

**File No. AERA/20010/MYTP/MIAL/2011-12-IV**

**Order No. 32/2012-13**

**Airports Economic Regulatory Authority of India**

**In the matter of Determination of Aeronautical  
Tariffs in respect of Chhatrapati Shivaji  
International Airport, Mumbai for the first  
Regulatory Period (01.04.2009 – 31.03.2014)**

**Date of Order: 15<sup>th</sup> January 2013**

**Date of Issue: 15<sup>th</sup> January 2013**

**AERA Building  
Administrative Complex  
Safdarjung Airport  
New Delhi - 110003**



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**File No. AERA/20010/MYTP/MIAL/2011-12-IV**  
**Airports Economic Regulatory Authority of India**

**Order No. 32/2012-13**

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**AERA Building,  
Administrative Complex,  
Safdarjung Airport,  
New Delhi – 110 003**

**Date of Order: 15<sup>th</sup> January, 2012**

**Date of Issue: 15<sup>th</sup> January, 2012**

**In the matter of Determination of Aeronautical Tariffs in respect of  
Chhatrapati Shivaji International Airport, Mumbai for the 1<sup>st</sup> Regulatory  
Period (01.04.2009 – 31.03.2014)**

**1. Brief facts**

**1.1.** In the year 2003, the Airports Authority of India Act, 1994, was amended to enable setting up of private airports and the leasing of existing airports to private operators. The Amendment Act 43 of 2003 was brought in to effect on 01.07.2004. In pursuance thereof, the Government of India (GoI), had approved the modernisation, up-gradation and development of the Delhi and Mumbai Airports through private sector participation. Airports Authority of India (AAI) initiated the process of selecting a lead partner for executing the modernisation projects and undertook a competitive bidding.

**1.2.** In so far as Chhatrapati Shivaji International (CSI) Airport (CSIA) at Mumbai is concerned, a consortium led by the GVK Group was awarded the bid for operating, maintaining, developing, designing, constructing, upgrading, modernising, financing and managing the CSIA. Post selection of the private consortium a special purpose vehicle, namely Mumbai International Airport Private Limited (MIAL), was incorporated on 2<sup>nd</sup> March 2006 with AAI retaining 26% equity stake and balance 74% of equity capital acquired by members of consortia. The GVK consortia comprised GVK Airport Holding Pvt Ltd, ACSA Global Limited and Bid Services Division (Mauritius) Ltd. On 4<sup>th</sup> April 2006, MIAL signed the

Operation, Management and Development Agreement (OMDA) with AAI, whereby the AAI granted to MIAL the exclusive right and authority during the term to undertake some of the functions of AAI being the functions of operations, maintenance, development, design, construction, upgradation, modernising, finance and management of the CSI Airport and to perform services and activities constituting aeronautical services and non-aeronautical services (but excluding Reserved activities) at the airport. MIAL took over the operations of CSI Airport on 3<sup>rd</sup> May 2006 (Effective Date). The OMDA has a term of 30 years with MIAL having a right to extend the agreement for a further period of 30 years subject to its satisfactory performance under the various provisions governing the arrangement between MIAL and AAI.

**1.3.** In addition to the OMDA, MIAL also entered into State Support Agreement (SSA) dated 26.04.2006 between the President of India acting through the Ministry of Civil Aviation (MoCA) and MIAL, which outlined the support from the Gol. Besides the OMDA and the SSA, MIAL also entered in to the Shareholder Agreement, CNS-ATM Agreement, Airport Operator Agreement, State Government Support Agreement, Lease Deed, Substitution Agreement and the Escrow Agreement.

**1.4.** Provisions regarding “Tariff and Regulation” have been made in Chapter XII of OMDA and clause 3.1 read with Schedule 1 of the SSA.

**1.5.** MIAL submitted a proposal for revision of tariffs for aeronautical services at CSI Airport, Mumbai, for the Authority’s consideration and approval on 11.10.2011. MIAL made the proposal based on their understanding of the principles of tariff fixation provided in the SSA. They considered the first regulatory period as a 5 year period commencing FY 2009-10 and upto FY 2013-14 and assumed that the charging of revised tariff shall commence w.e.f. 01.12.2011

**1.6.** Along with their proposal, MIAL also submitted the considerations/ assumptions made for preparing the proposal for determination of tariffs for aeronautical services, which included the :

- 1.6.1. principles used for the filing for revision of tariffs for aeronautical services;
- 1.6.2. project cost considered in the filing and the calculation of Regulatory Asset Base;
- 1.6.3. means of finance and calculation of Weighted Average Cost of Capital;

- 1.6.4. forecasts of operation and maintenance expenses and rationale for the same;  
and
  - 1.6.5. forecasts of non-aeronautical revenues and rationale for the same
- 1.7.** Along with copies of their key agreements (OMDA & SSA), MIAL also furnished certain reports/studies to support their submissions. These inter alia included:
- 1.7.1. Notes on reason for variation in project cost
  - 1.7.2. KPMG's report on classification of Assets and costs
  - 1.7.3. Report on determination of cost of equity of Mumbai Airport by the KPMG;
  - 1.7.4. Copies of orders passed by Maharashtra Electricity Regulatory Commission – with reference to levy of cross subsidy surcharge and regulatory asset recovery and requesting Authority to true up these costs and electricity rates as and when determined by MERC,
  - 1.7.5. Municipal Corporation of Greater Mumbai's draft rules for fixing capital values of land and buildings
  - 1.7.6. Air traffic forecast for CSI Airport carried out by the Department of Statistics, MIAL;
  - 1.7.7. Commercial agreements entered into by MIAL with concessionaires at CSI Airport, Mumbai
- 1.8.** MIAL, vide their initial submission dated 11.10.2011, made the following submissions:
- “Concessions offered by Central Government to be considered for Tariff Determination:*
- Order No. 13/2010-11 dated 12.01.2011 issued by the Hon'ble Authority recognized that covenants of the concession agreements may require appropriate modifications to be made in the general framework that has been laid down in this Order. Also in the Clause 1.4 of the guidelines released by Hon'ble Authority titled, 'AERA (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011' on 28.02.2011 (hereinafter referred as the 'General Guideline') has recognized the need of a separate order for CSIA for tariff determination.”*
-

1.8.1. MIAL also submitted that all the Project Agreements entered into by MIAL including SSA and OMDA are part of concession offered by Central Government. MIAL stated that vide their letter dated 04.02.2011, they had requested MoCA to clarify the same to the Authority and followed up vide letter dated 22.07.2011 to MoCA. MIAL submitted that provisions of SSA and OMDA are interconnected and inter dependent in their interpretation and application.

1.8.2. Provisions of the SSA and OMDA - With regard to the application of the provisions of SSA and OMDA for the purpose of tariff determination, MIAL have made reference to their letter dated 09.02.2011 to the Authority, where MIAL provided interpretation of the principles of tariff fixation as per Schedule 1 of the SSA. MIAL further stated that,

*“Schedule 1 of SSA states that the Aeronautical charges would be calculated in the ‘shared till inflation – X price cap model’ According to this model Target Revenue is calculated as per the formula below:*

$$TR_i = RB_i \times WACC_i + OM_i + D_i + T_i - S_i$$

*Each of the above terms has been defined in Schedule 1 and the same are not being reproduced for the sake of brevity. However, our understanding of each of these is given in our above mentioned letter dated 09.02.2011 (Annexure 4) and is also discussed in detail in the following sections.*

#### ***Aeronautical and Non- Aeronautical Services***

*Aeronautical and Non- Aeronautical Services are defined under OMDA and the same definitions have been used for the purpose of classification of services. Further, OMDA provides detailed list of various services and facilities that would form part of the Aeronautical Services and Non-Aeronautical Services in Schedule 5 and Schedule 6 respectively.*

#### ***Shared Till***

*As given in the Schedule 1 of the SSA, 30% of the revenues from Revenue Share Assets (RSA) would go towards reducing the*



*aeronautical charges while computing Target Revenue. Further the costs in relation to such revenue shall not be included while calculating Aeronautical Charges. Thus, this Multi-Year Tariff Proposal has been prepared based on the Shared Till as per SSA. Revenue Share Assets (RSA) have been defined in SSA as under:*

*“Revenue Share Assets” shall mean (a) Non-Aeronautical Assets; and (b) assets required for provision of Aeronautical related Services arising at the Airport and not considered in revenue from non-Aeronautical Assets (e.g. Public admission fee etc.).’*

**1.9.** MIAL, in their MYTP, also made the following submissions:

1.9.1. MIAL appealed before the Hon’ble AERA Appellate Tribunal (the Tribunal) over certain orders issued by this Authority viz Order no 13/2010-11 dated 12.01.2011; Order no 12/2010-11 dated 10.01.2011; Order no 2 dated 18.04.2012/2012-13 and Order no 3 dated 21.05.2010/2010-11. MIAL stated that the MYTP was being filed without prejudice to the Contentions and submissions of MIAL in respective appeals to Hon’ble Appellate Tribunal.

1.9.2. MIAL stated that along with MIAL’s proposal for 10% increase in Aeronautical Charges, a proposal for introduction of Aerobridge Charges was also submitted for consideration of the Authority.

### ***Issue of 10% Tariff Increase***

**1.10.** One of the issues against which MIAL had appealed before the Hon’ble Tribunal is in the matter of 10% increase in aeronautical charges requested by MIAL, w.e.f. 01.05.2009, based on MIAL’s interpretation of the provisions in the SSA. Brief facts of the case are as presented in the paragraphs below.

**1.11.** MoCA, vide its letter no. AV.20036/014/2009-AD dated 06.10.2009, had forwarded a request received from the MIAL (letter ref.no. MIAL/PR/96 dated 28.07.2009), for a 10% increase in aeronautical charges at CSIA with effect from 03.05.2009 for the Authority's consideration. Aforesaid request was made by MIAL on the grounds that as per Schedule 6 of the SSA, entered into between the Central Government and MIAL, the regulatory authority/Government of India, will set the aeronautical charges from the commencement

of the 4th year from the Effective Date, i.e., 03.05.2006 and for every year thereafter subject always to the condition that, at least, nominal increase of 10% of base airport charges will be available to MIAL. MIAL interpreted the above provisions to mean that the Authority/GOI are bound to permit an increase of 10% of the Base Airport Charges on the commencement of the 4th year and every year thereafter and, accordingly, approval was solicited to increase the airport charges by 10% w.e.f. 03.05.2009. MIAL did not otherwise justify its proposal.

**1.12.** MIAL was earlier permitted a 10% increase in airport charges w.e.f. 01.01.2009, by the MoCA, in terms of Clause 1 of the Schedule 6 of SSA after completion of two years from the Effective Date i.e., 03.05.2006.

**1.13.** The request of MIAL was examined in detail by the Authority. It was noted that the 'Base Airport Charges' are the charges which were prevalent on 26.04.2006 (as set out in Schedule 8) and that a nominal increase of 10% had already been permitted by the MoCA over the Base Airport Charges (BAC) in terms of Clause 1 of Schedule 6 and that this increase could be termed as "permitted nominal increase of 10%" contemplated in Schedule 6 of the SSA. Further, the second part of Clause (2) of Schedule 6 states that

*"a permitted nominal increase of ten (10) percent of Base Airport Charges will be available to the JVC for the purposes of calculating Aeronautical Charges in any year after the commencement of the fourth year".*

**1.14.** Thus, on a co-joint reading of Clauses 1 & 2, it is evident that as per Clause (1) a nominal increase of 10% is to be permitted on completion of first two years, subject to certain conditions, and as per Clause (2), this permitted nominal increase of 10% will, at the least, be available to the Joint-Venture Company (JVC, i.e. MIAL) for the purposes of calculating airport charges from fourth year onwards. Expressed differently, in terms of first part of Clause 2, the Authority/GOI are required to set aeronautical charges in accordance with Clause 3.1.1 read with the principles set out in Schedule 1 of SSA from 4th year onwards and by virtue of second part the nominal increase of 10% permitted (in terms of Clause 1) is saved. The Authority also noted that the request of MIAL, at least in some part of their communications, appeared to be for an increase of 10% on the prevalent Airport Charges, whereas the second part of the Clause 2 of Schedule 6 mentions an increase of

10% on the BAC, which in the Authority's view had already been permitted by the MoCA in terms of Clause 1 of Schedule 6.

**1.15.** The Authority observed that, if it is accepted that Clause 2 contemplates an year on year increase of 10% from the commencement of 4th year onwards, it would mean that the GOI have agreed to a doubling of BAC in about 7 years' time irrespective of the actual determination in terms of principles set out in Schedule 1. Thus, on a co-joint reading and harmonious construction of the provisions of Schedule 6 of SSA, the Authority found that the following scheme is revealed:-

1.15.1. The airport charges, as existing on 26.04.2006 (which are set out in Schedule 8) will continue for first two years from the effective date.

1.15.2. In the event the JVC fully completes and commissions all the mandated facilities required to be completed during the first two years, it would be allowed a tariff increase of 10% in nominal terms from the beginning of 3rd year from the effective date, as an incentive.

1.15.3. From the commencement of 4th year onwards, tariff will be set by the Authority/GOI as per principles set out in Schedule 1 subject to the condition that, at the least, the nominal increase of 10% of the BAC permitted during the third year, as incentive, will continue to be available to the JVC.

**1.16.** In view of the above, the Authority felt that there was no warrant in Schedule 6 of SSA for an automatic year on year increase of 10% in airport charges from the commencement of fourth year onwards. Accordingly, the Authority rejected the request made by MIAL for a 10% increase in aeronautical charges at CSIA, with effect from 03.05.2009, vide Order No.03/2010-11 dated 20.05.2010.

**1.17.** MIAL appealed against the said Order of the Authority before the Hon'ble Tribunal vide Appeal No. 02/2010. The Hon'ble Tribunal, disposed the said Appeal vide its final Order dated 11.05.2011 and directed that:

*"Therefore, without expressing any opinion on the merits of the case we set aside the impugned order and remit the matter to the Regulatory Authority to pass a reasoned order after grant of opportunity to the parties for hearing and to place further materials, if any. The exercise shall be undertaken within a period of ten weeks. If the Regulatory Authority*

*requires any material to be produced it is but imperative that the same shall be supplied by the appellant. We note the stand of Mr. Nanda that a final determination has to be done in each case.”*

**1.18.** Pursuant to the Order dated 11.05.2011, the Authority filed an Interim Application (IA) dated 18.07.2011 before the Hon’ble Tribunal praying that instead of merely confining its determination to the 10% increase issue, it may proceed with the tariff determination which would be as per the mandate of the Airports Economic Regulatory Authority of India Act (the Act) as also in public interest and if at such final stage any party is aggrieved they would be free to approach the Hon'ble Tribunal at that stage as per the provisions of the Act.

**1.19.** Further, the Authority (in the IA) clarified that it had already initiated the process for tariff determination in respect of MIAL in January ‘2011, wherein MIAL was requested to make a stylised tariff filing, as far as possible with actual numbers, so that the Authority could thereafter consider the matter and then take up the actual tariff determination. However, MIAL initially submitted only their understanding of various provisions of SSA and did not submit any figures for the tariff determination. In view of the same, the Authority (in the IA) clarified that it would not be in a position to undertake and complete the tariff determination within the timeline of 10 weeks as directed by the Hon’ble Tribunal. The Authority, accordingly, requested for modification of the timeline and for permission to decide the entire tariff for aeronautical charges rather than merely the 10% issue.

**1.20.** The Authority requested MIAL to expedite the details of the tariff filing, with actual numbers (as far as possible) so that the matter could be examined and finalised at the earliest. The Authority also, from time to time, approached the Hon’ble Tribunal, for extension of the time limit given for the tariff determination as it was not in a position to complete the same in the absence of any proposal from MIAL.

**1.21.** The Hon’ble Tribunal has, vide its Order dated 14.09.2012, ordered as under:

*“This is an application for extension of time to finalize the tariff. The original limitation was over on 31<sup>st</sup> August, 2012. However considering the fact that this Tribunal was constituted only on 24<sup>th</sup> August 2012, there appears to be some gap in the communication. In that view, the time asked for, is extended by three months with effect from 01.09.2012.”*

**1.22.** In accordance with the above, the Authority has considered the 10% increase in aeronautical charges as part of the present exercise of detailed examination of the tariff proposal submitted by MIAL.

**1.23.** MIAL also separately filed a proposal to increase parking charges for General Aviation Aircraft to which the Authority vide letter No. AERA/20010/MIAL-GA/2009-10/840 dated 07.07.2011 stated that the Authority is unable to consider the matter in a piecemeal manner and advised MIAL to file Multi Year Tariff Proposal (MYTP) for CSIA, Mumbai and to include the said proposal for parking charges as part of MYTP.

***Process of Review of Multi-Year Tariff Proposal***

**1.24.** Pursuant to the MYTP submission made by MIAL on 11.10.2011, a series of discussions/ meetings/presentations were held / organised (during the period October 2011 to August, 2012) on the proposal including discussions in respect of the financial model developed by MIAL for this purpose.

**1.25.** MIAL made presentations on the following:

- 1.25.1. Traffic forecast of CSIA;
- 1.25.2. Cost allocation between aeronautical and non-aeronautical assets;
- 1.25.3. Cost of equity;
- 1.25.4. Operating and maintenance costs;
- 1.25.5. Case studies of some similar airports (CAA decision on Heathrow; Gatwick Airport)
- 1.25.6. General tariff filing and other matters having bearing on the tariff determination

**1.26.** The Authority got the financial model used by MIAL as a part of their tariff application vetted by Consultants. They analysed and reviewed the financial model prepared and submitted by MIAL and advised the Authority on the same. The scope of the assignment 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.

