the level of UDF would have been higher had it been computed on the basis of dual or hybrid till).

4.44. Apart from the above determination of ad hoc UDFs, the Authority had recently made final tariff determinations in respect of Kolkata and Chennai Airports on the basis of single till.

4.45. As indicated in the Tariff Order for Kolkata, realizing the very high UDF, the Authority had finally determined UDF at a substantially lower level of Rs. 400/ domestic and Rs. 1,000/ international passengers consciously leaving a shortfall of Rs. 800 which needed to be carried forward during the Control Period. Under 30% hybrid till or dual till, the levels of UDF would have been much higher. The Authority had noted that the UDF determination for Kolkata and Chennai Orders in respect of Kolkata and Chennai had also not been challenged before Appellate Tribunal on the ground of regulatory till.

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4.46. The Authority observed from the above that the Government had determined the UDF for domestic passengers at Rs. 150 uniformly across different airports. The Authority also noted that these airports varied in their physical characteristics in terms of capital cost, passenger throughput, percentage of international revenue, passenger mix (international / domestic) and types of aircrafts landing these airports etc. Yet the Government had kept UDF for domestic passengers constant at Rs. 150. It appeared that keeping UDF for domestic passengers low as well as uniform may have been a key concern for the Government. This was in line with the Government's policy to keep the UDF for domestic passengers low and uniform. Further the UDF for international passengers had also been kept at a lower level by increasing the period of levy to as much as 20 years in case of Varanasi Airport. Comparatively in respect of Airport, Hyderabad, HIAL had approached the Government to determine UDF at Rs. 450 for domestic passenger and of Rs. 2,950 per embarking international passenger for a period of 5 years. The Government had approved the same. After detailed examination the Authority finally determined the UDF for Hyderabad at figures mentioned in Para 1.24 above.

4.47. The Authority observed that the Government had not considered the issue of regulatory till in respect of RGI Airport, Hyderabad. The Authority was of the view that the consideration of one single element namely, hybrid / shared till for the above mentioned six airports did not appear to be appropriate and tantamount to selective approach only to enable HIAL get more than fair rate of return for itself at the cost of passengers through UDF. This was because the Authority was of the view that it would not be pertinent to consider only one aspect of an exercise, which essentially is dependent upon several factors and all the factors responsible for the final outcome of the exercise should be considered together. Thus basing the consideration of hybrid till on the basis of one single element namely, hybrid / shared till was not in consonance with the consideration of other factors such as restricting the UDF on domestic passengers to Rs. 150 and extending the period of levy to as high as period as required to keep the overall UDF at lower levels. However the Authority had not resorted to consideration of these factors as it would not be in consonance with its legal mandate.

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4.48. Based on the above, the Authority considered it appropriate to take a comprehensive view including the detailed legislative policy guidance contained in Section 13 of the AERA Act while considering the determination of aeronautical tariff in respect of RGI Airport, Hyderabad. Apart from that, the Authority did not consider the submission before AERAAT.

Govt. of Andhra Pradesh (GoAP) view on till

4.49. HIAL had made reference to two communications from Government of Andhra Pradesh (GoAP) to infer and present their views on the regulatory till to be considered for RGI Airport, Hyderabad. These are presented below:

4.49.1. Presenting and referring to an extract of the Letter of Award by Government of Andhra Pradesh (reproduced below), HIAL submitted that

... on equity over and above 18.33% to be shared equally over the life of the project in proportion to the equity holding between the Developer and the Government of Andhra Pradesh i.e there will be no asymmetrical sharing of profits above 18.33% In favour of Government.

4.49.2. HIAL further submitted based on the above extract as under,

Government of AP, while approving GMR Consortia as a preferred bidder for Hyderabad Airport, envisioned that the project may have potential upside that would be shared in proportion to equity holding.

If AERA adopts a Single Till and allows a return equivalent to 18.33% as minimum assured by GoAP, then the above provision relating to sharing of return over and above 18.33% get redundant.

This goes against the promise made by the Government at the time of privatization. Any change in the conditions will cause irreparable loss to the airport operator.

4.49.3. HIAL had also referred to a letter from Government of Andhra Pradesh, which, had been written by GoAP to the Authority clarifying as presented to the Authority, from the said letter reproduced below:

GoAP has categorically clarified that article 10 (3) of the Concession Agreement gives the right to GHIAL to set tariffs for non airport facilities and services. The concession does not envisage cross subsidy of Non Aeronautical revenue to defray aeronautical charges.

GoAP also clarified that Cargo, Ground Handling and Fuel should not be regulated. Govt further clarified that an Equity Internal Rate of Return needs to be maintained.

GoAP also clarified that under clause 2.3b(i) of State Partnership Agreement, its necessary to maintain an Equity Internal Rate of Return of 18.33%. It was further clarified that 18.33% was not a cap on the return on equity.

GoAP also clarified that the land given was for the socio-economic benefit of the state and by reducing its market value from the RAB, the desired benefit will not be achieved.

4.50. The Authority had carefully examined the HIAL submission on this ground. As far as the three services of cargo, ground handling and fuel supply are concerned, they have been defined as aeronautical services. Under Section 13(1) of the AERA Act, 2008, the legislature has mandated the Authority to determine tariffs for these services. Hence the contention that these services should not be regulated on account of the Concession Agreement is at variance with statutory requirement. The Authority therefore is required to determine tariffs for these 3 services that are clearly defined as aeronautical services. The Concession Agreement has provisions about the determination of tariffs for aeronautical services except that they should be fixed in accordance with ICAO policies (Article 10.2.1 of the Concession Agreement) and HIAL pointed that

ICAO is neutral with regard to the regulatory hence the Authority is unable to appreciate the argument that the concession agreement envisage cross subsidy of non-aeronautical revenues to defray aeronautical charges.

4.51. As far as the return on equity is concerned, the Authority determined the same with reference to well established principles. While doing so had taken into account the risk profile of the airport. It also introduced substantial risk mitigating measures like tripping of passenger traffic, aeronautical revenue, interest cost at actuals (subject to reasonability). Even thereafter the Concession Agreement also provides for grant of user Development Fee. UDF is generally understood as a revenue enhancing measure to enable the Airport Operator to obtain a fair rate of return. However the Concession Agreement also admits of the possibility of UDF being used for capital financing. Hence not only the commercial risk is mitigated, even the financing risk for new investments as and when required is taken care of. The Authority also noted that the Central Government closed down a functioning airport at Begumpet so that the new airport was assured traffic from the day it commenced its commercial operation. The Government of Andhra Pradesh also made available financial assistance in form of subsidy of Rs 107 crore and IFL of Rs 15 crore to help finance the project. It also lent substantial infrastructure support in terms of elevated approach road at the cost of state exchequer. Based on all these parameters, the Authority considered a rate of return of 16% as fair.