**1.27.** Further, the Consultants were also required to review the Financial Model for accurately reflecting the concession offered by the Central Government with respect to the key agreement(s), and financial documents. The tasks here included consistency check for

incorporation of provisions from key agreements related to various Building Blocks into the financial model and highlighting to the Authority.

**1.28.** 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 MIAL of key aspects/ assumptions taken from the key / concession agreement(s) 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 or even reviewing the drivers and projection bases for such factors.

**1.29.** During the course of the review and clean-up of the financial model, MIAL were also requested to furnish to the Authority, certifications from its Statutory Auditors in support of figures taken in the financial model including those taken as the base for their projections/forecast. In course of tariff appraisal for CSIA and passage of time, the Authority noted that three years of the first control period i.e. FY 2009-10, FY2010-11 and FY 2011-12 are over and hence the Authority sought from MIAL the auditor certificates for actuals till FY 2011-12.

**1.30.** The analysis of the financial model (based on the model furnished with MIAL's submission dated 11.10.2011), has been carried out by the Consultants based on proposed positions taken by the Authority. The findings, deliberations, changes, and proposed position of the Authority in respect of each item of the Regulatory Building Block are captured in the following sections of this paper.

**1.31.** MIAL, in their initial submission, submitted their approach for determination of escalation factor 'X'-factor. MIAL stated that,

*“The escalation factor (CPI-X) for tariff increase is to be calculated by solving the equation given in the SSA. CPI is to be based on average for annual inflation rate as measured by change in the All India CPI (Industrial Workers) over the regulatory period. Thus, while determining X factor and maximum average Aeronautical charge at the beginning of first regulatory period, the value of CPI would be an assumed value, which would need to be corrected annually for actual value for each year while keeping the value of X same as determined earlier. As two and a half years of regulatory*

*period have already elapsed, MIAL has assumed a one time tariff increase to be effective from 01/12/2011 for the remaining control period.”*

**1.32.** MIAL had filed their tariff proposal, through their submission dated 11.10.2011, seeking an X Factor of (-) 439.25% for determination of aeronautical tariffs (for the 5 year tariff period FY 2009-10 to FY 2013-14, and charging of revised tariff assumed from 01.12.2011). MIAL also made presentations before the Authority on 19.10.2011 and 25.10.2011 on the MYTP. During the course of the presentations, the Authority requested MIAL to carry out certain modifications in the proposal as also sought clarifications inter alia on the (i) cargo volume forecast (ii) cost of equity (iii) the asset segregation principles adopted by it and the methodology for allocating common assets in the terminal buildings from volume basis to area basis. Accordingly, MIAL submitted a revised MYTP on 23.11.2011 based on the observations of the Authority, where the X-factor was revised to (-)591.95% (for the 5 year tariff period as above and charging of revised tariff assumed from 01.03.2012). Pursuant to the above submission, the Authority held discussions with MIAL on for cleaning-up of the tariff model in terms of bringing hard-coded numbers to the assumption sheets in the tariff model. Subsequent to the discussions, MIAL resubmitted their tariff model on 29.12.2011 without any change in the X-factor. The tariff model was further reconciled with the auditor certificates and clarifications provided by MIAL. The changes made in the tariff model resulted in the value of X-factor being updated to (-) 652.08% for determination of aeronautical tariffs (for the 5 year tariff period FY 2009-10 to 2013-14, and charging of revised tariff assumed from 01.05.2012). The Authority further asked MIAL to submit auditor certificates corresponding to FY 2012. These certificates along with certain clarifications were discussed with MIAL. Based on the submissions for FY 2012 and clarifications by MIAL, the tariff model was further updated. The updations resulted in the value of X-factor being updated to (-)655.46% for determination of aeronautical tariffs (for the 5 year tariff period FY 2009-10 to 2013-14, and charging of revised tariff assumed from 01.07.2012). Considering the CPI-IW inflation of 8.94%, as proposed by MIAL, the CPI – X factor worked out to (+) 664.40%.

**1.33.** MIAL, vide their submissions dated 20.08.2012, indicated that in their submissions they had not considered automatic inflationary increase in the tariff during 2013-2014 (01.04.2013 till 31.03.2014). According to their submission, if this inflationary impact is

taken into account, then the 'CPI – X' factor works out to (+)628.29%. MIAL have stated as under,

*“MIAL has earlier envisaged a CPI – X factor of 664.40% (effective from July, 2012) including an increase due to inflation of 8.94% in FY 13. MIAL now proposes an increase of X factor of 628.29% in FY 13 (effective from July, 2012) and an inflation increase of 8.94% in FY 14.”*

**1.34.** MIAL’s calculations of 'X' factor of (-)655.46% was based on the revised tariffs being implemented with effect from 1st July, 2012. According to the tariff model submitted by MIAL, if the effective date of application of revised tariffs is taken at 01.01.2013, the 'X' factor would become (-)935.92% (corresponding to the 'X' factor of (-)655.46% mentioned in MIAL’s submission) and 'CPI – X' factor would become (+)944.86%. Subsequently MIAL submitted that if automatic inflationary increase in the tariff is considered for FY 14, the 'X' factor would become (-)872.34% and 'CPI – X' factor would become (+)881.29%.

**1.35.** Presented below is the summary of how X-Factors have varied over various submissions by MIAL at various stages during the tariff determination process:

**Table 1: Summary of X-Factors submitted by MIAL at various stages during the tariff determination process**

	October 2011	November 2011	April 2012	August 2012	August 2012	September 2012	September 2012
X-Factors	(-)439.25%	(-)591.95%	(-)652.08%	(-)655.46%	(-)619.35%	(-)935.92%	(-)872.34%
CPI – X Factors	(+)448.19%	(+)600.89%	(+)661.02%	(+)664.40%	(+)628.29%	(+)944.86%	(+)881.29%
Effective date of tariff increase	01-12-2011	01-03-2012	01-05-2012	01-07-2012	01-07-2012	01-01-2013	01-01-2013
Effective date of levy of DF *	01-12-2011	01-12-2011	01-05-2012	01-05-2012	01-05-2012	01-05-2012	01-01-2013
Automatic inflationary increase in FY 14	No	No	No	No	Yes	No	Yes
Other key differences from previous submissions	-	Use of Bid WACC for determination of Hypothetical RAB	Incorporation of auditor certificate numbers and other clarifications	Incorporation of auditor certificate numbers and other clarifications	-	-	-

\*- MIAL in their initial submission had derived the DF, which they would need to levy in order to bridge its entire gap in the means of finance through DF. For the purpose of derivation, MIAL proposed to fix DF for domestic embarking passenger at Rs 200 and kept the DF for international



embarking passenger as variable (Rs 2184 per departing international passenger corresponding of X-factor of (-)655.46%)

**1.36.** The Authority had noted that MIAL, in their calculation of 'X' factor of (-)872.34%, considered the expense on account of collection charges on Development Fee (DF) to be paid by MIAL to the airlines for 3 months of FY 13 (assuming the DF to be effective from 01.01.2013). Since DF, approved by the Authority vide its Order No. 02/2012-13 dated 18.04.2012, was to be levied with effect from 01.05.2012, MIAL, in line with the AIC issued by DGCA, had to pay collection charges to the airlines with effect from 01.05.2012 for 11 months in FY 13 (instead of three months as considered by MIAL) and further till the end of billing of DF by MIAL. The Authority had in the Consultation Paper given its reasons for not allowing these collection charges on DF to be defrayed as an operating expense (reference para 26.113 to 26.120 of Consultation Paper No.22/2012/13 dated 11.10.2012). The Authority noted that MIAL, in their determination of X-factor, had underestimated the collection charges to the extent of eight months. The Authority, for the sake of comparison of corresponding figures, had corrected MIAL's estimation of X-factor. Considering the expense on account of collection charges for 11 months, the 'X' factor as per Authority's calculations worked out to (-)873.36%.

**1.37.** This cleaned up model was used for sensitivity analysis and all submissions made by MIAL post the cleaning up or those made earlier but which were not mutually agreed were considered as part of sensitivity analysis in the relevant sections / building blocks.

**1.38.** The Authority discussed the proposal and the additional submissions made by MIAL. The Authority's consideration and its tentative views in respect of all relevant issues were placed for stake holder consultation vide Consultation Paper No.22/2012-13 dated 11.10.2012. The various submissions made by MIAL in respect of Multi-Year tariff proposal (MYTP) were made part of the Consultation Paper. The new tariffs in respect of CSIA were proposed to be effective from 01.01.2013 in the Consultation Paper. The last date for receipt of comments on the proposals contained in the Consultation Paper was 12.11.2012.

**1.39.** The Authority held a stakeholder consultation meeting on 29.10.2012 in the Conference Room, first floor, AERA Building, Administrative Complex, Safdarjung Airport, New Delhi to elicit the views of the stakeholders. The Minutes of the stakeholder consultation were uploaded on the Authority's website.

**1.40.** During the stakeholder consultation meeting, a number of stakeholders including Federation of Indian Airlines (FIA) and International Air Transport Association (IATA) requested for extension of time for submission of comments in response to the CP-32. The requests made by the stakeholders were considered by the Authority and the date for submission of comments was extended upto 26.11.2012 vide Public Notice No.07/2012-13 dated 31.10.2012.

**1.41.** Meanwhile, Lufthansa German Airlines vide their email dated 18.11.2012 requested for certain documents submitted by MIAL (CNS-ATM Agreement; SSA; State Government Support Agreement; Lease deed between MIAL and AAI; the substitution and Escrow Agreement, Shareholders Agreement, revised/final master plan, financial Audit reports for FY 2006-07 to FY 2011-12 and Airport Operator Agreement) for preparing and submitting comments on Consultation Paper No. 22/2012-13 dated 11.10.2012.

**1.42.** The Authority considered the request of Lufthansa German Airlines and observed that they had requested for certain documents which were already part of the Consultation Paper No. 22/2012-13 dated 11.10.2012. It also observed that the revised/final master plan submitted by MIAL as required under the OMDA, was already available on AERA's website as annexure to the minutes of the stakeholder consultation meeting held on 17.01.2012 along with the Consultation Paper No. 33/2011-12 dated 06.01.2012 in the matter of determination of DF in respect of CSIA and in view of this the Major Development Plan submitted by MIAL is not a necessary document to be a part of the Consultation Paper for effective stakeholder consultation. Further, the Authority observed that the Airport Operator Agreement contain sensitive information and hence cannot be provided. As regards the Financial Model, the Authority observed that the financial Model submitted by MIAL embodies the business plan and contains large amount of information that includes, inter-alia, projected revenues based on agreed commercial terms and conditions under various agreements and the information is commercially sensitive and hence, as an accepted regulatory practice, the same cannot be not disclosed. Lufthansa German Airlines, were accordingly, informed vide Authority's letter dated 22.11.2012.

**1.43.** However, Lufthansa German Airlines vide their email dated 24.11.2012, stated that *"We have not been able to obtain the aforesaid agreements on the website of the Ministry of Civil Aviation...."* and reiterated their request for all the documents sought by them vide

their initial email dated 18.11.2012. In addition, Lufthansa German Airlines, also sought for the EPC Contract entered into between MIAL and the EPC Contractor, Jacobs Consultancy Report on Project Cost benchmarking and the Landrum & Brown's Report on Passenger Terminal Apron Capacity, as also the Cargo Apron Capacity which have been referred to and relied upon by EIL in its Technical Report.

**1.44.** The Authority further considered the request made by the Lufthansa German Airlines. In its reply dated 30.11.2012, the Authority clarified the location of the various documents in the MoCA's website. The Authority also reiterated its stand on the revised/final master plan and the MDP, Annual Reports for the years 2006-07 to 2011-12, Airport Operator Agreement and the financial model.

**1.45.** As regards the EPC Contract entered into between MIAL and the EPC Contractor, the Authority observed that it is not the mandate of the Authority to examine each and every contract awarded by a regulated entity, including MIAL. It is assumed that MIAL being a board managed company, having Government and AAI nominees on its board, would conduct its operations with due diligence. Further, EPC contracts are contractual documents entered into between MIAL and the EPC contractor and hence contain confidential commercial information like the agreed terms and conditions, financial terms etc. Moreover, these documents are not in the Authority's possession due to the facts stated hereinabove. However, the independent auditors, during the course of their audit of the project cost, have considered various contracts (including the Jacobs Consultancy Report on Project Cost benchmarking and Landrum & Brown's Report on Passenger Terminal and Cargo Apron Capacity), and the report of the independent auditors, which has been considered by the Authority in the Consultation Paper No 22/2012-13 is available as annex IV to the said Consultation Paper. Hence, the Authority observed that there remains nothing else to be provided to Lufthansa for commenting on the proposals contained in the said Consultation Paper.

***Stakeholder Comments on the Consultation Paper:***

**1.46.** In response to Consultation Paper No. 22/2012-13 dated 11.10.2012, the Authority received several responses from the stakeholders, which were uploaded on the website of the Authority vide Public Notice No. 08/2012-13 dated 30.11.2012 and Public Notice No.10/2012-13 dated 21.12.2012 for the information of all concerned. The list of

stakeholders, who have commented upon the Consultation Paper No. 22/2012-13 dated 11.10.2012, is presented below.

Sl. No.	Stakeholder	Issues commented upon
1.	Association of Private Airport Operators (APAO)	<ul style="list-style-type: none"> <li>• Cost of Equity</li> <li>• Non-Aeronautical revenue</li> <li>• Refundable Security Deposit</li> <li>• Cargo Revenue</li> <li>• Hypothetical RAB</li> <li>• DF Collection Charges</li> <li>• Retirement Compensation</li> <li>• Adjustment to RAB on account of DF</li> <li>• Fuel Throughput Charges and CUTE Counter Charges</li> <li>• AAI Upfront Fee</li> <li>• DF</li> <li>• UDF</li> </ul>
2.	Airports Council International (ACI)	<ul style="list-style-type: none"> <li>• Project Cost</li> <li>• Regulation</li> <li>• RAB Adjustment on account of DF</li> <li>• Hypothetical RAB</li> <li>• Refundable Security Deposit</li> <li>• Cost of Equity</li> <li>• Internal Resource Generation</li> <li>• Non-Aeronautical Revenue</li> <li>• Fuel Throughput</li> </ul>
3.	Delhi International Airport Limited (DIAL)	<ul style="list-style-type: none"> <li>• Determination of DF</li> <li>• Operational Capital Expenditure</li> <li>• Internal Resource Generation</li> <li>• Interest on DF Loan</li> <li>• Corporate Tax</li> <li>• Non-Aeronautical Revenue</li> <li>• Fuel Throughput</li> </ul>
4.	Mumbai International Airport Limited (MIAL)	<ul style="list-style-type: none"> <li>• Project Cost</li> <li>• DF</li> <li>• Adjustment of RAB on account of DF</li> <li>• Hypothetical RAB</li> <li>• Retirement Compensation</li> <li>• Cost of Debt</li> <li>• RSD</li> <li>• Cost of Equity</li> <li>• Internal Resource Generation</li> <li>• Upfront fee to AAI</li> <li>• Demurrage Income</li> <li>• Non-Aeronautical Revenue</li> <li>• Cargo Revenue</li> <li>• Fuel Throughout Charges</li> <li>• CUTE Counter Charges</li> <li>• Rate Cards</li> </ul>

Sl. No.	Stakeholder	Issues commented upon
		<ul style="list-style-type: none"> <li>• 10% escalation in annual tariffs</li> <li>• DF Collection Charges</li> <li>• User Development Fees</li> <li>• Parking for General Aviation</li> </ul>
5.	Bid Services Division (Mauritius) Limited & ACSA Global Limited	<ul style="list-style-type: none"> <li>• Determination of DF</li> <li>• Cost of Equity</li> </ul>
6.	Air France	<ul style="list-style-type: none"> <li>• Project Cost</li> <li>• Tariff Proposal</li> </ul>
7.	Board of Airline Representatives – India	<ul style="list-style-type: none"> <li>• Project Cost</li> <li>• Regulation (Shared Till Approach)</li> <li>• DF Levy</li> <li>• Aeronautical &amp; Non-Aeronautical Revenue</li> <li>• Fuel Throughout Charges</li> <li>• Master Plan</li> <li>• Major Development Plan</li> <li>• Real Estate</li> </ul>
8.	British Airways	<ul style="list-style-type: none"> <li>• Non-Aeronautical Revenues</li> <li>• WACC</li> <li>• Project Cost</li> <li>• RAB</li> <li>• Slot Charges (for flight cancellation)</li> <li>• Differential Treatment of International and Domestic passengers for UDF</li> <li>• Tariff Increase</li> </ul>
9.	Cathay Pacific	<ul style="list-style-type: none"> <li>• Project Cost</li> <li>• Asset Allocation</li> <li>• Revenue from Cargo Service</li> <li>• Fuel Throughout Charge</li> <li>• Tariff Structure/Rate Card</li> <li>• Period of Truing up of variables</li> <li>• O&amp;M costs</li> <li>• FRoR</li> <li>• Real Estate</li> </ul>
10.	Federation of Indian Airlines	<ul style="list-style-type: none"> <li>• Project Cost</li> <li>• Development Fee Levy</li> <li>• Single Till Approach versus Shared Till Approach</li> <li>• Regulatory Period</li> <li>• Depreciation</li> <li>• Asset Allocation</li> <li>• Hypothetical RAB</li> <li>• Cost of Debt</li> <li>• Operating Expenditure</li> <li>• Non-Aero revenue</li> <li>• UDF Levy</li> <li>• Cargo and Ground Handling Service</li> </ul>

Sl. No.	Stakeholder	Issues commented upon
		<ul style="list-style-type: none"> <li>• Multiple Impact of Inflation</li> <li>• Need for Benchmarking</li> <li>• Engagement of Consultant by MIAL</li> </ul>
11.	International Air Transport Association	<ul style="list-style-type: none"> <li>• Project Cost</li> <li>• Inclusion of Metro cost in RAB</li> <li>• Determination of DF, DF Levy rate and project funding</li> <li>• Asset Allocation</li> <li>• Operational Capital Expenditure</li> <li>• Cost of Equity</li> <li>• Consideration of Upfront Fee Paid by MIAL to AAI towards equity</li> <li>• WACC</li> <li>• O&amp;M costs</li> <li>• Cargo services revenue, Ground Handling revenue, Fuel Throughput</li> <li>• CUTE Counter Charges</li> <li>• Quality of Services</li> <li>• Tariff Structure/Rate Card</li> <li>• Alternatives from UDF implementation</li> <li>• Proposed new Slot Charges</li> </ul>
12.	Hindustan Petroleum Corporation Limited	<ul style="list-style-type: none"> <li>• Revision in FTC on retrospective basis</li> </ul>
13.	Indian oil Corporation Limited	<ul style="list-style-type: none"> <li>• Annual Escalation of CPI or &amp; 7%, whichever is lesser</li> <li>• Proposed increase should be on prospective basis</li> </ul>
14.	CONCOR Air Limited	<ul style="list-style-type: none"> <li>• Application for approval of initial tariff for domestic cargo facility</li> </ul>
15.	Express Industry Council of India	<ul style="list-style-type: none"> <li>• Proposal not in accordance with respect to the Authority's direction on Courier/ Express cargo services</li> <li>• X-ray screening tariff</li> <li>• Differential pricing for same service</li> </ul>
16.	Federation of Indian Chambers of Commerce & Industry	<ul style="list-style-type: none"> <li>• Return on Equity</li> </ul>
17.	Confederation of Indian Industry	<ul style="list-style-type: none"> <li>• Return on Equity</li> <li>• Remunerating Security Deposit as means of Finance</li> <li>• Return on Internal Resource Generation</li> <li>• Allocation of use of DF based on actuals rather than notional basis</li> </ul>
18.	Air Passengers Association of India	<ul style="list-style-type: none"> <li>• AAI's additional infusion of equity</li> <li>• Lack of project management by MIAL</li> <li>• Comments on Project cost components</li> <li>• Differential rate for landing charges on domestic and international passengers</li> </ul>

Sl. No.	Stakeholder	Issues commented upon
19.	Zee News Limited	<ul style="list-style-type: none"> <li>• Parking charges for General Aviation Aircraft</li> </ul>
20.	Ashley Aviation Limited	<ul style="list-style-type: none"> <li>• Penal Charges for parking of aircraft</li> </ul>
21.	Jupiter Aviation Services Private Limited	<ul style="list-style-type: none"> <li>• Unavailability of parking / maintenance slot at CSI Airport</li> </ul>
22.	Government of Maharashtra	<ul style="list-style-type: none"> <li>• Ensuring best interest of Mumbai Airport passengers and developers</li> </ul>
23.	Airlines for America	<ul style="list-style-type: none"> <li>• Endorsing IATA's views</li> </ul>
24.	Assocham	<ul style="list-style-type: none"> <li>• Cost of Equity</li> <li>• Refundable Security Deposits</li> <li>• Hypothetical RAB</li> <li>• Return on Internal Resource Generation</li> <li>• RAB Adjustment on account of DF</li> <li>• Corporate Tax</li> <li>• Fuel Throughput Charge</li> <li>• Reduction in Equity due to payment of Upfront Fee</li> <li>• Cargo services</li> <li>• Cost of Debt</li> </ul>
25.	Airports Authority of India	<ul style="list-style-type: none"> <li>• RAB Adjustment on account of DF</li> </ul>

**1.47.** The stakeholder responses were forwarded to MIAL for their comments/ views vide the Authority's letter dated 30.11.2012. MIAL vide their letter dated 10.12.2012, forwarded their comments on the observations made by the stake holders.

**1.48.** As already brought out vide para 1.21 above, the Hon'ble Tribunal, in appeal no. 02/2010 had vide Order dated 14.09.2012, granted time upto 30.11.2012 to the Authority for determination of tariffs in respect of Mumbai airport. However, given the timeline for various events – including submission of the MYTP by MIAL, issuance of the Consultation Paper No.22/2012-13 dated 11.10.2012, and the extension of time for submission of comments upto 26.11.2012, it was observed that the final order could not have been issued by 30.11.2012 (i.e., as ordered by the Hon'ble Tribunal). Hence, an application was moved before Hon'ble Tribunal seeking extension of time upto 31.01.2013.

**1.49.** In the meantime, Business Aircraft Operators' Association (BAOA) had filed an application for resolution of dispute regarding enhanced parking charges levied by MIAL –

wherein, the Hon'ble Tribunal, after hearing the matter, vide its Order dated 13.12.2012, ordered as under:

*“Considering the overall circumstances, the overstaying tendency of the general aviation aircrafts, safety of the airports as well as of the passengers, and the necessity of an early decision regarding the powers of MIAL to enhance the parking charges or, as the case may be, inflicting penalties for overstaying, we are of the opinion that the AERA should decide the matter finally as early as possible but not beyond 15<sup>th</sup> January, 2013. In case, it is not possible to keep that schedule, then AERA would at least consider passing some interim orders. We advise AERA to adhere to the time schedule as strictly as possible. We, however, clarify that this Order should not be read as an expression for necessity of passing of an order otherwise.*

*In view of the safety issues involved in the matter, we hope that the proper authorities would take appropriate action to avoid overcrowding of aircrafts. If the necessity is felt on account of any safety issue, the MIAL has the liberty to move for interim orders.”*

**1.50.** In view of the above Order of the Hon'ble Tribunal, the Authority was required to determine the charges for parking of GA aircraft at Mumbai airport by 15.01.2013.

**1.51.** After hearing the IA filed by the Authority, for extension of time to determine the aeronautical tariffs in respect of Mumbai airport upto 31.1.2013, the Hon'ble Tribunal issued its Order dated 14.12.2012, wherein it ordered that:

*“Time is extended upto 15<sup>th</sup> January, 2013. No further time shall be granted”.*

**1.52.** Thus, as per the Order of the Hon'ble Tribunal, the Multi Year Tariff Order (MYTO) determining aeronautical tariffs for CSIA is required to be issued by 15.01.2013. The Authority noted the above and observed that in the Consultation Paper No.22/2012-13 dated 11.10.2012, the Authority had proposed determination of DF as well as tariffs for aeronautical services simultaneously. This was so because, the Authority, while examining the project cost had arrived at a funding gap of Rs. 4200 crores, approx., after taking all the available means of finance, i.e., equity, debt, RSD and after inclusion of even the internal



resource generation (comprising of depreciation, which is a non-cash expenditure, deferred tax liability, etc.) The project cost was found to exceed these available means of finances. However, noting the parity with IGI Airport, New Delhi - in terms of passenger throughput, project cost, etc., the Authority had, in Consultation Paper No.22/2012-13 dated 11.10.2012, proposed that the amount of DF be capped at Rs. 3400 crores in respect of CSIA.

**1.53.** Given the voluminous comments received from the stakeholders which covered a variety of issues, complex and, to an extent, having circularity and the fact that DF as well as aeronautical tariffs were proposed to be determined simultaneously, the Authority needed in-depth examination of the comments so as to arrive at a reasoned decision. Thus, to determine tariffs, the time required may be more, if DF is also determined simultaneously.

**1.54.** The Authority noted that in order to arrive at the aeronautical RAB for determination of tariffs, it is important for the amount of DF to be deducted from the overall RAB. The Authority observed that it would need to determine the DF so as to determine aeronautical tariffs thereafter. Hence, the Authority decided to determine the DF and thereafter take up the task of determination of aeronautical tariffs in respect of CSIA.

**1.55.** After considering the comments of the stakeholders in respect of the project cost and DF the Authority proceeded with the examination. The Authority has since issued an Order determining the levy of DF at CSIA with effect from 01.01.2013, vide its Order No.29/2012-13 dated 21.12.2012.

**1.56.** The Authority has carefully gone through the comments of the stakeholders on the tariff related issues proposed in the Consultation Paper dated 11.10.2012. The Authority's reasoned decisions on various issues are discussed in the following sections.

**1.57.** The remaining part of the Order is structured as follows:

1.57.1. The issue of Project Cost and Determination of Development Fee has been addressed by the Authority in a separate Order No.29/2012-13 dated 21.12.2012. Hence a summary of the discussions has been presented in the Para 2 below in Issue of Project Cost and Determination of Development Fee.

1.57.2. Discussion on each of the issue subsequently has been segregated into five sections.

1.57.2.a. First section reproduces the Authority's discussion on the issue, as presented in the Consultation Paper 22 / 2012-13 dated 11.10.2012.

1.57.2.b. Second section presents the comments made by the Stakeholders to the Authority's position on the issue stated in the Consultation Paper 22 / 2012-13 dated 11.10.2012.

1.57.2.c. Third section presents the response made by MIAL to the comments made by the Stakeholders on the issue.

1.57.2.d. Fourth section presents the comments made by MIAL itself on the issue in addition to its responses to the Stakeholder comments.

1.57.2.e. Fifth and the final section presents the Authority's examination of Stakeholder comments, MIAL's responses and MIAL's own comments on that issue.

## **2. Issue of Project Cost and Determination of Development Fee**

**2.1.** As per requirements of OMDA, MIAL had submitted a Master Plan to the MoCA, for upgradation and modernisation of the CSI Airport in October, 2006. The Original plan was revised in November, 2007 to provide for a new integrated terminal, relocation of existing international terminal and other existing structures to provide for more space on the airside and consolidation of terminals 2B and 2C to pave way for development of integrated terminal. The initial project cost, as per the revised Master plan, estimated by MIAL, and approved by its Board, was Rs. 9,802 Crores. The Central Government, vide letter no. AV 24011/001/2009-AD dated 27.02.2009 granted approval for levy of Development Fee (DF) by MIAL at CSI Airport Mumbai with respect to such project cost of Rs. 9,802 crores.

**2.2.** Subsequently, MIAL revised the Project Cost to Rs. 10,453 crores in October 2010 on account of certain mandated projects. Further, MIAL submitted that due to delay in handing over of certain areas for construction, the schedule of project got extended by 17 months and with addition of certain new works, the Project Cost was further revised to Rs. 12,380 crores as submitted by MIAL as part of the MYT proposal.

**2.3.** Pursuant to MIAL's request for levy of development fee vide letters dated 26.12.2008, 05.02.2009, 11.02.2009 and 16.02.2009, the Central Government had determined, on an ad-hoc basis, the rate of Development Fee (DF), leviable at CSI Airport, Mumbai by MIAL, vide its letter No.AV.24011/001/2009-AD dated 27 February 2009, @ Rs. 100/- per embarking domestic passenger and @ Rs. 600/- per embarking international passenger for a period of 48 months w.e.f. 01.04.2009. This ad-hoc determination by the Government was subject to various conditions, some of them are given below:

2.3.1. At the stage of final determination, Regulator/Central Government would ensure adequate consultation with the users.

2.3.2. The amount collected through DF would under no circumstances exceed the ceiling of Rs. 1,543 crores and in case of any cost escalation beyond Rs. 9,802 crores, the amount representing the escalation would have to be brought in by MIAL through other sources. The ceiling amount would be exclusive of taxes, if any.

2.3.3. An independent auditor appointed by AAI would audit the receipts/accruals of MIAL on periodical basis. Periodicity of the audit would be decided by AAI in consultation with MIAL. AAI would report the results of audit to Government/Regulator for necessary directions.

2.4. After establishment of this Authority (September 01, 2009 when the Government notified, inter alia, Chapter III, namely, the powers and the functions of the Authority, which included the power of determination of DF), Ministry of Civil Aviation (MoCA), vide its letter dated 24.11.2009, forwarded MIAL's request for bridging the funding gap of Rs. 2,350 crores, as against that of Rs. 1,543 crores (as permitted by MoCA), through levy of a DF. MIAL made a number of other submissions to the Authority on the issue of determination of DF. The Authority proceeded to examine the request of MIAL on this issue and finally issued its Consultation Paper No – 33/2011-12 dated 06.01.2012.

2.5. In the Consultation Paper No – 33/2011-12 dated 06.01.2012, the Authority had specifically referred to the letter of MoCA dated 27.02.2009, which was also annexed.

2.6. The Authority, in the Consultation Paper No – 33/2011-12 dated 06.01.2012, had noted that MIAL had indicated revised project cost of Rs 12,380 crores. However, in para 16.2 of Consultation Paper No.33/2011-12 dated 06.01.2012, it had indicated that

*“The issue of escalation in project cost to Rs 12,380 crores will be considered by the Authority after the audit commissioned by it is completed. The Authority would thereafter make further orders regarding rate and tenure of DF, as may be required.”*

2.7. After considering the comments of various stakeholders on the Consultation Paper No – 33/2011-12 dated 06.01.2012, the Authority had issued its Order 02/12-13 dated 18.04.2012 for determining the quantum of DF at that point of time. In this Order the Authority had also stated that

*“the issue of escalation in project cost to Rs. 12,380 crores will be considered by the Authority after the audit commissioned by it is completed, after which the Authority -may make further orders regarding rate and tenure of DF, as may be required.”*

2.8. The Authority noted that in response to the Consultation Paper No – 33/2011-12 dated 06.01.2012, MoCA had not indicated that the Authority should not take into account

any escalation in the project cost beyond Rs 9,802 crores while finally determining the DF amount.

**2.9.** Thereafter, the Authority had issued the Consultation Paper – 22/2012-13 dated 11.10.2012, wherein the Authority had proposed to take into account the project cost of Rs.12,380 crores, subtracting disallowances (including costs not considered in current control period) of Rs 732.54 crores, to arrive at the allowable project cost of Rs 11,647.46 crores for the current control period. The Authority had, in the Consultation Paper – 22/2012-13 dated 11.10.2012, calculated the funding gap of Rs 4,219.05 crores. This was based on allowable project cost of Rs 11,647.46 crores. MoCA has not given any comments on this proposal. Furthermore, in its Press Release 88444 dated 16.10.2012, MoCA has referred to the funding gap of Rs 4,200 crores in respect of MIAL.

**2.10.** However, the levy of DF at CSIA was challenged before various appellate fora, including before the Hon'ble Supreme Court. The levy of DF, per-se, was upheld by the Hon'ble Supreme Court in the judgment and Order dated 26.04.2011 in civil appeal Nos. 3611 of 2011, 3612 of 2011, 3613 of 2011 and 3614 of 2011. In this Order, the Apex Court has, inter-alia, held the letter dated 09.02.2009 of the Central Government (vide which the approval of the Government was conveyed for levy of DF by MIAL), as ultra-vires the Airports Authority of India Act, 1994 (AAI Act, 1994). The Hon'ble Supreme Court has also held that w.e.f. 01.01.2009, no DF can be levied or collected from the embarking passengers at major airports under Section 22A of the AAI Act, 1994, unless this Authority determines the rate of such DF.

**2.11.** The Hon'ble Supreme Court has also, inter alia, directed that:

*“(ii) It is declared that with effect from 01.01.2009, no development fee could be levied or collected from the embarking passengers at major airports u/s. 22A of the 1994 Act, unless the Airports Economic Regulatory Authority determines the rates of such development fee*

*(iii) We direct that MIAL will henceforth not levy and collect any development fee at the major airport at Mumbai until an appropriate order is passed by the Airports Economic Regulatory Authority under Section 22A of the 1994 Act as amended by the 2008 Act.....*

*(v).....any development fees that may be levied and collected by DIAL and MIAL under the authority of the orders passed by the Airports Economic Regulatory Authority under section 22A of the 1994 Act as amended by the 2008 Act shall be credited to the Airports Authority and will be utilized for the purposes mentioned in clauses (a), (b) or (c) of Section 22A of the 1994 Act in the manner to be prescribed by the rules which may be made as early as possible”.*

**2.12.** Pursuant to the aforesaid judgment, MIAL informed the Authority that the levy and collection of DF at CSIA had been stopped pursuant to the Hon’ble Supreme Court's order dated 26.04.2011. They also requested the Authority to determine DF in respect of CSIA and stated that any delay in collection of DF would jeopardise project completion due to shortage of funds.