4.52. As far as the equity return of 18.33% is concerned, this occurs not in the Concession Agreement with Government of India but in the State Support Agreement with Government of Andhra Pradesh. Going by Section 13 (1)(a) (vi) of AERA Act, the Authority is required to take into consideration agreements, etc. only with the Central Government. The Authority noted that under Clause 2.3 (b) of the State Support Agreement, it has been stated as under,

Govt. of Andhra Pradesh (GoAP) shall make available to HIAL an Interest Free Loan (IFL) in the sum of Rs. 315 Crore shall not in any circumstances attract interest payment. GoAP and accepts that the IFL may be adjusted prouta upward or downward on completion

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of detailed project report (DPR), if the determination is made that such pro-rata adjustment is required as a result of change in the project cost and so as to maintain equity internal rate of return @18.33%.

4.53. The Authority had noted that this agreement is between GoAP and HIAL in which the GoAP through Transport, Road and Buildings (Ports) Dept. holds 13% shares. The Authority, based on established financial principles and on the basis of a report of a reputed consultant like National Institute of Public Finance and Policy (NIPFP) had arrived at a fair rate of return on equity of 16%. The Authority noted the submission of HIAL with respect to Letter of Award. The tariff determination is required to be made on the basis of fair return, which in arrangements between GoAP (that is one of the shareholders in HIAL) and HIAL should thus not require the passengers to bear the extra burden of grant of rate of return on equity that is in excess of the fair rate of return, namely 16%.

4.54. The Authority noted the reasoning for ring fencing of land and the circumstances under which its market value is reduced from the RAB. The Authority noted the relevant contents of the Letter dated 1st March, 2011 from the Govt. of Andhra Pradesh to the State of Andhra Pradesh: *Land Lease Agreement dated 30.09.2005 500 acres of land was leased by the GoAP for the general economic and social development of the State of Andhra Pradesh*

4.55. The Authority noted that the project is hereafter on a build, own and operate basis (Project) being of prime importance to the State of Andhra Pradesh and refers to the policy of the lessor (State of Andhra Pradesh) to encourage and industrial development, tourism, passengers, cargo movement and general economic and social development of the State of Andhra Pradesh. The same Recital also speaks to the effect that the project is of prime importance to the State of Andhra Pradesh and refers to the policy of the lessor (State of Andhra Pradesh) to encourage and industrial development, tourism, passengers, cargo movement and general economic and social development of the State of Andhra Pradesh. The same Recital also speaks to the effect that the project is of prime importance to the State of Andhra Pradesh and refers to the policy of the lessor (State of Andhra Pradesh) to encourage and industrial development, tourism, passengers, cargo movement and general economic and social development of the State of Andhra Pradesh.

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- 4.56. Greenfield international airport to be constructed and operated by the lessee at Shamshabad near Hyderabad and includes all buildings, equipment, facilities and systems, aeronautical and non aeronautical and airport activities and includes without limit, where the
- 4.57. The Authority upon combined readings of the lease deed felt that land was given to make the project feasible. It, therefore, appeared to the Authority that any revenues obtained from commercialization of land in excess of the project requirements were required to be ploughed into the project. The GOAP had also made available State Support for the project to make it feasible. Hence the Authority had considered the mechanism of reducing RAB by the market value of such commercial activities generally outside the terminal building (except what clearly are aeronautical services). This, in view of the Authority, established a nexus between the purpose of grant of land (to make the project feasible) and lowering the charges on the passengers.
- 4.58. The Authority, in any case, is mandated to determine tariffs for aeronautical services (including amount of Development Fees) taking into consideration the economic and viable operation of the major airports. Hence, after determining such aeronautical tariffs (as well as User Development Fee (UDF), the airport would in any case become viable and feasible in terms of financial returns. Any amount obtained through commercial exploitation of land would be over and above what is required for such economic viability or feasibility. According to the understanding of the Authority, land in excess of the airport requirement was leased out to make use of the same for other purposes. The Authority is of the view that the lease deed, going through the purpose of grant of lease (Clause 3.1(b)), has not stated that some of the purposes are related to hotels, resorts, commercial and residential complexes, industrial facilities, and any other lawful commercial activity. According to the Authority, the lease deed does not state that the land is to be used normally or given for pure commercial or residential activities unless revenue generated from such activities is utilized for making some other public purpose feasible. In the extant case, therefore, the Authority is of the view that the revenues from

such commercial rates should flow to the airport. One of the mechanisms, that the Authority had thus contemplated, was to reduce the market value from RAB as to lower the charges on the passengers which, in its view, is consistent with scheme of the grant of Easement HIAL for the project.

4.59. The Authority had noted from the extract of the Letter of Award submitted by HIAL that it spoke about the circumstances if the return on equity is over and above 18.33% (that is to be shared equally over the life of the project) to the equity holding between the developer and the Government. It was unable to appreciate the argument that this provision tantamount to making a regulatory regime such that the developer ought to get a return on equity over and above 18.33%. HIAL had a reading of its provisions was clear that what is contemplated is a mechanism of sharing returns over and above 18.33% and that the regulatory framework cannot be tailored so as to give an equity return over and above this figure.

4.60. As far as the issue of land is concerned, the Authority had noted from the State Support Agreement that 5450 acres of land is leased out ahead to be a concessional rental of 2% per annum the cost of land (Rs. 55). Part of the land can be used for commercial exploitation. Both the concessional rental as well as the commercial exploitation appear have been stipulated to make the Project feasible. The project, as defined in the State Support Agreement is the development of the Airport. The Recital E of the State Support Agreement in this respect is reproduced below:

The Project is feasible only with State Support of the Lessor, and as part of the State Support to be made available by the Lessor to the Lessee, pursuant to the State Support Agreement, the Lessor has agreed to provide on lease to the Lessee contiguous, unencumbered and freehold land owned and possessed by the Lessor measuring about 5,000 (Five Thousand acres) at Shamshabad, near Hyderabad, as described in Schedule 1 to this Agreement and shown on the site plan attached hereto.

*Lessee has agreed to accept the Land on lease ~~subject the~~
terms and conditions ~~do~~tain this Agreement.*

- 4.61. The Authority further ~~note~~ from Recital C that the Project (development of the Airport) is of prime importance to the State and is expected to induce benefits to the State, however this induced benefit is not directly ~~Project. Thus~~ the Authority ~~was~~ of the view that the revenue from monetization of land would not have been envisaged to have been left with the Airport Operator but to be invested in the project to make the project feasible. The ~~Authority~~ ~~intention~~ of taking this incentive away from HIAL, however the money so raised should be utilized for the project. The Authority had noted that around 5,000 acres of land has been leased to HIAL out of which the Airport requires 3,000 acres. Out of the remaining 2,000 acres, around 900 acres of land will be available for monetization by HIAL.
- 4.62. The conclusion as the Authority ~~understood~~ ~~was~~ inescapable. Land is acquired for a public purpose viz. the airport. The airport will not be feasible unless the commercial ~~exploitation~~ of land in excess of the airport requirements is permitted. It would follow that the revenues from such commercial exploitation should benefit the passengers of the airport in question. This is quite apart from the fact that ~~in~~ ~~the~~ ~~exercise~~ of its regulatory remit, it will have to determine aeronautical tariffs to make the airport feasible even without, if need be, addressing the land receipt. Receipts from commercial exploitation of excess land would then be monies in the hands of the private ~~operator~~ without any nexus with public purpose for which the land could be acquired by the Government of Andhra Pradesh in the first place.

Planning Commission on till

- 4.63. HIAL had referred to the letter from Planning Commission ~~to the~~ Authority dated 06.10.2010. During its presentation to the Authority dated 01.04.2013, HIAL presented to the Authority as under,

We understand that the Planning Commission of India (PC) has written to AERA in October 2010 clarifying its position on the choice of till to ~~be~~ adopted.

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Ø We understand that PC has advocated need for a Hybrid Till regulation. This has been also in light of the fact that India required a huge private sector investment into the Airport sector under the 12th plan.

Ø PC has underscored the importance of choice of economic regulation especially a Hybrid Till approach in achieving the investment goals.

Therefore, we again reiterate that the views of the PC may be taken into consideration. Therefore, we earnestly request to Authority to accept the views of the Planning Commission in finalizing philosophy applicable to HIAL.

4.64. During its presentation to the Authority dated 01.04.2013, HIAL requested Authority to accept the views of the Planning Commission in finalizing philosophy applicable to HIAL. The letter of Planning Commission referred to by HIAL is dated 06.10.2010 from Mr. Gajendar Haldea, Advisor to Deputy Chairman, Planning Commission wherein he has stated that he is not in favour of dual till. HIAL appeared to the Authority that HIAL wanted the Authority to apply hybrid till in the determination of aeronautical tariff for RGI Airport, Hyderabad. This request was not in consonance with its submissions before the Appellate Tribunal, where HIAL had stated that the Authority should adhere to the Concession Agreement and that dual till is implicit in the Concession Agreement. This was stated by HIAL in its Letter dated 20.04.2013 to the Minister for Civil Aviation. By its present submission (made on 01.04.2013) referring to the Planning Commission, HIAL seemed to feel that hybrid till is also consistent with the Concession Agreement, a position which was at variance with its appeal before the Appellate Tribunal. The Authority therefore proceeded with the examination of the submissions made by the Airport Operator which were under single and dual till.

4.65. The Authority had received a letter from Planning Commission. HIAL inferred from the letter that the Planning Commission assigns a great importance to the choice of economic

regulation in achieving the investment goals and also that the Planning Commission advocated need for a hybrid till.

4.66. The Authority concurred with the views of the Planning Commission that choice of economic regulation is an important factor in attracting private sector investment. The Authority had followed the principles of transparency and consistency in preparing its approach for determination of aeronautical tariff for major airports. To ensure the same the Authority had involved the stakeholders at various stages and considered the views expressed by them in developing its approach.

4.67. The Authority however noted that in this context, the term private sector investment needs to be understood. Utilizing or attracting private sector investment of an amount may be assigned a meaning that either the private party should be investing the target amount of money as equity or should arrange for finances from banks and financial institutions in the private sector as well as FDI, if any, for this amount.

4.68. In context of HIAL, it was observed that out of the said project cost of Rs. 2,920 crore HIAL had brought in the equity of Rs. 378 which is about 13% of the said project cost. In comparison, the State Government had supported through funding of Rs. 422 (Interest Free Loan of Rs. 315 and Advanced Development Fund Grant of Rs. 107). Thus it can be seen that while private sector investment is around 13% of the said project cost, the State Government has supported the project through its funding of around 14.5% of the project cost.

ACI view on choice of till

4.69. HIAL had referred to Airports Council International (ACI) communication to the Authority, wherein ACI stated the conclusions with regard to ICAO Doc 9082 as well as ICAO Doc 9562 in paras 5.17.5.32 of the Order 13/2010, are not tenable and require rectification. HIAL stated as under,

Airports Council International (ACI), Montreal while referring to the AERA Order 13/2010 has brought to the notice of AERA about the amendment done to the para 30(i) of Doc 9082 and clarified about the neutral position of ICAO on the matter of regulatory till and stated that the conclusions with regard to ICAO Doc 9082 as ICAO Doc 9562

in paras 5.15.32 of the AERA Order 13/2016 are therefore not tenable and require rectification.

4.70. The Authority had noted HIAL submission on the above aspect. The Authority aware that Airports Council International's deliberations taken a view on

11. The Authority was also aware that the wordings in the ICAO chapters revised in its 9th edition of ICAO 9082 and accordingly had taken a neutral stand on the issue of regulatory till to be adopted.

UK competition commission on till

4.71. HIAL had suggested or precluded a single till or a dual till approach on this issue as presented to the Authority produced under,

In UK, in 2002 the Civil Aviation Authority (CAA) proposed to move from a single till approach to a dual till approach at any of the three BAA London airports subjected to economic regulation.

The Competition Commission (CC), in drawing its conclusions on this

[Source: Competition Commission (2002), A Report on the Economic Regulation of the London Airports Companies (Heathrow Airport Ltd, Gatwick Airport Ltd and Stansted Airport Ltd),]

The CC, explicitly referring to ICAO policies and stated that:

There should be flexibility in applying either the single till or dual till approach.