**2.13.** With respect to MIAL’s submissions to the Authority for determination of Development Fee, the Authority noted the inter-linkage of DF with the Multi-Year Tariff Proposal and determination of tariffs and the Authority, vide letter No. AERA/20011/MIAL-DF/2009-10/Vol-II/648 dated 25.7.2011, directed MIAL as follows:

*“Internal accruals are one of the means of finance for the project. Any revision in Aeronautical tariff would directly impact the internal accruals of MIAL and consequently the funding gap to be bridged through DF. Therefore, MIAL is advised to expedite the tariff filling.”*

**2.14.** Further, in the matter of determination of DF in respect of CSI Airport, Mumbai, the Authority issued Order No. 02/2012-13 dated 18.04.2012. In this Order, the Authority, inter alia, noted:

*“The issue of escalation in project cost to Rs. 12,380 crores will be considered by the Authority after the audit commissioned by it is complete, after which the Authority may make further orders regarding rate and tenure of DF, as may be required.”*

**2.15.** Vide its Order No 02/2012-13 dated 18.04.2012, the Authority had determined DF of Rs. 100/- per embarking domestic passenger and Rs. 600/- per embarking international passenger pending, inter alia, audit and further examination of the project cost. The Authority had ordered that the DF be billed for a period of 23 months commencing

01.05.2012 (i.e. upto March 2014). At that point of time, the DF determination was on current basis (not NPV) inasmuch as the issue of securitization of DF by MIAL had not arisen.

**2.16.** Thereafter, upon completion of the audit of the project cost for CSIA the Authority issued a Consultation Paper No. 22/2012-13 dated 11.10.2012 in respect of Determination of Aeronautical Tariff and Development Fee in respect of CSIA for the first Regulatory Period 01.04.2009 – 31.03.2014.

***Recent Developments (Since the issue of Consultation Paper - 22/2012-13 dated 11.10.2012)***

**2.17.** The Consultation Paper No. 22/2012-13 was issued on 11.10.2012. Thereafter MoCA vide its Press Release no ID 88444 dated 16.10.2012, directed the AAI to infuse more equity in MIAL and DIAL with the objective of abolishing ADF at Mumbai and Delhi Airports and accordingly submit its proposals to this Authority. As per the MoCA's Press Release this was to make the air travel affordable and to ensure that the passengers are not subjected to any extra burden. Further, as per the said Press Release the financing gap in case of MIAL, was expected to be approximately Rs. 4200 crores if the ADF is abolished at MIAL with effect from 01.01.2013.

**2.18.** In order to fill the balance in financing gap of approximately Rs. 4200 crores, the MoCA asked AAI to contribute additional equity of approximately Rs. 288 crores in MIAL. The Press Release also said that the balance in financing gap will have to be met by the Airport Operator / Promoter (MIAL) through infusion of their share of equity. It is noteworthy that when ADF was levied at Mumbai and Delhi Airports, AAI had informed that it was not in a position to contribute more equity in view of its critical financial condition. However, vide its letter dated 26.10.2012, AAI informed the Authority that AAI is now in a position to infuse the additional required equity.

**2.19.** Stakeholder meeting for consultation on the Consultation Paper - 22/2012-13 dated 11.10.2012 was held on 29.10.2012. During this meeting, the Stakeholders like IATA and APAI had informed that they would be in agreement with stoppage of DF. The stakeholders also submitted their written comments / observations on the Consultation Paper-22/2012-13 dated 11.10.2012.

**2.20.** To assess the impact of infusion of additional funds on the determination of DF as proposed in the Consultation Paper - 22/2012-13 dated 11.10.2012 , in the light of MoCA's

Press Release mentioned above, the Authority vide its letter dated 01.11.2012, wrote to AAI to indicate the amount of additional equity that AAI proposes to infuse into MIAL. The Authority also asked MIAL, vide letter dated 01.11.2012, to indicate the quantum of infusion of additional equity by other shareholders of MIAL as well as expected additional resources to fund the project through debt.

**2.21.** MIAL has informed the Authority, vide letter dated 19.11.2012, that after detailed deliberations by the Board of Directors of MIAL, it has been decided that there is no possibility of bringing any additional equity.

**2.22.** Vide its letter dated 05.12.2012, AAI has informed that

*“AAI Board, in principle, approved to infuse equity of Rs. 293 Crore in MIAL, as and when cash call is made by the Company”.*

**2.23.** For the present, however, the Authority notes that the MIAL has so far not made the cash call. The Authority would be reviewing the position in this regard periodically.

**2.24.** In view of the deliberations outlined above, it did not appear feasible to bridge the Capital Funding gap by the end of December, 2012 and hence discontinuance of DF w.e.f 01.01.2013 also did not appear feasible. The Authority brought the above position to the notice of MoCA. The Ministry indicated that it is in agreement with AERA on this issue.

**2.25.** The Authority has considered the comments made by the stakeholders insofar as they pertain to the issues of project cost, determination of DF, its rate as well as the time period for billing separately.

**2.26.** In the light of the deliberations outlined above the Authority has carefully considered the comments of the stakeholders on the Consultation Paper – 22/2012-13 dated 11.10.2012 insofar as they pertain to the issues of project cost, determination of DF, its rate as well as the time period for billing. The comments as well as Authority’s examination and its decisions regarding determination of the quantum and rate of DF the Authority has been examined a separate Order No.29/2012-13 dated 21.12.2012 has been issued. The summary of the decisions in Order No.29/2012-13 dated 21.12.2012 are extracted here for ease of reference:



### **3. Single Till / 30% Shared revenue Till & Tariff Determination Methodology**

#### **a Authority's position on Issues pertaining to Single Till / 30% Shared revenue Till & Tariff Determination Methodology in the Consultation Paper**

**3.1.** In terms of the Airports Economic Regulatory Authority of India Act, 2008 (the Act) the main functions of the Authority, in respect of the major airports, are as under:

- 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 88 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.** Section 13 (1) (a) requires the Authority to determine tariff for the aeronautical services taking in to consideration:

- 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.

**3.3.** As per Section 13 (1) (a) of the Act, the Authority is to determine the tariff for the aeronautical services taking into consideration, inter-alia, *“(vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise”*. In so far as CSI Airport is concerned, the principles of tariff fixation and mechanism thereof have been laid down in clause 3.1 read with Schedule 1 of the SSA.

**3.4.** The Authority vide its Order No. 13/2010-11 dated 12.01.2011 (Airport Order) and Direction No.5/2010-11 issued on 28.02.2011 (Airport Guidelines) had laid down the overall approach which it would adopt for regulation of aeronautical services provided by the Airport Operators. However, in view of the provisions of the Section 13 (1) (a) (vi) of the Act, the Authority had indicated that it would analyse and assess the implications of the principles and mechanics, relating to tariff fixation, contained in the concession(s) of these airports and determine separately the form and manner in which its directions would be applicable to the Indira Gandhi International Airport, New Delhi and Chhatrapati Shivaji International Airport, Mumbai.

**3.5.** In this background, MoCA, vide letter No.AV.24011/001/2011-AD dated 30.5.2011, informed the Authority that:

*“.....OMDA can be considered as the principal document, because the right to Operate, Maintain, Develop, Construct, Upgrade, Modernize, Finance and Manage the airport has been given to the JVCs only under the provisions of clause 2.1 of OMDA. Hence, without OMDA there is no utility of other agreements. Further, in all other agreements cross referencing has been done to the provisions of OMDA for interpretations of the provisions of other transaction documents. Also the definition of the Project Agreements has only been inserted in Clause 1.1 of OMDA and thus this includes all other Transaction Documents.”*

**3.6.** The Authority has given full consideration to the advice of MoCA. The Authority noted that Section 13(1)(a)(vi) of the AERA Act speaks of a concession offered by the Central Government which implies that:

3.6.1. the relevant document should be a “Concession”

3.6.2. “Concession” should have been offered by the Central Government; and

3.6.3. “Concession” should be in the form of any agreement or memorandum of understanding or otherwise.

**3.7.** In the Consultation Paper No.22/2012-13 dated 11.10.2012, the Authority noted that the provisions of the AERA Act do not bind the Authority to the provisions of any agreement nor circumscribe its process of tariff determination on that account. Section 13 (1)(a)(vi) of the Act, however, enjoins upon the Authority only requires it to take in to consideration the

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concession offered by the Government in any agreement, memorandum of understanding or otherwise. Further, a “concession is a government grant for specific privileges” (Black’s Law Dictionary, Ninth Edition). The “airport” being a subject matter of the Central Government (Entry 29, List I, Seventh Schedule of the Constitution), that Government alone has the powers to grant concession in respect of the airports. This position has been clearly recognised and stated in the Greenfield Airport Policy, 2008 of the Central Government.

**3.8.** As brought out in the Consultation Paper No.22/2012-13 dated 11.10.2012, the Authority had deliberated on this matter and already taken a view vide Order No. 10/2010-11 dated 10.12.2010 in the matter of approval of X-Ray charges for domestic cargo levied at IGI Airport, New Delhi and the Airport Order to the effect that the OMDA is not a concession offered by the Central Government as it is an agreement between MIAL and AAI. Position taken in Order No.10/2010-11 was not challenged by way of any appeal. Appeal filed by MIAL against Airport Order has been disposed off by the Hon’ble Tribunal. However, the Authority is cognizant of the fact that OMDA is an important document governing the relationship between contracting parties and functioning of the airport. Furthermore, as indicated in para 3.5 above, MoCA has stressed the primacy of OMDA amongst the Project Agreements as being an important document.

**3.9.** It was also noted in the Consultation Paper No.22/2012-13 dated 11.10.2012 that sub clause (vii) of Section 13(1)(a) indicates that the Authority can take into consideration “*any other factor which may be relevant for the purposes of this Act*”. In view of the stated primacy of OMDA amongst the Project Agreements and the fact that SSA is at many places cross referenced to OMDA, the Authority proposes to take into consideration the provisions of OMDA, while determining tariff for CSI Airport, in terms of Section 13(1)(a)(vii) of the Act. However, while doing so, it would have to be ensured that the provisions of OMDA are considered only to the extent these are not inconsistent with the provisions of the Act; or to the extent these could be reconciled with the provisions of the Act.

**3.10.** Similarly, as regards other agreements, (i.e., other than OMDA & SSA) the provisions therein have also been considered, wherever possible, by the Authority to the extent these are relevant for tariff determination in terms of Section 13 (1) (a) (vii) of the Act.

**3.11.** Provisions regarding “Tariff and Regulation” have been made in Chapter XII of OMDA. It is stated in clause 12.1.2 that “*The JVC shall at all times ensure that the*

*Aeronautical Charges levied at the Airport shall be as determined as per the provisions of the State Support Agreement.” Thus, in respect of tariff, cross referencing has been done in OMDA to the provisions of SSA.*

**3.12.** In clause 3.1 of the SSA following provisions have been made regarding tariff:

*“3.1.1 GOI’s intention is to establish an independent airport economic regulatory authority (the “Economic Regulatory Authority”), which will be responsible for certain aspects of regulation (including regulation of Aeronautical Charges) of certain airports in India. GOI agrees to use reasonable efforts to have the Economic Regulatory Authority established and operating within two (2) years from the Effective Date. GOI further confirms that, subject to Applicable Law, it shall make reasonable endeavours to procure that the Economic Regulatory Authority shall regulate and set/ re-set Aeronautical Charges, in accordance with the broad principles set out in Schedule 1 appended hereto. Provided however, the Upfront Fee and the Annual Fee paid/payable by the JVC to AAI under the OMDA 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.*

*3.1.2 The Aeronautical Charges for any year during the Term shall be calculated in accordance with Schedule 6 appended hereto. For abundant caution, it is expressly clarified that the Aeronautical Charges as set forth in Schedule 6 will not be negotiated post bid after the selection of the Successful Bidder and will not be altered by the JVC under any circumstances.”*

**3.13.** Schedule 1 of the SSA provides that “.....in undertaking its role, AERA will (subject to Applicable Law) observe the following principles:

*1. Incentives Based: The JVC will be provided with appropriate incentives to operate in an efficient manner, optimising operating cost, maximising revenue and undertaking investment in an efficient, effective and timely manner and to this end will utilise a price cap methodology as per this Agreement.*

2. *Commercial: In setting the price cap, AERA will have regard to the need for the JVC to generate sufficient revenue to cover efficient operating costs, obtain the return of capital over its economic life and achieve a reasonable return on investment commensurate with the risk involved.*

3. *Transparency: The approach to economic regulation will be fully documented and available to all stakeholders, with the Airports and key stakeholders able to make submissions to AERA and with all decisions fully documented and explained.*

4. *Consistency: Pricing decisions in each regulatory review period will be undertaken according to a consistent approach in terms of underlying principles.*

5. *Economic Efficiency: Price regulation should only occur in areas where monopoly power is exercised and not where a competitive or contestable market operates and so should apply only to Aeronautical Services. Further in respect to regulation of Aeronautical Services the approach to pricing regulation should encourage economic efficiency and only allow efficient costs to be recovered through pricing, subject to acceptance of imposed constraints such as the arrangements in the first three years for operations support from AAI.*

6. *Independence: The AERA will operate in an independent and autonomous manner subject to policy directives of the GOI on areas identified by GOI.*

7. *Service Quality: In undertaking its role AERA will monitor, pre-set performance in respect to service quality performance as defined in the Operations Management Development Agreement (OMDA) and revised from time to time.*

8. *Master Plan and Major Development Plans: AERA will accept the Master Plan and Major Development Plans as reviewed and commented by the GOI and will not seek to question or change the approach to development if it is consistent with these plans. However, the AERA would have the right to assess the efficiency with which capital expenditure is undertaken.*

*9. Consultation: The Joint Venture Company will be required to consult and have reasonable regard to the views of relevant major airport users with respect to planned major airport development.*

*10. Pricing responsibility: Within the overall price cap the JVC will be able to impose charges subject to those charges being consistent with these pricing principles and IATA pricing principles as revised from time to time including the following:*

*i) Cost reflectivity: Any charges made by the JVC must be allocated across users in a manner that is fully cost reflective and relates to facilities and services that are used by Airport users;*

*ii) Non-discriminatory: Charges imposed by the JVC are to be non-discriminatory as within the same class of users;*

*iii) Safety: Charges should not be imposed in a way as to discourage the use of facilities and services necessary for safety;*

*iv) Usage: In general, aircraft operators, passengers and other users should not be charged for facilities and services they do not use.”*

**3.14.** The Authority had given a careful consideration to the question of applying its general Airport Order also to Delhi and Mumbai in respect of adopting Single Till. The Authority had noted that the SSA as well as the OMDA were arrived at after a transparent bidding process. Shared Revenue Till of 30% (without cost pass through) was one of the conditions on which prospective bidders were to submit bids. One of the important revenue parameters for judging different bids was the revenue share (which also was not a cost pass through) from the bidders. Accordingly MIAL had bid for a revenue share of 38.6% to be paid to AAI and that this is not to be taken as a cost while determining aeronautical tariffs.

**3.15.** The Authority, in its Airport Order had noted that it would keep the interest of the passengers in focus during the process of finalizing its regulatory framework and philosophy. It had reviewed the regulatory till position obtaining in different regulatory regimes. It had stated that in the Indian context proper balance of the interest of the passengers and that of the airport operator can be achieved through Single Till as this would minimize the overall burden on the passengers (particularly with regard to user development fee) while also ensuring fair rate of return to the investor.

**3.16.** In Single Till, all the costs are to be taken into account while determining the required revenue that would enable the airport operator to obtain fair rate of return. The Authority noted that SSA / OMDA prescribe that the revenue share would not be reckoned as a cost pass through. SSA / OMDA also state that 30% of the total Non-aeronautical revenue be reckoned towards calculating aeronautical tariffs without, however, taking into account any costs associated with generating such non-aeronautical revenue. In Single Till, all the items of costs would have to be taken into account. The SSA / OMDA are for long period of 30 years to start with and thereafter at the option of the Airport operator for another period of 30 years. During these long periods, it is not possible to estimate as to what would be the financial impact of Single Till qua the provisions of SSA / OMDA on the aeronautical charges.

**3.17.** Furthermore, it appeared to the Authority that generally the principles laid out in the SSA / OMDA are not inconsistent with the provisions of the AERA Act except for example the classification of services of cargo and ground handling that are aeronautical under the AERA Act but non-aeronautical under SSA / OMDA. After considering the Concession offered by the Central Government (SSA) as well as OMDA as required under Section 13(1)(a)(vi) and Section 13(1)(a)(vii) of the Act, the Authority came to the conclusion that as far as the AERA Act as well as the Government's stipulation in Section 3.1.1 of the SSA is concerned, the Authority could follow the Shared Revenue Till approach for aeronautical tariff determination in respect of CSI Airport, Mumbai and IGI Airport, Delhi.

**3.18.** The Authority noted that there are certain important provisions in Schedule 1 of SSA, which are at variance with the approach decided by the Authority in respect of other airports, which can be summarised as under:

3.18.1. Shared Till – 30% of the gross revenue generated by the JVC from revenues share assets shall be used to subsidize Target Revenue. The costs in relation to such revenue shall not be included while calculating aeronautical charges.

3.18.2. Hypothetical RAB – The opening RAB for the first regulatory period would be the sum total of the Book Value of the Aeronautical Assets in the books of the JVC and the hypothetical regulatory base computed using the then prevailing tariff and the revenues, operation and maintenance cost, corporate tax pertaining to

Aeronautical Services at the Airport, during the financial year preceding the date of such computation.

3.18.3. No cost pass through – (read with Clause 3.1.1)-the Upfront Fee and the Annual Fee paid/payable by the JVC to AAI under the OMDA 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.

**3.19.** In addition to Schedule 1, some relevant provisions regarding Aeronautical Charges have been made in Schedule 6 of the SSA as well, which are as under:

3.19.1. The first control period to commence from the commencement of the fourth year after the Effective Date

3.19.2. Year on year determination of tariff

**3.20.** The Authority observed that the draft of the SSA formed part of the bid documents in respect of CSI Airport. Further, the provisions of the SSA have to be read together and consideration of such provisions in isolation may tantamount to cherry picking. In view of this, it has been a consistent view of the Authority that the provisions of the SSA should be taken on board as far as these are consistent with the provisions of the Act. Further, the provisions of SSA should also be reconciled to the extent possible with the provisions of the Act. It is only where the provisions of the SSA are not consistent with the AERA Act and cannot be reconciled thereto, a deviation may need to be made.