[Source: Competition Commission (2002), A Report on the Economic Regulation of the London Airports Companies (Heathrow Airport Ltd, Gatwick Airport Ltd and Stansted Airport Ltd)]

4.72. The Authority had carefully examined the material furnished by HIAL with regard to that the Competition Commission assessed whether

could be regarded as consistent with international obligations, guidelines and

The Authority concluded that Competition Commission mentioned the flexibility in applying either the single till or dual till as per ICAO. It however also noted that HIAL had refrained from pointing out the recommendation of Competition Commission to the Civil Aviation Authority with respect to adoption of single till in economic regulation of UK airports like Heathrow, Gatwick and Stansted. After analysis, the Competition Commission did not accept the proposal of CAA for dual till and recommended single till. The reasons for rejecting CAA proposal of dual till and recommending single till are summarized by Competition Commission UK as under

Conclusions on single/dual till

2.221. Because the issue of single or dual till understandably preoccupied us and many other parties to the inquiry in its internal stages, on 11 July 2002 we issued a statement on the issue (see Appendix 2.3). We said we were not persuaded by the arguments and current evidence for moving to a dual till at any of the three BAA London airports. None of the evidence we subsequently received led us to change that view. We therefore believe it appropriate to retain the single till approach in setting airport charges.

2.222. Our main reasons are as follows:

(a) There is no evidence that the single till has led to any general underinvestment in aeronautical assets at the three BAA London airports in the past, nor any expectation that it will do so over the next five years (see paragraph 2.122).

(b) It is not clear that the dual till, as opposed to the single till, would be likely to lead to significantly better aeronautical investment in the future and in some respects is likely worse (see paragraph 2.122).

¹ <http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=1322>

- (c) The dual till could improve the efficient utilization of capacity, but the benefits are unlikely to be more than marginal even at Heathrow, where they would not occur (see paragraph 2.141).
- (d) Nor do we see significant benefits from any deregulation of commercial activities. We are not persuaded that the distinction between locational and monopoly rents is useful in context. In so far as airport charges affect fares, the current relatively high profits from commercial activities are applied to the benefit of passengers; the dual till approach is likely to require increased regulation of such activities (see paragraph 2.148).
- (e) The dual till could also risk unduly benefiting commercial activities, at the expense of noncapacity-enhancing aeronautical activities, which may not attract sufficient funds, or attention (see paragraph 2.161).
- (f) It is difficult sensibly to separate commercial and aeronautical facilities. Commercial revenues at the three BAA London airports cannot be generated without aeronautical facilities: they should therefore be regarded as one business (see paragraph 2.170).
- (g) Since the successful development of commercial revenues requires airlines to deliver passengers to or from the airport, the benefits of commercial activities should be shared with airlines and airline users (see paragraph 2.171).
- (h) We believe that average fares would be affected at both congested and uncongested airports if airport charges were to be at the three BAA London airports as a result of a switch to a dual regime, and we do not think that effect can be justified (see paragraph 2.197).
- (i) A move from the single till to the dual till would in the longer term mean a substantial transfer of income to airports from airlines and/or their passengers and be to their detriment, potentially undermining

regulatory credibility and creating regulatory certainty (see paragraph 2.200)

2.223. We also note:

(a) No useful inferences can be drawn at this time from overseas airports which use the dual in whole or in part, as their circumstances are different from those of the three BAA airports (see paragraph 2.74).

(b) Nor are we persuaded that the dual approach would act as an effective incentive BAA to maintain or improve performance by reversion to a single approach) at future regulatory reviews it fail to do (see paragraph 2.121).

(c) The CAA proposal of raising the price cap about single at Gatwick and Stansted in Q4 but not at Heathrow would be contrary to efficient resource allocation (see paragraph 2.141).

(d) It is difficult, in practice, to allocate both investments and operating costs between aeronautical and commercial activities. To the extent that some of the judgements that to be made are arbitrary, future disputes about cost allocation could arise between the airport and its users (see paragraph 2.216).

4.73. The CAA accepted this recommendation and proceeded to determine the relevant price cap under single till. Thereafter in the subsequent control period Q5, CAA did not reopen this issue and continued to apply the single price cap. (See its Economic Regulation of Heathrow and Gatwick Airports, (2008 March 2008), Appendix E: Regulatory Policy Statement:

in its December 2005 policy consultation, the CAA consulted on the view that its evolutionary approach to this review, the extensive

² Similar have been the findings of the Australian Competition and Consumer Commission (ACCC) ten years ago. The prevailing view that price monitoring combined with a threat of reintroduction of regulation would be an effective constraint on the exercise of market power. (See Evaluation of Australian Infrastructure Reforms: An Assessment of Research Possibilities Working Paper no.5, December 2011, ACCC/AER Working Paper Series, Page 86)

discussion and analysis of the issue at the last (Q4) review and the resulting conclusions, mitigated against the debate over the introduction of a dual till. Instead, it proposed that caps for airport charges in Q5 be set on the basis of a single till. In its May 2006 publication, the CAA confirmed its intention to continue to develop policies and price cap proposals consistent with its statutory duties within a single till framework. In its October 2007 advice to the CAA, the Competition Commission restated its main reasons for retaining the single till approach in the last (Q4) review, and stated that it had seen nothing to change its previous assessment of the issue. (Emphasis added) The Competition Commission therefore recommended that airport charges should continue to be set on a single till basis. (Para E 3.1)

- 4.74. The Authority further noted that CAAK in its most recent (30.04.2013) price cap proposals in respect of Heathrow, Gatwick and Stansted for the sixth quinquennium (Q6) decided to continue with single till.
- 4.75. It would thus be clear that the Competition Commission, UK as well as the CAA found single till approach as consistent with its regulatory objectives. The reasons advanced by the Competition Commission, in the opinion of the Authority, relevant in the Indian context. The Competition Commission has stated that shift to dual till, inter alia, would result in large swing of revenues from air airports. In the Indian context, the swing would be directly from the passengers to the private Airport Operators through the operation of higher passenger charges (User Development Fee). The quantum of such a swing from passengers to private Airport Operator over a five year period was estimated at approximately Rs.968 crore (calculated as the sum of revenue covered from UDF for the balance years in the current Control Period).
- 4.76. The Government of India had consistently maintained that the ultimate objective of economic regulation of airports should be anchored to the passengers and cargo facility users. For e.g. in its affidavit before AERA it clearly mentioned that *u* *rs (passengers). The*

keeping in mind the contractual obligations (if any) and socio objectives of the Government as in the case of the airports in the other states and in

While passing its Airport Order of 12.01.2011, the Authority had considered these views of the government appropriately.

- 4.77. Having regard to the focus on the interest of the passengers and cargo facility users, the Authority considered it appropriate to balance the interests of the airport operator with passengers in such a manner that the airport operator is assured a fair rate of return (on equity) consistent with the risk profile (with various risk mitigating measures incorporated), the capital requirements for expansion etc. having been addressed, the charges on the passengers should be minimized.

European Union on till

- 4.78. Referring to the EU directive on the issue of regulatory till, HIAL submitted that Directive did not prescribe the basis on which airport charges should be set, and explicitly left open key issues such as regulatory till. HIAL presented to the Authority as under,

The EU Directive, that explicitly mentions policies on airport charges endorsed by ICAO states that:

@
essential features of a framework should be without prejudice to the possibility for a Member State to determine if and to what extent revenues from an establishing airport charges.

[source; Competition Commission (2002), A Report on the Economic Regulation of the London Airports Companies (Heathrow Airport Ltd, Gatwick Airport Ltd and Stansted Airport Ltd),]

*The above quotation provide evidencethat the EU Directive, in
airport charges should be set, and explicitly leaves open key issues such*

*[Dr. Francesco Lo Passo and David Matthew, NERA (2009), The EU
Directive on Airport Charges: Principles, Current Situation and
Developments.]*

- 4.79. The Authority had noted HIAL submission on the above aspect. The Authority aware of the latest wordings in the ICAO 9082 and accordingly ICAO has taken a neutral stand on the issue of regulatory till to be adopted. As also indicated by HIAL, the EU Directive admits both single and dual tills depending upon the situation in the Member State.

International examples and research studies of airports moving to dual till

- 4.80. HIAL in its presentation had referred to a case study on Aéroports De Paris (ADP). Presenting the findings of the case study, HIAL submitted that *fact that single till regulations are not economically efficient, are not cost reflect provide limited incentive to the operator to increase traffic and does not enable*

Findings from the case study, as presented by HIAL to the Authority, are reproduced below:

For the period 2006 Single Till principle was used, but for 2011

regulation with the withdrawal of commercial and real estate

put forward by the authority in its Consultation paper included:

- Ø Would be a stronger incentive to improve the competitiveness and attractiveness to users because traffic growth is a positive external driver of retail activities*
- Ø Would be a driver for increased employment. The retail and restaurant activities majorly employs local labor and represent nearly 7,000 jobs on these airports*

- Ø *Would allow the airport to capture some of the value created over the long term will help strengthen its financial robustness hence its investment capacity*
- Ø *Decreasing the level of subsidy between non-aviation activities and aviation activities will enable airport fee rates to be a price signal linked more directly to the cost of developing infrastructure and services, bringing sound and responsible economic behavior.*

4.81. The Authority had analysed the points with respect to the ADP experience given by HIAL mentioned above. As a preliminary observation the Authority that ADP has majority holdings of public entities is not the case at all. According to an article³ quoting the study of Morgan Stanley⁴, (2006) 7 did not disclose key figures such as the value of the RAB in its 2006 regular

The Competition Commission of UK had also observed that it remains unimpressed by the examples of other dual till airports since according to Competition Commission they cannot be said to be comparable to Heathrow, Gatwick and Stansted. It had stated that it could not find any private airports comparable to Heathrow etc. under dual till. The Authority has also come across an

REGULATION OF LARGE AIRPORTS STATUS QUO AND OPTIONS FOR REFORM Hans Martin NIEMEIER, in a workshop Airport Regulation Investment & Development of Aviation Discussion Paper No. 2009 May 2009 of OECD and International Transport Forum (ITC), wherein Prof Niemeier has referred to the same study made by Morgan Stanley (2006) ADP in different scenarios between EUR 38.12 and 7.1 per share. The differences are mainly due to different degrees of non-aviation business left out in the till. These differences give a rough idea of the magnitude of the distortion

³ Testing the effects of economic regulation on the cost efficiency of European airports using homogenous Stochastic Frontier Analysis. Alexander Düнки, City University London, (date not mentioned but going by the dates of the references mentioned in the article, it would be 2010 or thereafter)

⁴ "Costs of Regulation at Airports" by Morgan Stanley, 2006

⁵ "Costs of Regulation at Airports" by Morgan Stanley, 2006

4.82. The Authority does not believe that a move from single till towards dual till should be supported on the ground that this is in higher valuations of the airport. Inasmuch as higher valuations thus obtained have higher passenger charges (in the form of UDF) in the Indian context, the Authority does not find any reason to levy higher charges on the passengers (as would happen as one departs from single till) merely to enhance the valuation of the airport in the Indian context. The Authority has also noted the arguments from private airport operators including HIAL that privatization goes hand in hand with adoption of dual till. The Authority remains unpersuaded by this approach. This is because privatization is meant to increase competitiveness and lower costs. To the extent dual till increases costs directly impinging on the passengers (in the form of higher UDF as compared to Single Till), the argument of private airport operators tantamount to privatization being regarded as a goal in itself. The Authority thus continues to regard the welfare of passengers as paramount subject however to grant of fair rate of return to the airport operator. Single Till, in view of the Authority, strikes this balance.

4.83. That apart, the Authority also noted that HIAL had in its appeal before the Appellate Tribunal made a submission for '...'. Its submission before the Authority was also for both single till as well as dual till. The Authority has noted that under dual till, the entire aeronautical revenue would remain in the hands of the airport operator that would augment its overall rate of return. Consequently the aeronautical charges (particularly impinging directly on the passengers in the form of UDF) would be higher than what they would be under single till. For example, the Authority had analysed in case of HIAL that the average UDF per passenger under single till with 16% return on equity would be ₹5,895 (which is weighted average of domestic UDF of ₹3,304 and international UDF of ₹1,306.60 assuming the existing domestic / international UDF ratio), but under dual till it would be ₹4,453.70 (which is weighted average of domestic UDF of ₹4,577 and international UDF of ₹343.73 assuming the existing domestic / international UDF ratio) further assuming that under single till and dual till, the UDF is charged only on embarking passengers the provisions of the

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Concession Agreement Schedule 6. The approach of HIAL in proposing both embarking and disembarking passengers as not being in consonance with the provisions of the Concession Agreement is discussed in para 4.4.10.

- 4.84. Professor Czerny (2006) analysed whether price cap regulation of airports should take the form of single till or dual till regulation. The contribution of the paper is to model single and dual till regulation, evaluate their welfare implications, and compare them to Ramsey charges. Prof. Czerny concludes that dual till regulation dominates dual till regulation at congested airports with regard to welfare maximization. However, none of them provides an airport with incentives to implement Ramsey charges.