**3.21.** The Authority had noted the provisions of Section 13 (1) (a) (vi) and (vii) of the Act; and the fact that with respect to evolving its regulatory philosophy and approach for economic regulation of Airport Operators to give effect to its mandate under the Act, the Authority had undertaken extensive consultations with stakeholders, carefully perused all submissions, views and opinions expressed by stakeholders and had issued its Airport Order in the matter;

**3.22. *In this light the Authority had in the Consultation Paper No.22/2012-13 dated 22.10.2012 proposed to adopt the following approach towards determination of tariffs for aeronautical services provided by MIAL:***

3.22.1. ***To consider the provisions of the SSA read with the provisions of OMDA and other agreements as far as these are consistent with provisions of the Act; and***

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3.22.2. ***Wherever possible, have recourse to principles of tariff determination contained in the Airport Order and Airport Guidelines.***

**b Stakeholder Comments on Issues pertaining to Single Till / 30% Shared revenue Till & Tariff Determination Methodology**

3.23. Stakeholders have expressed that the Authority should adopt Single Till rather than proceeding with Shared Till.

3.24. ACI on the issue of Tariff Determination Methodology stated that AERA should consider the fact that the private airport operators entered into the concession on the basis of the terms of the agreement signed by them with AAI and Govt. of India. AERA was set up post execution of these agreements and any change in regulation contrary to the terms of the concession should be avoided as this would result in ambiguity for all the stakeholders. ACI further stated that considering that India needs to attract private investment for the development of its airport infrastructure, it believes that the right message should be sent in order to encourage private investments through appropriate incentives rather than raise concern about the certainty of the regulatory environment.

3.25. On the issue of Till, FIA has reproduced extracts from the Authority's Order No. 13/2010-11 (Airport Order) and stated that,

*"In the MIAL's proposed tariff, Authority has proceeded on 'Shared Till' approach which is against its own Single Till Order. In the said order, Authority has strongly made a case in favour of the determination of tariff on the basis of 'Single Till'. Under the Single Till basis, airport charges/aeronautical tariff are set with reference to the net costs of running the airport, taking into account other revenues arising at the airport i.e. non-aeronautical revenues."*

3.26. Referring to the Appeal filed by GMR HIAL against the Authority's Order No. 13/2010-11 dated 12.01.2011, FIA stated that,

*"It is noteworthy that another airport operator being GMR HIAL has filed an Appeal being Appeal No.8 of 2011 GMR HIAL Vs AERA & Anr on 10.02.2011 against the Authority's Order No. 13/2010-11 dated 12.01.2011. FIA is not aware of the contents of the Appeal since FINs Impleadment Application is still pending before Hon'ble Airports Appellate*

*Tribunal (AERAAT). It is respectfully submitted that since Single Till Order which lays down Single Till approach is subject matter of challenge before Hon'ble Airports Appellate Tribunal, the Authority may keep the issue of levying any charges in abeyance till the issues are resolved by AERAAT. Meanwhile, MIAL must be directed to follow Single Till approach (since there is no stay of Order No. 13/2011-12) in the matter of determination of aeronautical tariff as it is practical and equitable to both airports and airlines.”*

**3.27.** FIA further stated that,

*“The Authority in its Guidelines (para 4.3) has followed the Single Till approach while laying down the procedure for determination of Aggregate Revenue Requirement for Regulated Services. In this respect, the matter must be dealt with by the Authority considering the ratio pronounced by the Constitutional Bench in the Hon'ble Supreme Court Judgment in PTC vs. CERC reported as (2010) 4 SCC 603 wherein it is specifically stated that regulation under an Act, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations. In this scenario, perhaps it would be desirable to conduct a public hearing to reconcile the overall regulatory philosophy of the Authority for Delhi and Mumbai so that the applicable law can be given effect to after taking into account views of the Stakeholders. Elements like transition and other relevant factors for aligning the OMDA tariff to the Single Till will have to be considered in such process.....*

*..... FIA therefore submits as under:*

*(a) Single Till approach ought to be applied to ALL airports regulated by the Authority regardless of whether it is a public or private airport or works under the PPP model and in spite of the OMDA and SSA.*

*(b) Single Till is in the public interest and will not hurt the investor's interest and given the economic and aviation growth that is projected for India, Fair*

*Rate of Return alone will be enough to ensure continued investor's interest."*

**3.28.** Cathay Pacific on the issue of Till stated that

*"The whole charge recovery mechanism adopts a Shared Till model. This is not a model that the airlines accept. Although there are allocation guidelines, the split of aeronautical and non- aeronautical assets, revenues, costs and charges are done purely for the sake of separation of accounts. Aeronautical and non-aeronautical services in an airport are symbiotic in nature. Passengers congregate and shop at airports because they need to ride on an aircraft for travelling to other places. The provision of apron, runways and taxiways are hence an integral part of a passenger's travelling journey and therefore the commercial revenue thus generated should contribute towards charge recovery by the Airport Operator i.e. a single till model should be adopted, as otherwise the burden associated with charge recovery of the aeronautical assets would be unbearably high for the aeronautical services users since capital costs related to apron, runways and taxiways are usually very significant."*

*"As per Section 13(1)(a)(v) of the AERA Act, AERA shall take into consideration tile revenue received from services other than the aeronautical services, while determining the tariff for aeronautical services. AERA in its Order No. 13/201-11 dated 12th January, 2011 ("Single Till Order") in the matter of Regulatory Philosophy and Approach in Economic Regulation of Airport Operators has held that "Single till is most appropriate for the economic regulation of major airports in India." Further, according to Guideline 4.2 of AERA Guidelines, AERA has held that the Single Till approach, sets out the revenues from services other than aeronautical services, as one of the components on the calculation of Aggregate Revenue. The tentative decision to allocate revenue from Aeronautical & Non-Aeronautical services in the ratio of 90:10 would be blatantly against the concept of the Single Till methodology that has been decided by AERA itself, which mandates that the revenue of aeronautical*

*and non-aeronautical services ought to be considered as a whole and not in part.”*

**3.29.** Board of Airline Representative (India) on the issue of Till stated that

*“As per the present Consultation Paper, AERA has tentatively decided to consider the entire revenue from Aeronautical & Non-Aeronautical services in the ratio of nearly 90:10. If AERA decides to adopt such a ratio for the consideration of aeronautical and non-aeronautical revenue, the same would be blatantly against the concept of the Single Till methodology that has been decided by AERA itself, which mandates that the revenue of aeronautical and non-aeronautical services ought to be considered as a whole and not in part.”*

*“AERA has in the Consultation Paper tentatively decided to adopt the Shared Till approach thereby violating the methodology of the Single Till approach that has been advocated by it in its Orders and Guidelines. As per Section 13(1)(a)(v) of the AERA Act, AERA shall take into consideration the revenue received from services other than the aeronautical services, while determining the tariff for aeronautical services. AERA in its Order No. 13/2010-11 dated 12th January, 2011 ("Single Till Order") in the matter of Regulatory Philosophy and Approach in Economic Regulation of Airport Operators has held that “Single Till is most appropriate for the economic regulation of major airports in India.” Further according to the Guideline 4.2 of the AERA (Terms and Conditions of Determination of Tariff of Airport Operators) Guidelines, 2011 dated 28th February, 2011 ("AERA Guidelines") AERA has held that the Single Till approach sets out the following components on the basis of which Aggregate Revenue Requirement shall be calculated:*

*(i) Fair Rate of Return applied to the Regulatory Asset Base; (ii) O&M Expenditure; (iii) Depreciation; (iv) Taxation; and (v) Revenues from services other than aeronautical services.*

*The various airport charges, according to the Single Till methodology, are fixed in proportion to the net costs of running such airport, after taking into*

*account other revenues that arise at the airport, viz. non-aeronautical revenues. AERA has, however, in the present Consultation Paper, tentatively adopted the Shared Till methodology for the purposes of determination of aeronautical tariff at the CSI Airport, Mumbai on the basis of the State Support Agreement, which was entered into between the MoCA and MIAL. It is pertinent to point out that AERA has proceeded to deviate from the Single Till Order and the AERA Guidelines while adopting such Shared Till methodology, without providing the stakeholders any reasons for the same.*

*The Single Till Order passed by AERA mandates a comprehensive evaluation of the economic model and realities of the airport -both capital and revenue elements and also lays down the criteria for determining aeronautical tariff after taking into account the standards followed by several international airports. It is submitted that AERA has erroneously proceeded on Shared Till Model by adhering to the Operations Management and Development Agreement and State Support Agreement and ignoring the Single Till Order. It is an established principle that statutes, rules and regulations override the contractual provisions entered into between the parties. Thus, AERA has erred in tentatively deciding to give priority to the provisions of the concession agreements that were entered into between the Government and MIAL, over the statutory provisions contained in the AERA Act. AERA has failed to appreciate the primary reasoning behind the Single Till method that if the passengers are offered cheaper air-fares, the volume of passengers is bound to increase leading to more foot-fall and probability of higher non-aeronautical revenue. The benefit of such non-aeronautical revenue should be passed on to consumers and that can be assured only by way of lower aeronautical charges.*

**c MIAL Response to Stakeholder Comments on Issues pertaining to Single Till / 30% Shared revenue Till & Tariff Determination Methodology**

**3.30.** MIAL responded to the stakeholder comments on the matter as under,

*“As per clause 3.1 of the SSA entered between the GoI and MIAL, the Authority is required to regulate aeronautical charges in case of CSIA. This clause specifically states “AERA shall regulate and set / re-set Aeronautical Charges, in accordance with the broad principles set out in Schedule 1 appended hereto”.*

*Schedule 1 mentions determination of tariff based upon Shared Till – X approach.*

*Further, Section 13(1)(a)(vi) stipulates, inter alia,*

*“13. (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-*

*....*

***(vi) the concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;***

*.... “ (Emphasis supplied)*

*The above provisions have been duly recognized by AERA in its Order No. 13/2010-11 wherein it has stated that it would separately determine the extent to which the covenants of the SSA would impact the general framework being laid down in the order.”*

**3.31.** MIAL has also responded to Cathay Pacific’s observation on allocation of revenue between aeronautical and non-aeronautical and stated that,

*“Further, the comment that revenue has been allocated in the ratio of 90:10 is incorrect.”*

**3.32.** Responding to BAR – India’s observation on allocation of revenue, MIAL stated that,

*“The split of Aeronautical and Non-Aeronautical Revenue has been submitted to the Authority and the statement that aeronautical and non-aeronautical revenue are split in the ratio of 90:10 is factually incorrect. Only the Common Assets are allocated between Aeronautical and Non-*

*Aeronautical assets based on the methodology enumerated by MIAL in the MYTP.”*

**d MIAL’s own comments on Issues pertaining to Single Till / 30% Shared revenue Till & Tariff Determination Methodology**

**3.33.** MIAL has not provided its own comments on the issue.

**e Authority’s Examination of Issues pertaining to Single Till / 30% Shared revenue Till & Tariff Determination Methodology**

**3.34.** The Authority has examined the comments made by the stakeholders and the response by MIAL to these stakeholder comments. The Authority’s examination of the issue is as follows:

**3.35.** With regards to MIAL’s comment, the Authority noted that MIAL has quoted Clause 3.1 of SSA as a support to Authority’s adoption of Shared Revenue Till for Mumbai airport. The Authority notes that while referring to Clause 3.1, MIAL has referred to a particular portion somewhat out of context. Para 3.1.1 make the Government’s intention to establish an Airports Economic Regulatory Authority (AERA) as an independent body clear. This section also states that the AERA will be responsible for certain aspects of regulation (including regulation of aeronautical charges) of certain airports in India. The said clause further states that *“Gol further confirms that subject to applicable law, it shall make reasonable endeavours to procure that Economic Regulatory Authority shall regulate and set/re-set aeronautical charges in accordance with the broad principles set out in Schedule-1 appended hereto.”*

**3.36.** The meaning of the above formulation is quite different from what MIAL has alleged that clause 3.1 specifically states *“AERA shall regulate and set/re-set aeronautical charges in accordance with the broad principles set out in Schedule-1 appended hereto”*. Complete formulation of 3.1.1 recognises primacy of an act of the Parliament quo contracts (unless the AERA Act specifically mentions certain contracts to which the AERA Act is not held to be applicable). The bidders in Mumbai airports were thus fully aware and cognizant of the fact that an Economic Regulatory Authority is to be formed at a future date (and within two years from the effective date (3rd May, 2006), and that the AERA will be responsible for certain aspects of regulation (including regulation of aeronautical charges) of certain airports in India. The bidders were also fully aware that what the clause 3.1.1 has stated is

with respect to reasonable endeavours by the GoI to procure that the AERA would follow Schedule-1 of the SSA. The Authority, therefore, is of the opinion that clause 3.1.1 of the SSA does not within itself enjoins upon it to regulate only in accordance with Schedule-1 of the SSA though as per the provisions of the Act, it is mandated to take into consideration such concessions, agreements as may have been entered into by the Central Govt. The Authority also notes that in a different context, namely, that of the determination of Development Fee, MIAL do not wanted the Authority to strictly go by the provisions of OMDA according to which, in case of any cost escalation, it was the sole responsibility of the JVC to procure the required finances (clause 13.1 of Chapter 13 of OMDA). The Authority has, while determining the Development Fee, took specifically into consideration the provisions of OMDA as well as the provisions of Section 13(1)(a)(i) read with Section 13(1)(b) of the AERA Act which together mandated it to take into consideration, inter alia, capital expenditure incurred and timely investment in improvement of the airport facilities and for this purpose came to the conclusion that if additional finances through DF are not determined by the Authority, the timely completion of the project is unlikely to happen. It, therefore, used the provision of Section 13(1)(b) of the AERA Act and determined the DF.

**3.37.** Referring to the comment from ACI, the Authority noted that ACI has not indicated what part of the AERA's proposed action in its Consultation Paper may lead to such apprehension as has been voiced by ACI. While determining the aeronautical tariffs for Mumbai Airport, the Authority has taken into consideration the SSA as well as OMDA (SSA under Section 13(1)(a)(vi) and OMDA under Section 13(1)(a)(vii)). AERA Act requires the Authority to take into account the concessions offered by the Central Government as well as any other factor which may be relevant for the purposes of this Act. However, the Authority is also cognizant of the fact that an Act takes primacy over the contracts / agreements. The Authority, therefore does not envisage any apprehension that may arise in the minds of existing or prospective investors on account of this aspect.

**3.38.** Referring to the comment from Cathay Pacific, the Authority had indicated in Consultation Paper – 22/2012-13 dated 11.10.2012 that the Authority in its Order No.13 of 2010-11 dated 12.01.2011 had decided to adopt single till for all the major airports, stating, however, that this order is not applicable to Delhi and Mumbai. In case of Delhi and



Mumbai, the Authority has already given its reasoning to adopt the framework indicated in the SSA and OMDA in sufficient detail in the paras 3.1 above to 3.2 above.

**3.39.** The Authority had noted that under Section 13(1)(a)(vi) and 13(1)(a)(vii) of the AERA act, it is required to take into consideration concessions offered by the Central Govt. as well as any other factor which may be relevant for the purposes of this Act. It had, therefore, taken into consideration the SSA as well as OMDA. It had already been indicated that it is cognizant of the fact that the Act has primacy. However, in the event that the provisions of the AERA Act do not run contrary to any extant agreement, the Authority felt that it may give effect to the covenants of the agreement insofar as they are not repugnant to the provisions of the Act. The Authority had noted in para 19 of the Consultation Paper – 22/ 2012-13 dated 11.10.2012 that services like Cargo and Ground Handling are defined as aeronautical services in the Act. However, under Schedule IV of OMDA, Cargo and Ground Handling are treated as non-aeronautical services. The Authority had regarded these two services as aeronautical and proceeded to determine aeronautical charges for the same (vide its Order No 12/ 2010-11 dated 05.01.2011 for Cargo services and Ground Handling services). The Authority had also treated the revenues from these two services to be aeronautical services if they are provided by the airport operator himself (and not outsourced to a third party). It had noted accordingly that revenues from the Cargo service (which was provided by MIAL till September-October, 2012) to be regarded as aeronautical revenues (a full analysis of this issue can be seen in Para 19 of the Consultation Paper – 22/ 2012-13 dated 11.10.2012)). However, in view of the Government's letter dated AV.24032/04/2012-AD dated 10.09.2012 (already uploaded and in public domain), it has calculated the 'X' factor on the basis of reckoning the revenues from the aeronautical service, namely Cargo services, as Non-aeronautical revenue.