This paper investigates price regulation of an airport where airport facility (e.g. runway) is congestible and air carriers compete for slots. We show that when the level of airport congestion is low, single till regulation dominates the dual till price cap regulation with respect to social welfare maximization. On the other hand, the dual till regulation performs better than single till regulation when airport congestion is significant. The authors note that

airports will likely become profit maximization instead of social welfare maximization. Price regulations may thus be called upon so as to contain potential

(2006; Basso 2008).

- 4.85. Leaving aside the legal provision in the AERA Act, theoretically therefore, Hyderabad airport that is congested should have single till whereas a congested one should have dual till. As and when congested airport becomes congested, the regulatory till should switch from single to dual till. Congestion depends on factors like growth in passengers. Quite apart from the aspect that to determine if the airport is to be regarded as congested or not itself involve

⁶ Price-cap regulation of airports: single-till versus dual-till öby Achim I. Czerny, J Regul Econ (2006) 30:85-97

⁷ Analysis on Price-cap Regulation of Congested Airports by Hangjun (Gavin) Yang and Anming Zhang, July 2010

considerable judgment, the congestion can start showing up in the Control Period. Once the airport is determined to be congested (and hence regulated as per dual till), it should make necessary investments in airport facilities (presumably from the extra income retained by it through non-aeronautical services that have been kept out of the regulatory ambit) and become over time, non-congested airport. Then it will switch back to single till. The Authority does not regard as practicable, such regulatory pendulum from single to dual till and then back to single till for the purposes of welfare maximization.

4.86. This is quite apart from a viewpoint expressed in a submission made by Prof Darrin Biggar, Consulting Economist, ACC (20th Jan 2011) to the Productivity Commission Australia questioning whether welfare maximization (or minimizing of the deadweight loss) is indeed the sole rationale of economic regulation of airports in various regulatory regimes. Prof. Biggar states;

But what if the primary rationale for airport regulation is not the minimisation of deadweight loss? The attached paper points out that most economists have missed a core element of public utility regulation the need to protect and promote the sunk relationship specific investments made by customers and

He further argues:

If airport regulation is primarily about minimisation of deadweight loss, regulators should care primarily about the structure of airport charges in particular, ensuring that the prices charged at the margin are close to marginal cost. As long as the deadweight loss can be reduced to a minimum, regulators should have relatively little to say about the overall level of charges

Yet, this is not the case. A common principle in airport regulation is that charges be costed. The ICAO Policies on Airport Charges

⁸ If the airport is in competition with other airports, it may or may not be able to retain substantial part of the non-aeronautical income in dual till and may be required to cross-subsidize aeronautical charges through non-aeronautical income.

⁹ WHY REGULATE AIRPORTS? A RE-EXAMINATION OF THE RATIONALE FOR AIRPORT REGULATION ö . " d { " F c t t { n " D k i i c t . " L c p " 4 9 . " 4 2 3 3 0

to the ICAO, in determining the cost basis for airport charges, only those facilities or services used to provide (international) air services can be included. In the US, airport revenue-diversion laws require that airports receiving federal or state grants must ensure that revenues generated at an airport are only spent on the capital or operating costs of that airport. In contrast to the predictions of the deadweight loss hypothesis, regulators and policy-makers seem to care as much or more about the level of airport prices than they do the structure.

4.87. Whether a congested airport (and assuming that it is regulated on the basis of a single till following the welfare maximizing objective advocated in academic literature) will actually invest in expanding its capacity has also been questioned in academic literature. For example, Baso (2008)¹⁰ presents a theoretical model in which he shows that deregulation can lead to congested private airports fixing higher prices, while it is unclear as to whether they have greater incentives than a regulated airport to invest in their capacity to alleviate this congestion.¹¹ In this connection, the Authority noted the observations in a paper (Sept 2008), *Airport Performance and Capacity*, by Tae H. OUM, The Air Transport Research Society (ATRS) & Xiaowen FU, Hong Kong Polytechnic University. The authors give a comprehensive summary of the different strands in academic literature. Their conclusion, however, is interesting. They state: *Under a single till system, the possible (excess) profits earned by airports from ancillary services can be utilized to expand capacity and improve service quality. However, there is no easy answer to how to provide incentives for airports to do so* (Emphasis added).

4.88. The Competition Commission (CC) of UK commenting on the proposal (2002) of the Civil Aviation Authority (CAA) to switch from single till to dual till has similar

¹⁰ Airport deregulation: Effects on pricing and capacity. *International Journal of Industrial Organization*, 26(4), 1015-1031.

¹¹ Quoted in Privatization, regulation and airport pricing: an empirical analysis for Europe, Germà Bel & Xavier Fageda

¹² This then effectively becomes single till.

concluded that the dual approach would act as an effective incentive on BAA to revert to a single approach) at future regulatory reviews should it fail to do so (see paragraph 2.121).

4.89. In USA there is a legal framework that mandates that the revenues generated in airport must be invested in the airport itself and cannot be diverted elsewhere (prohibition on revenue diversion). The Authority understands that similar is the situation in Canada where the airports are managed by *share* companies, that do not pay income tax and are required to invest in airport itself (See for example Prof Gillen *"national" airports as for example in the Canadian system, the airport authorities are formally treated as "not-for-profit" entities under the corporation act, so that any profits must be reinvested in the airport itself*. Prof Gillen further observes in the same paper that *the Airport Authority Fee (AAF) is a source of funds for capital investments. The nature of the Canadian model led to a lack of public regulation; first, the not-for-profit model meant all monies must be reinvested and secondly the lack of access to the broader capital markets*

4.90. The limited purpose of giving some of the different viewpoints is not to give any general view on the comment of the Authority on the superiority of single till over dual till or the other way round. It is merely to highlight that academic literature or regulatory submissions have taken different approaches to the issue of regulatory till depending on the situation of the country in question. Different countries have different legal frameworks and different regulatory structures for economic regulation of airports. It is thus not appropriate to pick only the

¹³ REPORT BY THE COMPETITION COMMISSION - NOVEMBER 2002 on BAA plc: a report on the economic regulation of the London airports companies (Heathrow Airport Ltd, Gatwick Airport Ltd and Stansted Airport Ltd) CC UK at url: <http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=1322>

¹⁴ Airport Governance Reform in Canada and Abroad by Allison Padova Economics Division 5 September 2007, Page 3.

¹⁵ The Regulation of Airports by the Competition Commission Working Paper 2007-5 Centre for Transportation Studies (CTS), 2007

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dual till as the best regulatory approach in the Indian context. As has already been emphasized, dual till is legally ruled out by the AERA Act.