**Decision No. I. Regarding Single Till / 30% Shared revenue Till & Tariff Determination Methodology**

**I.a. The Authority decides to adopt the following approach towards determination of tariffs for aeronautical services provided by MIAL:**

- i. To consider the provisions of the SSA read with the provisions of OMDA and other agreements as far as these are consistent with provisions of the Act; and**
- ii. Wherever possible, have recourse to principles of tariff determination contained in the Airport Order and Airport Guidelines.**

## 4. Regulatory Period

### a Authority's position on Issues pertaining to Regulatory Period in the Consultation Paper

4.1. The Authority had in the Consultation Paper No.22/2012-13 dated 11.10.2012, indicated that MIAL have made a tariff filing for the five-year block comprising 2009-10 to 2013-14 as the first regulatory period (comprising past financial years 2009-10, 2010-11 and 2011-12 and future financial years 2012-13 and 2013-14). In the initial proposal dated 11.10.2011, a collection period of the revised tariff has been considered from 1<sup>st</sup> December 2011 to 31<sup>st</sup> March 2014. Subsequently the collection period has been revised and indicated as 1<sup>st</sup> July 2012 to 31<sup>st</sup> March 2014. Considering the timelines involved, the Authority had considered that the collection period w.e.f. 1<sup>st</sup> January 2013 may be practicable.

4.2. Section 13 (2) of the AERA Act requires that *"the Authority shall determine the tariff once in five years and may if so considered appropriate and in public interest, amend, from time to time during the said period of five years, the tariff so determined."*

4.3. The SSA authorizes MIAL, under clause 3.1.2 and Schedule 6, to levy Aeronautical Charges for various Aeronautical Services at the rates set forth in Schedule 8, for a period of two years from the Effective Date. Further, Schedule 6 also requires that from the commencement of 4th year after the Effective Date, Aeronautical Charges will be set by Economic Regulatory Authority/Gol in accordance clause 3.1.1 read with Schedule 1 of the SSA.

4.4. One of the Principles of Tariff Fixation, provided under Schedule 1 of the SSA, pertains to provision of: *"appropriate incentives to operate in an efficient manner, optimising operating cost, maximising revenue and undertaking investment in an efficient, effective and timely manner and to this end will utilise a price cap methodology as per this Agreement (SSA)"*.

4.5. The principle of Consistency refers to *"pricing decisions in each regulatory review period"* and the illustrative example relates to a five-year regulatory period.

4.6. In view of the above, the Authority had in the Consultation Paper noted that it is apparent that in terms of the provisions of Section 13 (2) of the Act, and consistent with provisions of the SSA, tariffs would need to be determined for a five-year regulatory period.

4.7. Another issue which arose for the consideration was the date of commencement of the first regulatory period. In this regard the guidance available in Schedule 6 of the SSA envisaged that:

*“From the commencement of the fourth (4th) year after the Effective Date and for every year thereafter for the remainder of the Term, Economic Regulatory Authority / GoI (as the case may be) will set the Aeronautical Charges in accordance with Clause 3.1.1 read with Schedule 1 appended to this Agreement.....”*

4.8. Further, Schedule 1 of the SSA also provides that

*“If despite all reasonable efforts of the GOI, AERA is not in place by the time required to commence the first regulatory review, the Ministry of Civil Aviation will continue to undertake the role of approving aero tariff, user charges, etc.”*

4.9. The Authority observed that clause 3.1.2 and Schedule 6 of the SSA provide for tariffs to be determined from the commencement of fourth year after the “Effective Date” which has been defined as per clause 1.1 of the OMDA as under:

*“Effective Date” means the date on which the Conditions Precedent have been satisfied or waived according to the terms hereof.*

4.10. The Effective Date for MIAL as per the OMDA /SSA is 3<sup>rd</sup> May 2006 implying that the first regulatory period should technically commence from 3<sup>rd</sup> May 2009 and end on 2<sup>nd</sup> May 2014.

4.11. The Authority also noted that in terms of requirements of information for tariff determination, information already/ normally maintained by MIAL and other entities for financial years followed in our country i.e. 1<sup>st</sup> April to 31<sup>st</sup> March of the subsequent year, the above periodicity would imply that:

4.11.1. The information would need to be segregated for a number of periods:

- 3<sup>rd</sup> May 2009 – 31<sup>st</sup> March 2010;
- 1<sup>st</sup> April 2010 – 2<sup>nd</sup> May 2010;
- 3<sup>rd</sup> May 2010 – 31<sup>st</sup> March 2011;
- 1<sup>st</sup> April 2011 – 2<sup>nd</sup> May 2011;

- 3<sup>rd</sup> May 2011 – 31<sup>st</sup> March 2012;
- 1<sup>st</sup> April 2012 – 2<sup>nd</sup> May 2012;
- 3<sup>rd</sup> May 2012 – 31<sup>st</sup> March 2012;
- 1<sup>st</sup> April 2013 – 2<sup>nd</sup> May 2013;
- 3<sup>rd</sup> May 2013 – 31<sup>st</sup> March 2014
- 1<sup>st</sup> April 2014 – 2<sup>nd</sup> May 2014;

at times requiring adoption of certain approximations and assumptions especially on operational data;

4.11.2. Analyses of such information would not necessarily correspond to analyses of other information that may be available on relevant aspects.

**4.12.** In view of the above, the Authority had in the Consultation Paper opined that it is more practicable to consider the regulatory period from 1<sup>st</sup> April 2009 to 31<sup>st</sup> March 2014, i.e., in line with the normal Financial Years(s) reckoned in the country. This approach would imply consideration of an additional period from 1<sup>st</sup> April 2009 to 2<sup>nd</sup> May 2009 (a period of 32 days) in the first regulatory period while implying consideration of the period from 1<sup>st</sup> April 2014 to 2<sup>nd</sup> May 2014 (a period of 32 days) in the next regulatory period. However, in view of the issues in data segregation and analyses mentioned above, the consideration of the regulatory period from 1<sup>st</sup> April 2009 to 31<sup>st</sup> March 2014 is more practicable. MIAL had also made their filings accordingly.

**4.13.** In this light, the Authority had in the Consultation Paper indicated that determination of tariffs for the first regulatory period for MIAL will be effected during the 4<sup>th</sup> year of the regulatory period. Also, determination and notification of revised tariffs for aeronautical services, after stakeholder consultation, would only be possible by 1<sup>st</sup> January 2013, as the new tariff are likely to be operationalised only w.e.f. 1<sup>st</sup> January 2013.

**4.14.** *In view of the above, the Authority had, in the Consultation Paper No. 22/2012-13 dated 11.10.2012, proposed that the first regulatory period in respect of tariff determination for CSI Airport, Mumbai may be reckoned from 1<sup>st</sup> April 2009 to 31<sup>st</sup> March 2014.*

**b Stakeholder Comments on Issues pertaining to Regulatory Period**

**4.15.** On the issue of Regulatory Period, FIA stated that,

*“In the present consultation, the Authority has tentatively decided the tariff for the 5 year control period starting from 01.04.2009. As such, the Authority will be determining the tariff, retrospectively from 01.04.2009 exceeding its jurisdiction. The power of the Authority to determine aeronautical tariff was only granted from 01.09.2009 since Chapter III of the AERA Act came into force on 01.09.2009 vide GSR 624(E) dated 31.08.2009.....*

*.....It is settled position of law that future consumers cannot be burdened with additional costs as there is no reason as why they should bear the brunt. Such quick-fix attitude is not acceptable!’. As such, the approach in the Consultation Paper does not appear to deal with the present economic realities and interests of consumers while proposing the tariff in its present form. Authority being a creature of statute is under a duty to balance the interest of all the stakeholders and consumers, which it is mandated to do under the AERA Act. Authority's proposal for tariff determination is retrospective, which is impermissible. In this regard, reliance is placed on Hon'ble Supreme Court's judgment in Binani Zinc Ltd. Vs. Kerala State Electricity Board & Others reported as (2009) 11 SCC 24414 , wherein the Hon'ble Supreme Court has held that "It is only after the Regulatory commission is constituted that it will be the sole authority to determine the tariff'. Thus, there tariff cannot be determined retrospectively.”*

**4.16.** FIA has commented on the delayed submission of MYTP by MIAL and stated as follows:

*“The Authority is overlooking that the MIAL has caused inordinate delay in submitting the details of project cost and relevant information for determination of aeronautical tariff which has:*

*(a) Diminished the effective Control Period to 15 months from 5 years;*

*(b) Led to exponential increase in aeronautical tariff of CSI Airport with the past charges of last 45 months recoverable in the next 15 months from the*

*future passengers and consumer including the airlines. This approach is unacceptable as it would increase the operational expenditure of the airlines and rendering its operations economically unviable.”*

**4.17.** With regard to the regulatory period considered by the Authority in the Consultation Paper – 22/2012-13, dated 11.10.2012, BAR (India) commented as under,

*“It may be pertinent to note that the control period for which MIAL has submitted the proposal for aeronautical charges and development fees commences on 1st April, 2009, when the AERA was not even in existence. AERA's statutory power to determine aeronautical tariff was granted only from 1st September, 2009, as Chapter III of the Airports Economic Regulatory Authority of India Act, 2008 came into force only on 1st January, 2009 vide GSR 624(E) dated 31st August, 2009. Thus, AERA by determining the aeronautical tariff for the CSI Airport, Mumbai during the control period commencing from 1st April, 2009 has evidently exceeded its jurisdiction.”*

**c MIAL’s Response to Stakeholder Comments on Issues pertaining to Regulatory Period**

**4.18.** MIAL has responded to FIA’s comment on delayed submission as under,

*“Allegation about dilatory tactics adopted by MIAL is baseless and factually incorrect.*

*AERA was setup in 2009. Subsequently, the Authority had communicated to MIAL to submit a stylized multi-year tariff proposal through its letter dated 4th January 2011. MIAL had submitted its understanding of the provisions of SSA which would govern its tariff determination process vide its letter dated 9th February 2011. Thereafter, the Authority had directed MIAL to prepare the final MYTP through its letter no. AERA/20011/MIAL-DF/2009-10/Vol-II/648 dated 25th July, 2011.*

*This being the first control period, MIAL had to act painstakingly for data collection and analysis and finally submitted its MYTP to the Authority on 11th October 2011.*

*Looking into the facts mentioned above, it is absolutely clear that there was no delay on the part of MIAL. In fact any delay does not result in any*

*benefit to MIAL. Rather, delay is certain to result in skewed increase in tariff leading to false perception of steep tariff increase, which, if analysed appropriately, is not the case.”*

**d MIAL’s own comments on Issues pertaining to Regulatory Period**

4.19. MIAL has not provided its own comments on the issue.

**e Authority’s Examination of the Issues pertaining to Regulatory Period**

4.20. The Authority has noted FIA submission that the effective Control Period has got truncated from the five year period to 15 months on the ground that MIAL has delayed submission of the MYTP. FIA has however not indicated what should be the commencement date that according to it, which would be the appropriate date for the First Control Period of five years. Secondly FIA has quoted a judgment of the Hon’ble Supreme Court that *“It is only after the Regulatory commission is constituted that it will be the sole authority to determine the tariff”*.

4.21. In this regard, it is to be noted that the Authority was formed with effect from 12th May, 2009 and the powers of Chapter-III were notified on 1st September, 2009. The Authority, therefore, for the purpose of reckoning the first control period, has taken the beginning of the financial year 2009 (namely, with effect from 01.04.2009) as the starting point. The Authority needs to determine the financials based on audited figures which are available as of 31st March, 2008.

4.22. It may be observed that clause 3.1.2 and Schedule 6 of the SSA provide for tariffs to be determined from the commencement of fourth year after the “Effective Date” which has been defined as under, as per clause 1.1 of the OMDA:

*“Effective Date” means the date on which the Conditions Precedent have been satisfied or waived according to the terms hereof.*

4.23. 3rd May 2006 has been taken as the Effective Date for MIAL. This would imply that the first regulatory period should technically commence from 3rd May 2009 and end on 2nd May 2014.

4.24. In terms of requirements of information for tariff determination, information already / normally maintained by MIAL and other entities for financial years followed in our country i.e. 1<sup>st</sup> April to 31<sup>st</sup> March of the subsequent year, the above periodicity would imply that :



(i) The information would need to be segregated for a number of periods:

- 3<sup>rd</sup> May 2009 – 31<sup>st</sup> March 2010;
- 1<sup>st</sup> April 2010 – 2<sup>nd</sup> May 2010;
- 3<sup>rd</sup> May 2010 – 31<sup>st</sup> March 2011;
- 1<sup>st</sup> April 2011 – 2<sup>nd</sup> May 2011;
- 3<sup>rd</sup> May 2011 – 31<sup>st</sup> March 2012;
- 1<sup>st</sup> April 2012 – 2<sup>nd</sup> May 2012;
- 3<sup>rd</sup> May 2012 – 31<sup>st</sup> March 2012;
- 1<sup>st</sup> April 2013 – 2<sup>nd</sup> May 2013;
- 3<sup>rd</sup> May 2013 – 31<sup>st</sup> March 2014
- 1<sup>st</sup> April 2014 – 2<sup>nd</sup> May 2014;

at times requiring adoption of certain approximations and assumptions especially on operational data;

**4.25.** Analyses of such information would not necessarily correspond to analyses of other information that may be available on relevant aspects.

**4.26.** In view of the above, the Authority observed that it is more practicable to consider the regulatory period from 1<sup>st</sup> April 2009 to 31<sup>st</sup> March 2014, i.e., in line with the normal Financial Years(s) reckoned in the country. This approach would imply consideration of an additional period from 1<sup>st</sup> April 2009 to 2<sup>nd</sup> May 2009 (a period of 32 days) in the first regulatory period while implying consideration of the period from 1<sup>st</sup> April 2014 to 2<sup>nd</sup> May 2014 (a period of 32 days) in the next regulatory period. However, in view of the issues in data segregation and analyses mentioned above, the consideration of the regulatory period from 1<sup>st</sup> April 2009 to 31<sup>st</sup> March 2014 is more practicable.

**4.27.** Additionally, the Authority clarifies that from 1<sup>st</sup> April, 2009 till the date on which the new tariffs would be applicable, the Authority has continued with the extant tariff regime which was in vogue as of 31<sup>st</sup> March, 2008. The Authority also notes that it is required to determine 'X' factor based on the formulae given in Schedule-I of the SSA for a period of five years. Its action of commencing the first control period from 1<sup>st</sup> April, 2009 is, therefore, in order.

**Decision No. II.      Regarding Regulatory Period**

**II.a.      The Authority decides to reckon the first regulatory period, in respect of tariff determination for aeronautical services in respect of CSI Airport, Mumbai, from 1st April 2009 to 31st March 2014.**

## 5. Regulatory Building Blocks

5.1. In the Consultation Paper No.22/2012-13 dated 11.10.2012, the Authority had indicated that MIAL has determined the Target Revenue (TR) by aggregating terms in the following formula:

$$TR_i = RB_i \times WACC_i + OM_i + D_i + T_i - S_i$$

Where;

- TR = target revenue
- RB = regulatory base pertaining to Aeronautical Assets and any investments made for the performance of Reserved Activities etc. which are owned by MIAL. The Assets other than Aeronautical Assets will be excluded from the scope of RAB.

$$RB_i = RB_{i-1} - D_i + I_i$$

- Where: for the first regulatory period would be the sum total of
  - the Book Value of the Aeronautical Assets in the books of MIAL and
  - the Hypothetical Regulatory Base computed using the then prevailing tariff and the revenues, operation and maintenance cost, corporate tax pertaining to Aeronautical Services at the Airport, during the financial year preceding the date of such computation
- WACC = nominal post-tax weighted average cost of capital, calculated using the marginal rate of corporate tax
- OM = efficient operation and maintenance cost pertaining to Aeronautical Services
- D = Annual Depreciation charged on aeronautical assets based on depreciation reference rates prescribed as per the Companies Act, 1956
- T = Corporate taxes on earnings pertaining to Aeronautical Services
- S = Subsidy to the extent of 30% of the Gross Revenue generated from the Revenue Share Assets, which are defined to include:
  - Non-Aeronautical Assets; and
  - Assets required for provision of aeronautical related services arising at the Airport and not considered in revenues from Non-Aeronautical Assets (e.g. Public admission fee etc.)
- i = Number of year in the regulatory control period

## 6. Allocation between Aeronautical and Non-aeronautical Assets

### a Authority's position on Issues pertaining to Allocation between Aeronautical and Non-aeronautical Assets in the Consultation Paper

6.1. The Authority had in the Consultation Paper No.22/2012-13 dated 11.10.2012, considered MIAL's submission that as per definition of the RB given in the Schedule 1 of SSA, the RB includes only the Aeronautical Assets (including those for reserved activities), which necessitates segregation of Assets into Aeronautical and Non-aeronautical assets. MIAL submitted that KPMG has conducted a study for segregation of assets for the FY 2009-10 and FY 2010-11 using asset-by-asset allocation approach and MIAL have adopted the same basis for allocation of asset into aeronautical and non-aeronautical assets for the remaining years in the current control period.