- 4.91. The Authority had calculated that the total aeronautical revenue accruing to HIAL during the current Control Period was approximately Rs. 912 crore (excluding the Hotel and MRO that have been referred and hence not taken into account in the exercise of tariff determination but including the duty free revenue share accruing to HIAL as aeronautical revenue, duty free shopping being within the terminal building). The non-aeronautical services of duty free shopping were provided by a 100% subsidiary of HIAL. The non-aeronautical service of parking was provided directly by HIAL (through appointment of what can be called an agent (that however is termed as O&M contractor by HIAL) to reimburse a predetermined operation and maintenance costs. However the entire revenue from the car parking activity is booked in the accounts of HIAL (non-aeronautical services) as it was outsourced to third party concessionaires. The net income (surplus) from non-aeronautical services accruing to HIAL (after accounting for the expenses of depreciation, interest expenses and taxes attributable to non-aeronautical activities) had been worked out at approximately Rs. 430 crore for five years or roughly Rs. 86 crore per year (calculated by broadly assuming a tax paid @ MAT of 20.96% from FY-2012 onwards and historical tax paid for FY 2011 separately on the non-aeronautical income). Taking the equity base of HIAL at Rs. 378 crore (excluding the contribution of HIAL equity to Hotel and MRO), this was apportioned at 83% equity for aeronautical (approximately Rs. 314 crore) and 17% equity apportioned for non-aeronautical (approximately Rs. 64 crore). The Authority, under dual till would determine the aeronautical tariffs (including UDF from the passengers) so that the airport operator gets fair rate of return at 16% on his aeronautical equity. Hence the airport operators return on equity from non-aeronautical net income would come to 134% (= 864 crore / 64 crore). Hence for HIAL as a standalone entity (refer 3.4.1 above) the return on total equity (under dual till) would be 36.06% (= 16% * 83% + 134% * 17%). The rate of return on equity of 24% would be admissible, what HIAL is asking, under dual till a total effective rate of return on equity would come at 2.70% (= 24% * 16% + 36.06% * 84%).

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83% + 134%17%) Whichever way one looked at it, this meant that under dual till the extra amount of Rs. -895/passenger (see Para 4.81 above) would be extracted from the passengers only to give the airport operator an (additional) return on equity of 20.06% (assuming fair rate of return on equity at 16%) or 180% (assuming fair rate of return on equity of 24% as indicated by HIAL). The Authority did not feel that this would be the object of public policy and in public interest.

- 4.92. The Authority had been consistently saying that the purpose of extra revenue (over and above what are required to give the airport operator a fair rate of return) must be a priori clear and transparent to all stakeholders, especially to the passengers on whom will fall the burden of giving the airport operator additional revenue. If it is a public purpose (like capital requirement for airport expansion or improvement of passenger conveniences or service quality), such burden may be held justifiable after appropriate stakeholder consultations. This consideration was also in consonance with what had been indicated by HIAL when it said that the airport should have financial robustness for its investment capacity.
- 4.93. In the Indian context the generation of non-aeronautical revenue was primarily passenger related. The UDF being directly on the passengers the Authority considered it as fair that the passengers should be able to derive full benefit of the non-aeronautical revenue subject to fair rate of return to the airport operator as well as requirements of additional investments as mentioned above.

- 4.94. HIAL submission regarding single till not necessarily leading to lower tariffs as under,

Prices are determined by the characteristics of the airport, their ownership structure and the way it is managed rather than the charging methodology and one should not conclude that single till leads to lower tariffs.

- 4.95. HIAL had given some elements that, according to it, influenced the prices at the airport. The statement,

, if put in a logical construct, would mean that

This however was not the

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hypothesis to be tested. What to be tested was whether for a given airport
respect of its land UDF determination in respect of Ahmedabad and Trivandrum
airports indicated that this was so. In the current determination this aspect so
come out very clearly that UDF under dual till was found 80% higher than in single
till. Hence to say that for a given airport single till may not lead to lower tariffs
not appear to be borne by facts.

- 4.96. The Authority had carefully noted the contents of the letter No
GHIAL/MOCA/regulatory/2013/2001 dated 20.4.2013 from Mr. Siddharth
Kapoor, EO and President Airports HIAL had stated that
*be based and in consonance with Concession Agreement signed by HIAL with
U and further that* . HIAL had also stated that
Authority should *deduct the value of land meant for non-aeronautical activities
from RAB and also not to consider the revenues generated therefrom while fixing*
The letter
had also reproduced various provisions of Concession Agreement as well as other
This had been
reiterated by HIAL in its letter date 03.05.2013 (Page 7) which read
*The reading of various provisions of the concession
agreement. It can be concluded that a dual till is envisaged in the concession
agreement*

- 4.97. From these submissions, HIAL stated that since Concession Agreement was to
be adhered to, it followed that,

4.97.1. Dual till should be adopted and

4.97.2. Land meant for non-airport activities should be permitted to be used by HIAL
and revenues therefrom should be permitted to be used at its discretion
which, according to HIAL, was also as per Concession Agreement at RGI,
Hyderabad.

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4.98. The other points mentioned in the letter were substantially similar to those made by HIAL in its presentation and were addressed in the respective building blocks. The Authority had also given financial calculations under both single and dual till.

4.99. The letter from GMR also included a report from NERA Economic Consulting on two issues, namely, (a) ICAO principles of Regulatory Till and (b) land treatment.

4.100. As far as the ICAO principles of Regulatory Till is concerned, the report of NERA included a table giving different regulatory tills in different countries. Based on this table, NERA had concluded that

have decided to adopt different regulatory regimes conforms the absence of international obligation to preclude or encourage the single

4.101. The Authority had regulatory till is concerned appeared that NERA had not fully appreciated the Authority Order No. 13 of 2010 dated 12th January, 2011 regarding its reasoning for adoption of single till. NERA had (in Conclusion Para 5)

that the regulatory approach in the major airports in India has to be of single till price cap regulation since according to AERA a single till regime is the solely approach that may be regarded as consistent with

4.102. NERA had further stated

appropriate. By making anonymous reference to the fact that single till regulation is recommended or supported by ICAO, AERA does not make a reasonable case to support the adoption of a single till price cap

4.103. NERA had not gone through various considerations indicated in Authority Order under reference nor its reasons of adopting single till. First, order was based on the reference material as available between 22nd December, 2009 (the date of the Order) and January, 2011. Reference to ICAO in

respect of single till was only one of the considerations. Finally, the Authority in Para 5.26 of its order under reference referred to the writings of experts in aviation economics and regulation in academic literature in so far as their interpretation of ICAO guidelines was concerned. The Authority had normally indicated that

considerations indicated in their writings, they appear to be unanimous in the view

4.104. In paragraph 5.27, the Authority had given examples of the writings of David Gil Hans Martin Niemeier Rui Cunha Marques Ana Brochado as well as review of the new European Airport Charges Directions by Andrew Osawell as EU Directive 2009 itself. In fact, the paper by Rui Cunha specifically stated that *single till approach is widely used and its main advantages are to minimize the airpo*

Based on these numerous opinions, the Authority then concluded in Para 5.32 that

Apart from ICAO, the Authority had addressed a large number of issues on single till which were raised by various stakeholders in response to its consultation paper (see paras 5.33 to 5.135). Finally, the Authority summarized its position under AERA Act giving brief legislative history (para 5.136). Hereafter, it stated in para 5.137 *that the reasons aforesaid, the Authority is of the opinion that single till is most appropriate for economic*

4.105. From these discussions, the Authority was unable to appreciate the conclusions drawn by NERA that

The Authority had drawn upon and benefitted from writings of experts in the field as aforesaid. Its conclusions in para 5.137 indicate that its adoption of single till was solely on account of ICAO. It appeared that NERA had selectively read the reasons mentioned by the Authority to adopt single till. Its reading of the Authority's Order thus appeared to be both selective and misinterpreted. Probably this may be on account of the limited remit of NERA regarding ICAO principles and single till.

Consideration of Regulatory Till in respect of RGI Airport, Hyderabad

4.106. NERA had also given examples, of other countries regarding regulatory till. At the outset, the Authority had always maintained that economic regulation of the airports needed to be viewed in a comprehensive manner with specificities of each individual country. In fact, NERA also stated that specificities of each airport need to be taken into account while addressing the issue of regulated tariffs. NERA had felt that *viability and by taking into account the specificities of each airport, including the fact that HIAL pays an annual contribution (expressed in terms of a percentage of*

4.107. The Authority was mandated to take into account, inter alia, the *as well as capital expenditure incurred and*. Hence its determination of aeronautical tariffs would be in accordance with the legislative policies and guidelines under AERA Act and it would take into account all the factors mentioned in the policy guidelines. The Authority would also take into account the specificities of HIAL in its exercise of determination of aeronautical tariffs for HIAL. However, it was unable to appreciate the principal import and the wordings used by NERA that HIAL pays an annual contribution. Under the Concession Agreement signed between Govt. of India and HIAL, the annual contribution is determined @4% of the gross revenues, as cost pass through, further, that this is deferred for a period of 10 years. Along with other numerous specificities, under the Lease Deed Agreement between HIAL and Govt. of Andhra Pradesh, HIAL pays 2% of the lease rental (based on the cost of the land acquisition). The Authority would take these into account while determining the aeronautical tariffs. Likewise, the Authority had also taken into account the financial assistance by the State Govt., assured traffic by the Govt. of India, risk mitigating measures adopted by the Authority (which effectively transfer the risk from the airport operator to the passengers.), etc.

4.108. NERA had referred to the observations of Competition Commission (2002) regarding ICAO policies and guidelines stating that,

u @# ° \ n applying either the single or dual till approach. [...] [DFT] also suggested to us that, where appropriate, different treatment at different airports for example, dual till at congested airports, single till at uncongested airport would be more consis @# ° \

4.109. The Authority noted two important aspects in this provision given by NERA. The first was that according to the Department for Transport, it had suggested that the different regulatory tills suggested to be made applicable for congested and non-congested airports. It appeared that the Department for Transport considered this treatment to be more consistent with the ICAO principles of flexibility.

4.110. Purely for argument sake, applying principle in case of Hyderabad could result in following single till, since Hyderabad is a congested airport. Secondly, the Competition Commission in its final decision did not appear to agree with the suggestion of Department for Transport that, International practices neither suggested nor precluded a dual till approach. In its report, NERA provided evidence that the regulatory approaches, that enforce ICAO principles, may comprise ex post regulation as well as ex ante regulation.

4.111. The Authority had also considered the fact that as against the capacity of 12 million passengers, RGI Airport, Hyderabad had a traffic of around 8.25 million. The Competition Commission (Para 2.71 of Chapter 2) stated that to apply the single till at uncongested airports and the dual till at congested airports would also, as the CAA pointed out, have adverse effects on incentives, encouraging airports to be congested. The Authority was aware that this view was also advocated by Prof. Czerny in his Article (see Appendix 30.75). According to Prof. Czerny, *model single till and dual till regulation, evaluate their welfare implications, and compare them to Ramsey Charges. We show that single till regulation dominates dual till regulation at noncongested airports with regard to welfare maximization. However, none of them provides an airport with incentives to implement Ramsey*

Charges. A Ramsey optimal price cap regulation which achieves this goal is also
Hence, Prof. Czerny appeared to be actually advocating application of
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"Price Cap Regulation of Airports: A New
Approach" by Kevin Carrier of Oklahoma State University that both single
and dual till regimes will in general lead to regulated prices that are Pareto
inefficient. It further suggests a price cap scheme according to the author
generates Pareto improvements relative to the status quo by bringing the
commercial services into the sphere of regulatory control. So while Prof Czerny
advocates Ramsey pricing, Prof Carrier appears to suggest regulating non-
aeronautical services for Pareto optimality.

4.112. Apart from Prof. Czerny, the Authority also noted a large number of academic
literatures, some in support of single till and the others in support of dual till. For
example, the Authority noted the observations made in a paper (Sept 2008),
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Airport- Performance and
Airport- Performance, by Tae H. OUM, The Air Transport Research
Society (ATRS) & Xiaowen FU, Hong Kong Polytechnic University. These authors give
comprehensive summary of the different strands in academic literature. Their
conclusion, however, were interesting. They state *@*
-till
system, the possible (excess) profits earned by airports from non-aeronautical
services can be utilized to expand capacity and improve service quality. However,
there is no easy answer to how to provide incentives for airports to do so
(Emphasis added). (Also see Para 4.115 below for another observation of Profs Oum
and Fu).

4.113. Purpose of additional investments required by an airport in a single till that
allowed the airport operator to retain with it the non-aeronautical revenues was
also highlighted by the Association of Private Airport Operators in India (APAO) that
consist of the five private airports of India as its members. For their
o 8 U o V # = U stated
that:

¹⁶ This then effectively becomes single till.