**Table 2: Common Fixed Assets (Terminal) Segregation into Aeronautical and Non Aeronautical as submitted by MIAL**

Fixed Asset	Total Value (In Rs. Cr.)	Value of Common Assets (In Rs. Cr.	Allocation of Common Assets			
			Area under Aero (%)	Area under Non-Aero (%)	Aero Assets (in Rs Cr.)	Non-Aero Assets (in Rs Cr.)
<b>FY 2009-10</b>						
Terminal – 1	9.22	2.40	81.81	18.19	1.96	0.44
Terminal -1 & 2	3.78	2.82	79.68	20.32	2.25	0.57
Terminal- 1A	44.14	30.76	81.75	18.25	25.15	5.62
Terminal 1B	76.69	25.67	76.27	23.73	19.57	6.09
Terminal 1C	138.73	138.73	90.02	9.98	124.89	13.84
Terminal -2	14.69	5.73	77.56	22.44	4.44	1.29
Terminal 2B	9.98	7.37	81.42	18.58	6.00	1.37
Terminal -2B2C	39.02	32.58	77.56	22.44	25.27	7.31
Terminal -2C	126.12	35.19	75.10	24.90	26.43	8.76
<b>Total</b>	<b>462.36</b>	<b>281.24</b>	<b>83.90</b>	<b>16.10</b>	<b>235.96</b>	<b>45.29</b>
<b>FY 2010-11</b>						
Project Office	31.71	25.28	83.74	16.26	21.17	4.11
Terminal – 1	9.71	2.87	81.81	18.19	2.35	0.52
Terminal -1 & 2	3.45	2.1	79.68	20.32	1.67	0.43
Terminal- 1A	44.02	30.94	81.75	18.25	25.29	5.65
Terminal 1B	77.36	26.11	76.27	23.73	19.91	6.20
Terminal 1C	140.04	139.89	90.02	9.98	125.93	13.96
Terminal -2	14.21	5.66	77.56	22.44	4.39	1.27
Terminal 2B	9.98	7.37	81.42	18.58	6.00	1.37
Terminal -2B2C	39.06	32.98	77.56	22.44	25.58	7.40
Terminal -2C	129.09	35.18	75.10	24.90	26.42	8.76
<b>Total</b>	<b>498.63</b>	<b>308.38</b>	<b>83.89</b>	<b>16.10</b>	<b>258.71</b>	<b>49.66</b>

6.2. The Aeronautical and Non-aeronautical Assets after allocation of the Common Assets based on the area were projected as follows:

**Table 3: Aeronautical and Non-aeronautical Assets on area basis after allocation of the Common Assets as submitted by MIAL**

In Rs. Cr.	FY 10	FY11
Aeronautical Assets	1298	1883
Non-Aeronautical Assets	175	191
Total*	1473	2073

\*Excluding Upfront Fee and Retirement Compensation

6.3. Based on the above approach, MIAL had segregated the Aeronautical and Non-Aeronautical Assets on area basis for the current control period. The overall ratio between Aeronautical Assets and Total Assets (i.e. Aeronautical and Non-Aeronautical Assets) as computed by MIAL on area basis for each year of the control period, as below:

**Table 4: Overall Aeronautical Assets on area basis as a % of Total Assets**

In%	FY 10	FY 11	FY 12	FY 13	FY 14
Aeronautical Assets as %age of Total Assets	89.92	91.87	91.18	92.78	93.11
Total Aeronautical Assets*	1559	2144	2642	4000	10324

\*Excluding upfront fee and retirement compensation

6.4. ***After considering the submissions of MIAL, the Authority had proposed in the Consultation Paper as under:***

6.4.1. ***For the present and in absence of any other relevant basis for allocation to accept the proposal made by MIAL on allocation of assets into aeronautical and non-aeronautical assets on the basis of area as per Table 5 below.***

**Table 5: Overall Aeronautical Assets on area basis as a % of Total Assets**

Allocation of Assets	FY 10	FY 11	FY 12	FY 13	FY 14
Aeronautical Assets (Segregation Based on Area) (%)	89.92%	91.87%	91.18%	92.78%	93.11%

6.4.2. ***To commission an independent study in this behalf and would take corrective action, as may be necessary, at the commencement of the next control period commencing with effect from 01.04.2014. The Authority also proposed that upon analysis / examination pursuant to such a study, the Authority may conclude that the allocation of assets considered needs to be changed. In such a***

*case it was proposed to consider truing up the allocation mix at the commencement of the next control period.*

**b Stakeholder comments on Issues pertaining to Allocation between Aeronautical and Non-aeronautical Assets**

6.5. IATA has supported AERA's decision to commission an independent study and make the necessary adjustments to the asset allocation based on the results of this study.

6.6. On the issue of allocation between Aeronautical and Non-aeronautical Assets, FIA stated as under,

*"The Authority has noted that allocation of the airport assets in to Aeronautical or Non-Aeronautical categories is important in a Shared Till model, as is the case in determination of tariff for CSI Airport, the cost and assets' are to be allocated for determining the target revenue over the regulatory period. Further, the Authority has left the exercise for truing up the allocation mix and costs at the beginning of the next regulatory control period.*

*It is submitted that in the present case Authority has indiscriminately left it for future in the garb of truing up exercise during next control period. It is submitted that the Authority ought to pass reasoned order on issues like 'bifurcation of assets into aeronautical & non aeronautical' instead of leaving it for truing up to be taken up for next control period without assigning any cogent reason. It is submitted that 'merely paucity of time' cannot be regarded as a justifiable reason for not deciding the issue and accepting MIAL's proposal especially when there is a revenue asset mismatch which shows that 7% of total assets (nonaero assets) would be generating almost 49% of total revenues.*

*It is submitted that even if the Authority accepts the internationally applied ratio of 70:30 split between aeronautical and non-aeronautical assets, Target Revenue will reduce by 13%."*

6.7. On the issue of allocation between Aeronautical and Non-aeronautical Assets, BIA (I) stated as under

*“AERA has also tentatively decided to commission an independent study on the allocation of aeronautical and non-aeronautical assets for the next control period that would commence on 1<sup>st</sup> April, 2014 and that upon such a study being conducted, it may conclude that the allocation of such assets requires to be changed. In the event AERA chooses to decide the allocation of such assets for the next control period through an independent study, its present ad hoc approval of the same would result in a serious relinquishment of its duties under the AERA Act. AERA ought to carry out its statutory obligations by calling for independent studies and considering the same, before passing its final order on the airport tariff.”*

6.8. British Airways supported AERA’s decision to commission an independent study and make the necessary adjustments to the asset allocation at the commencement of the next control period from 1 April 2014 based on the results of this study.

**c MIAL’s Response to Stakeholder Comments on Issues pertaining to Allocation between Aeronautical and Non-aeronautical Assets**

6.9. MIAL responded to the stakeholder comments on the Asset Allocation. MIAL stated as under,

*“... as per Tentative Decision No. 9.b in the Consultation Paper, “The Authority also tentatively decided that it will commission an independent study in this behalf and would take corrective action, as may be necessary, at the commencement of the next control period commencing with effect from 01.04.2014”.”*

**d MIAL’s own comments on Issues pertaining to Allocation between Aeronautical and Non-aeronautical Assets**

6.10. MIAL has not provided its own comments on the issue.

**e Authority’s Examination of Issues pertaining to Allocation between Aeronautical and Non-aeronautical Assets**

6.11. The Authority notes that IATA has supported the Authority’s proposal to commission an independent study and to make necessary adjustment to the asset allocation based on the results thereof. However, FIA has commented that *“if the Authority were to accept the internationally applied ratio of 70:30 split between aeronautical and non-*

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*aeronautical assets, target revenue will reduce by 13%.”* FIA has not given details of the internationally accepted ratio of 70:30 between aeronautical and non-aeronautical assets. The Authority has not come across such a study. The Authority, however, notes that the calculation of aeronautical RAB depends on the facts in the specific case, namely what proportion of the assets can actually be ascribed to aeronautical use. The WACC as well as depreciation pertains to such aeronautical RAB. The Authority is also not aware of any empirical relationship between area of / investment in non-aeronautical assets and non-aeronautical revenues generated therefrom. In Authority’s view, aeronautical RAB does not depend on any pre-defined notional split between aeronautical and non-aeronautical assets. Perhaps what FIA has in mind is that larger area for non-aeronautical use, if made available, is likely to result in higher non-aeronautical revenues of which higher quantum (though at 30%) would be made available towards aeronautical charges. This is quite different from applying any notional ratio of 70:30 for aeronautical and non-aeronautical assets. At any rate, the Authority has proposed to take the non-aeronautical revenue on actuals so that if and when the non-aeronautical revenue is increased, correspondingly higher income would be available for aeronautical tariffs.

**6.12.** The Authority has also noted the statement of FIA that regarding what FIA class *“revenue asset mismatch”* in that *“7% of total asset (non-aero assets) would be generating 49% of total revenues”*. It appears to the Authority that FIA has not properly appreciated the aspect that the quantum of non-aeronautical revenue may not bear any linear relationship with the underlying assets thereof. If that were so, and if the other submission, namely, the alleged international split of 70:30 between aero and non-aero assets were to be accepted, it would mean that percentage of non-aero revenue would be 200% of the total revenue, an obviously meaningless extrapolation.

**Decision No. III.      Regarding Allocation between Aeronautical and Non-aeronautical Assets**

**III.a.      The Authority decides, for the present and in absence of any other relevant basis for allocation, to accept the proposal made by MIAL on allocation of assets into aeronautical and non-aeronautical assets on the basis of area as per Table 6.**



**Table 6: Overall Aeronautical Assets on area basis as a % of Total Assets**

Allocation of Assets	FY 10	FY 11	FY 12	FY 13	FY 14
Aeronautical Assets (Segregation Based on Area) (%)	89.92%	91.87%	91.18%	92.78%	93.11%

**III.b. The Authority decides to commission an independent study in this behalf and take corrective action, as may be necessary, at the commencement of the next control period commencing with effect from 01.04.2014.**

**Truing Up: 1. Correction / Truing up for Allocation between Aeronautical and Non-aeronautical Assets**

**1.a. The Authority also decides that upon analysis / examination pursuant to such a study, the Authority may conclude that the allocation of assets considered in this Order needs to be changed. In such a case it will consider truing up the asset allocation and consequently aeronautical RAB at the commencement of the next control period and giving appropriate effect to its impact on the X-factor, as is calculated in this Order.**

## 7. Operational Capital Expenditure

### a Authority's position on Issues pertaining to Operational Capital Expenditure in the Consultation Paper

7.1. The Authority had in the Consultation Paper No.22/2012-13 dated 11.10.2012, considered MIAL's submission regarding Operational Capital Expenditure (initial and as well MIAL's revised submission) as per Table 7 and Table 8 below:

**Table 7: Summary of Operational Capital Expenditure as per initial submission**

In Rs crore	FY 12	FY 13	FY 14	FY 15	Total
Operational Capital expenditure	106	116	85	173	480

**Table 8: Revised Operational Capital Expenditure, as submitted by MIAL**

In Rs crore	FY 12	FY 13	FY 14	FY 15	Total
Operational Capital expenditure	44	177	85	173	480

7.2. Section 13 (1) (a) (i) of the AERA Act lays down that the Authority shall determine the tariff for aeronautical services taking in to consideration the capital expenditure incurred and timely investment in improvement in airport facilities.

7.3. While finalising its Airport Order the Authority noted the concerns of stakeholders and Airports on the consultation protocol proposed by the Authority. The Authority reiterated its objective to propose a consultation protocol to be followed by Airport Operators in respect of the decisions to be made on capital investment. The Authority stated that it is a well-accepted principle and best practice that future development at the airport, primarily in terms of capital investment, needs to be informed by views expressed by users of airport. The consultation protocol provides a framework between Airport Operators and users which is intended to be an on-going, continuous process during the project life cycle that should inform decisions during key phases of investment planning.

7.4. The Authority noted that as per the principles of Tariff fixation, Schedule 1 of the SSA, the 9th principle is on the Consultation to be followed by the JVC i.e., MIAL. The principle states that *"The Joint Venture Company will be required to consult and have reasonable regard to the views of relevant major airport users with respect to planned major airport development"*.

7.5. In the Consultation Paper the Authority had indicated that in normal course, it would need to be assumed that MIAL have followed the principles enumerated in the SSA and

have ensured consultation with the stakeholder and have reasonable regard to the views of relevant major airport users with respect to planned major airport development. However, presently, no evidence whatsoever has been placed on record to support this assumption.

7.6. In view of the above, it appeared that on the basis of justification submitted by MIAL it is possible to consider the Operational Capital Expenditure for the years 2012-13 and 2013-14 are Rs 177.35 crores and Rs 85.3 crores respectively subject to a review of the actual expenditure.

**7.7. *In respect of the operational capital expenditure, the Authority had proposed to consider the operational capital expenditure as proposed by MIAL for the current control period towards project cost. The Authority noted that this project cost would also need to be separated between aeronautical and non-aeronautical activities to arrive at aeronautical asset base and thereafter aeronautical RAB. Further the Authority also had proposed to reckon these figures for the determination of X factor.***

**7.8. *The Authority had proposed that the future operational capital expenditure (FY 13 and FY 14) incurred by MIAL during the balance control period based on the audited figures and evidence of stakeholder consultation as contemplated in the SSA, as well as the review thereof that the Authority may undertake in this behalf, be reckoned for the determination of X factor. This review will also include the amount of Rs 177.3 crores for FY 13 and Rs 85.3 crores for FY 14, which the Authority has, for the present, reckoned for the determination of X factor.***

#### **a Stakeholder Comments on Issues pertaining to Operational Capital Expenditure**

7.9. On the issue of Operational Capital Expenditure, DIAL proposed that regular operating and maintenance capex required by major airports like Delhi and Mumbai year-on-year for upkeep and maintenance of the airport infrastructure should not be subject to stakeholders' consultation.

7.10. DIAL further stated that

*"This is further corroborated by the provision of the SSA which required consultation with the users in case any major development work of an estimated cost of over Rs. 100 crs needs to be carried out. Authority may*

*please appreciate the distinction between the major development work and regular/maintenance capex."*

**7.11.** IATA on the issue of Operational Capital Expenditure proposed that a cost cap be set for the future capital items identified. Furthermore, in its review, AERA should consider whether the airport has taken all necessary steps to ensure that project costs are kept as efficient as possible.

**7.12.** On the issue of Operational Capital Expenditure, FIA stated that

*"From Table 9 of the CP No.22/2012-13, it appears that aforementioned expenditure are capital expenditure for operations. However, it is not clear from the Consultation Paper as to why such capital expenditure (for the period FY13 to FY15) has been separately considered and not disclosed to the Financial and Technical Auditors during their review. Authority should call upon MIAL to provide reasons for considering this cost separately and not covering the same as part of audit.*

*Further, as per the principles of Tariff fixation, Schedule 1 of the SSA, the 9th principle provides that MIAL is obliged to consult the major airport users with respect to major development plan. However, as per the Consultation Paper, no evidence whatsoever has been placed on record evidencing that MIAL has undertaken such exercise.*

*It is submitted that considering, there is no evidence in place that MIAL has complied with provisions of SSA for operational expenditure of Rs. 177.35 crores and Rs. 85.3 crores to be incurred in FY13 and FY14, respectively, and such costs were not disclosed to Financial and Technical auditors during their review, it is not appropriate to consider such operational capital expenditure as part of Project Cost for the purpose of determining DF and aeronautical charges."*

**7.13.** FIA further asked whether MIAL's claim towards inflated operational capital expenditure should be allowed in absence of evidence of consultation with the major airport users.

**b MIAL’s Response to Stakeholder Comments on Issues pertaining to Operational Capital Expenditure**

7.14. MIAL responded to FIA’s question on allowing consideration of operational capital expenditure and stated that,

*“We take strong objection to the term ‘inflated’ used by the stakeholder which is without any basis and devoid of any substance.*

*It is to be noted that all projects pertaining to operational capital expenditure are below Rs. 100 crs, being the threshold for User Consultation.*

*.....Enough evidence and comparison has been provided to demonstrate that O&M costs at CSIA are among the lowest as compared to other similar airports in India. There is no reason to cap future capital items as all the capital expenditure are subject to audit, user consultation (in case of cost of Rs. 100 cr. or more) and review by the Authority. MIAL fully agrees to keep project cost as efficient as possible.”*

7.15. MIAL further responded on this issue and stated that

*“There is no reason to cap future capital items as all the capital expenditure are subject to audit, user consultation (in case of cost of Rs. 100 cr. or more) and review by the Authority. MIAL fully agrees to keep project cost as efficient as possible.”*

**c MIAL’s own Comments on Issues pertaining to Operational Capital Expenditure**

7.16. MIAL has not provided any comments on this issue.

**d Authority’s Examination of the Issues pertaining to Operational Capital Expenditure**

7.17. The Authority has examined the comments made by the Stakeholders and the response by MIAL to Stakeholder comments. The Authority has provided its detailed views on Operational Capital Expenditure in Para 8 of the Consultation Paper – 22/ 2012-13 dated 11.10.2012. With regards to the requirement of consultation, the Authority has referred to Schedule 1 of the SSA, the 9th principle, which states that *“The Joint Venture Company will be required to consult and have reasonable regard to the views of relevant major airport users with respect to planned major airport development”*. However the Authority also

notes from Clause 3.8.1 of the SSA, *“The JVC must prepare and submit to GOI a Major Development Plan for each major development or any development, which is expected to have a capital cost in excess of Rupees 100,00,00,000/- (Rupees One Hundred Crore Only). Each Major Development Plan must be in accordance with the OMDA and.....*

*.....and, in the case of aeronautical developments, must be the subject of full consultation with airport users and adequately take into account their requirements”.* The Authority expects that MIAL would follow the covenants of the agreements entered into regarding requirement of stakeholder consultation. The Authority, therefore, does not find any reason to reconsider its position taken on the issue of operational Capital Expenditure in Consultation Paper – 22/ 2012-13 dated 11.10.2012.

#### **Decision No. IV. Regarding Operational Capital Expenditure**

**IV.a. The Authority decides to consider operational capital expenditure of Rs 177.3 crores for FY 2012-13 and Rs 85.3 crores for FY 2013-14, after appropriate allocation into aeronautical assets, towards determination of X factor for the current Control Period. (The Authority noted that these operational capital expenditure amounts would need to be separated between aeronautical and non-aeronautical activities to arrive at aeronautical asset base and thereafter aeronautical RAB.)**

**IV.b. The Authority further decides that the future operational capital expenditure (FY 2012-13 and FY 2013-14) incurred by MIAL during the balance control period based on the audited figures and evidence of stakeholder consultation as contemplated in the SSA, as well as the review thereof that the Authority may undertake in this behalf, be reckoned for the determination of X factor. This review will also include the amount of Rs 177.3 crores for FY 2012-13 and Rs 85.3 crores for FY 2013-14, which the Authority has, for the present, reckoned for the determination of X factor.**

## 8. Regulatory Asset Base (RAB)

### a Authority's position on Issues pertaining to Regulatory Asset Base (RAB) in the Consultation Paper

8.1. In the Consultation Paper No.22/2012-13 dated 11.10.2012, it was indicated that MIAL have computed the RAB, representing aeronautical assets, for the purpose of their tariff application, as under:

$$\begin{aligned} & \text{RAB at the start of a period (Opening RAB) + Projected capital investment} \\ & \quad - \text{projected depreciation} = \text{RAB at the end of a period (Closing RAB)} \end{aligned}$$

8.2. MIAL had calculated RAB for each year as the average of the opening and the closing RAB. Changes in RAB values for various years over the control period have been computed by applying the aforesaid methodology. Further, the return was proposed to be calculated on average RAB. The computation of RAB for the control period, as submitted by MIAL vide their submission dated 11.10.2011, is as under:

**Table 9: Computation of Regulatory Base for the control period as submitted by MIAL**

(Amount in Rs. Crores)	2009-10	2010-11	2011-12	2012-13	2013-14
Opening Regulatory Asset Base	861	1,454	1,889	2,365	3,678
Less: Accumulated Depreciation	68	102	127	176	305
Add: Capitalisation during the Year	661	537	603	1,489	3,982
Closing Regulatory Asset Base	1,454	1,889	2,365	3,678	7,355
Average Regulatory Asset Base	1,157	1,671	2,127	3,021	5,516
Hypothetical Asset Base	1,587	1,587	1,587	1,587	1,587
Average RAB for Return	2,744	3,258	3,714	4,608	7,103

8.3. The Authority had noted that MIAL have used the abbreviation RB to denote the Regulatory Base as defined in the SSA whereas the Authority has used the abbreviation RAB to denote the same. The Authority noted that MIAL had applied following principles for computation of RAB:

8.3.1. MIAL had computed RAB for each year as average of opening and closing RAB.

8.3.2. Capital expenditure during the relevant year is added to the RAB.

8.3.3. MIAL had excluded DF funded assets from the RAB and had not claimed any depreciation on assets funded through DF assuming that replacement of such assets would be funded through DF.

8.3.4. MIAL had excluded upfront fee paid to AAI from the RAB

8.3.5. The CWIP not capitalised during the year has not been included in the RAB.

8.4. The Authority further noted in the Consultation Paper that the following approach has been adopted by MIAL for firming up RAB during the regulatory control period based on their submission dated 11.10.2011:

8.4.1. Financial year 2009-10 taken as the first year of the control period.

8.4.2. The closing RAB as computed for FY 2008-09 forms the opening RB for the first year of the control period.

8.4.3. The Assets capitalised during the year had been added to the opening RAB and adjusted for depreciation charged during the year to arrive at closing value of RAB for 2009-10.

8.4.4. RAB for other years of control period had been computed on similar basis.

8.5. MIAL, vide their initial submission dated 11.10.2011, provided the following year-wise and category-wise asset addition figures:

**Table 10: Year wise and category wise asset addition as submitted by MIAL**

(Amount in Rs. Crores)	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Buildings / Improvements	52.8	83.9	312.5	214.3	43.3	3.7	1,133.4	5,060.8
Runways	-	-	-	127.6	177.4	-	-	-
Taxiways and Aprons	74.7	17.5	169.5	-	316.8	294.5	91.5	330.8
Plant and Machinery	22.5	23.3	142.9	105.2	46.0	167.4	183.1	1,095.2
Computers	4.2	7.9	23.4	5.5	3.0	1.7	-	11.7
Office and Other Equipment	6.5	7.7	26.2	2.9	2.9	6.4	6.0	-
Furniture and Fixtures	4.7	7.0	11.7	7.2	7.5	34.3	-	277.8
Vehicles	0.1	0.0	0.1	(0.1)	-	-	-	-

**Observations on computation of RAB**

8.6. While reviewing the submissions made in respect of RAB, The Authority requested MIAL to submit clarifications/Auditor Certificates on the following aspects:



- 8.6.1. The historical year-wise and category-wise Asset Addition and CWIP figures;
- 8.6.2. The historical year-wise interest cost capitalised; and
- 8.6.3. The historical year-wise and category-wise Asset Addition figures in accordance with Income Tax Act, 1961
- 8.7. MIAL submitted the following certificates for consideration of the Authority:
- 8.7.1. The capital expenditure incurred year wise and CWIP figures;
- 8.7.2. The historical year-wise and category-wise Asset Addition;
- 8.7.3. The historical year-wise interest cost capitalised;
- 8.7.4. The historical year-wise and category-wise Asset Addition in accordance with Income Tax Act, 1961
- 8.8. The Auditor certifications for capital expenditure incurred, category-wise historical asset additions and historical interest cost capitalised were reviewed and certain differences were identified from the numbers submitted by MIAL with respect to the capital expenditure incurred, category-wise historical asset additions and historical interest cost capitalised. Consequently, numbers based on the Auditor's certificates with respect to these assets were updated in the financial model submitted by MIAL.
- 8.9. MIAL submitted year-wise and category-wise asset addition figures, as certified by their auditor, for financial years till 2011-12, which are presented below:

**Table 11: Revised Year-wise and Category-wise Asset addition figures as on 31.03.2012**

(Amount in Rs. Crores)	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Buildings / Improvements	52.8	83.9	312.5	214.3	43.3	123.5
Runways	-	-	-	127.6	177.4	136.6
Runways, Taxiways and Aprons	74.7	17.5	169.6	-	316.8	192.7
Plant and Machinery	22.5	23.3	142.9	105.2	46.0	17.7
Computers	4.2	7.9	23.4	5.5	3.0	2.4
Office and Other Equipment	6.5	7.7	26.2	2.9	2.9	0.3
Furniture and Fixtures	4.7	7.0	11.7	7.2	7.5	2.8
Vehicles	0.1	-	0.1	(0.1)	-	-

8.10. Further MIAL, vide their submission dated 26.06.12, revised the projected capitalisation for FY13. The revised year-wise and category-wise asset addition figures after considering revised projected capitalisation for FY13 are as under:

**Table 12: Revised Projected Capitalisation figures as on 31.03.2012**

(Amount in Rs. Crores)	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Buildings / Improvements	52.8	83.9	312.5	214.3	43.3	123.5	1013.6	5060.8
Runways, Taxiways and Aprons	74.7	17.5	169.5	-	316.8	192.7	56.7	330.8
Runways	-	-	-	127.6	177.4	136.6		
Plant and Machinery	22.5	23.3	142.9	105.2	46.0	17.7	306.2	1095.2
Computers	4.2	7.9	23.4	5.5	3.0	2.4	-	11.5
Office and Other Equipment	6.5	7.7	26.2	2.9	2.9	0.3	12.1	-
Furniture and Fixtures	4.7	7.0	11.7	7.2	7.5	2.8	31.5	277.8
Vehicles	0.1	0	0.1	(0.1)	-	-	-	-

8.11. As highlighted earlier, the Authority noted that MIAL had calculated RAB for each year as the average of the opening and the closing RAB and the return is calculated on average RAB.

8.12. The Authority had vide the Airport Guidelines decided that RAB for the purpose of determination of aeronautical tariffs shall be the average of the RAB value at the end of a tariff year and the RAB value at the end of the preceding tariff year, which is consistent with the approach adopted by MIAL in the tariff application.

8.13. The RAB value at the end of a tariff year is in turn determined in the above mentioned Guidelines as follows:

$$\text{Closing RAB} = \text{Opening RAB} + \text{Commissioned Assets} - \text{Depreciation} - \text{Disposals} + \text{Incentive Adjustments}$$

8.14. As per SSA the RAB for the year 'i' is to be determined in the following manner:

$$RB_i = RB_{i-1} - D_i + I$$

8.15. It would, therefore, appear that the regulatory base for the year 'i' is to be calculated by adding the asset additions undertaken during the year 'i' and subtracting the depreciation pertaining to the year 'i'. In absence of any other guidance, it has to be

understood that asset additions undertaken during the period essentially refer to the value of assets capitalised during the period.

**8.16.** The Authority, while reviewing MIAL submission on computation of RAB, noted that the project cost being proposed by MIAL comprised both aeronautical and non-aeronautical assets. Since RAB, as defined in SSA, should comprise only aeronautical assets, the project cost as submitted by MIAL needed to be segregated into aeronautical and non-aeronautical assets. The Authority has considered the issue of allocation of assets into aeronautical and non-aeronautical assets in para 6. The ratio to be applied for allocation of project cost to aeronautical assets, as proposed by the Authority, has been presented in Para 6.4.

**8.17.** The Authority further noted that RAB, as submitted by MIAL, comprised components of hypothetical RAB, operational capital expenditure and retirement compensation paid by MIAL to AAI. The Authority has discussed MIAL's submission in respect of all these three components. The discussion on operational capital expenditure, determination of hypothetical RAB and consideration of retirement compensation has been presented in Paras 7, 9 and 10 respectively.

**8.18.** The value of operational capital expenditure being considered by the Authority has been presented in Decision No. IV. However, such capital expenditure needs to be allocated into aeronautical assets through application of the ratio referred to in para 8.17 above.

**8.19.** The Authority had discussed the determination of hypothetical RAB, as proposed by MIAL, and the value of hypothetical RAB (proposed to be considered towards RAB) in Para 9. The Authority has further proposed not to consider retirement compensation as part of RAB.

**8.20.** Based on the above proposed views of the Authority, RAB values being considered by the Authority towards determination of Target Revenue are different from those proposed by MIAL.

**8.21.** From the formula given in SSA, it can be argued that the Return on RAB for the purpose of tariff determination is to be calculated based on the closing RAB. However, the determination of Return on RAB at the closing value of RAB has following associated issues:

- 8.21.1. Such an approach would tantamount to providing returns for the full period (year) for an asset which gets capitalised, say, even during the last month of the year

8.21.2. Such an approach would also tantamount to not providing any returns on an asset which gets disposed during, say, the last month of the year

8.22. In view of the above, it appears that the approach suggested by MIAL, which is to determine return on RAB at the average value of RAB would be acceptable at this stage of tariff determination. The same would be in accordance with the Airport Guidelines issued by the Authority.

8.23. Based on the above analysis, the Authority calculated the yearly RAB for the purposes of tariff determination according to the following Table 13 (considering the adjustment to RAB on account of DF as per MIAL's scheme of mapping capitalised assets onto DF collected). The Authority had proposed an alternative scheme indicated in para 8.40 below, and that the final calculation of Average RAB would be made taking into account the stakeholder's comments thereon.

**Table 13: Regulatory Asset Base as considered by the Authority for tariff determination in the Consultation Paper**

	2009-10	2010-11	2011-12	2012-13	2013-14
Opening HRAB	712.44	680.78	645.48	610.03	580.54
Depreciation	31.66	35.30	35.44	29.49	25.28
Closing HRAB	680.78	645.48	610.03	580.54	555.26
Opening Regulatory Asset Base	848.37	1,184.82	1,628.05	1,976.14	3,259.56
Depreciation & Amortisation	57.69	90.77	114.13	154.49	296.75
Capitalisation During the year	394.14	534.00	462.22	1,437.90	4,631.09
Closing Regulatory Asset Base	1,184.82	1,628.05	1,976.14	3,259.56	7,593.90
Average Regulatory Asset Base	1,016.60	1,406.44	1,802.10	2,617.85	5,426.73
Average HRAB	696.61	663.13	627.75	595.29	567.90
Net Regulatory Asset Base	1,713.21	2,069.56	2,429.85	3,213.14	5,994.63

8.24. *The Authority had proposed to calculate RAB for each year as the average of the opening and the closing RAB (as presented in Table 13) and calculate return for each year on the average RAB.*

***RAB adjustment on account of Actual date of commissioning/disposal of assets***

8.25. Pursuant to the issue of the Consultation Paper No. 32/2011-12 dated 3rd January 2012 in the matter of determination of Aeronautical Tariff(s) in respect of IGI Airport, New Delhi for the first Control Period, in response to stakeholder comments on calculating depreciation on actual date and not on the average of the year based on half way through

the tariff year, the Authority had analyzed and found that change in the basis of computation of depreciation led to difference in Target Revenue for the Control Period. The Authority, in Order No. 03/2012-13 dated 24.04.2012 in the matter of determination of aeronautical tariff in respect of IGI Airport, New Delhi (DIAL Tariff Determination Order), had decided that the difference in the amount of depreciation computed based on actual date of commissioning/ disposal of assets and depreciation computed considering that such asset had been commissioned/ disposed half way through the Tariff Year would be adjusted at the end of the Control Period considering Future Value of the differences for each year in the Control Period.

**8.26.** Further, in the said DIAL Tariff Determination Order, the Authority found that change in the basis of computation of depreciation would also have an impact on the value of RAB and associated Return on RAB. The Authority had decided that difference in the value of Return on RAB calculated based on actual date of commissioning/ disposal of assets and computed considering such asset had been commissioned/ disposed half way through the Tariff Year would also be adjusted at the end of the Control Period considering Future Value of the differences for each year in the Control Period.

**8.27.** The Authority, in the said DIAL Tariff Determination Order, had also decided that to maintain consistency in computations for the future Control Period, the regulatory accounts for the asset would be adjusted considering the actual date of commissioning / disposal.

**8.28.** The Authority had proposed to adopt a similar approach for MIAL in the Consultation Paper No.22/2012-13 dated 11.10.2012.

**8.29.** *In respect of Depreciation, the Authority had proposed that difference between the amount of depreciation calculated based on actual date of commissioning/ disposal of assets and the amount of depreciation calculated considering such asset has been commissioned/ disposed half way through the Tariff Year will be adjusted at the end of the Control Period considering Future Value of the differences for each year in the Control Period*

**8.30.** *Furthermore, the Authority proposed that the difference between the value of Return on RAB calculated based on actual date of commissioning/ disposal of assets and that calculated considering such asset has been commissioned/ disposed half way through*

***the Tariff Year will also be adjusted at the end of the Control Period considering Future Value of the differences for each year in the Control Period.***

***Adjustment of RAB on account of DF***

**8.31.** MIAL, in their MYT Proposal dated 11.10.2011, had stated that

*“Further, MIAL has excluded DF funded assets from the RB and has not claimed any depreciation on assets funded through DF assuming that replacement of such assets would be funded through DF.”*

**8.32.** As a principle, the Authority had proposed to reduce the aeronautical component of the allowable project cost by the amount of DF to arrive at the Regulatory Asset Base.

**8.33.** MIAL had provided the following details, certified by auditors, on the amount of DF collected by them till financial year 2011-12, assets funded through (Airport) Development Fee till financial year 2011-12 and Development Fee tied in Capital Works-in-Progress (CWIP). Essentially, out of the DF collected by MIAL till FY 2012 of Rs 636.6 crores (net of collection charges), MIAL had shown a capitalisation of assets of Rs 77.1 crores as per Table 14. An amount of Rs 595.5 crores was shown by MIAL to be tied in CWIP.

**Table 14: Details submitted by MIAL on ADF Collection and Assets funded through ADF (in Rs crores)**

	<b>FY10</b>	<b>FY11</b>	<b>FY12</b>	<b>Total</b>
Airport Development Fee collected	285.61	325.13	25.86	636.6
Assets funded through ADF	26.87	46.00	4.21	77.08
Capital Works-in-Progress funded through ADF	258.74	279.13	21.65	559.52

**8.34.** Apart from the application of DF towards assets funded through it (as per the submission of MIAL, Authority also noted that the final capitalisation schedule of the aeronautical RAB based on various submissions of MIAL and auditor certifications. The difference between the capitalisation schedule of tangible assets as per MIAL submission and that calculated by the Authority arises on account of disallowances to the project cost. The Authority had applied the same aeronautical/ non-aeronautical asset allocation as had been proposed by MIAL for the present (Refer para 6.3). The calculations as presented in the Consultation paper No.22/2012-13 dated 11.10.2012 are reproduced in the Table 15 hereunder:

**Table 15: Capitalisation schedule of the aeronautical RAB submitted by MIAL**

<b>(in Rs crores)</b>	<b>FY10</b>	<b>FY11</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>
Capitalisation Schedule of Tangible Assets (as per MIAL submission)	462.58	596.82	475.94	1,420.13	6,775.96

<b>(in Rs crores)</b>	<b>FY10</b>	<b>FY11</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>
Capitalisation of Aero RAB (as per Authority consideration) applying RAB disallowances as proposed by the Authority and applying the Aero/ Non-Aero allocation to capitalisation schedule	421.01	579.99	466.43	1,437.90	6,354.03

**8.35.** Pursuant to the Authority's Order No. 02/2012-13 dated 18.04.2012 in the matter of determination of DF in respect of CSIA , MIAL, in their submission dated 26.06.2012, had stated that

*“MIAL is in the process of obtaining a loan against securitization of approved Development Fee (DF) of Rs. 876 crores. The loan against DF is expected to be received in July 2012 and would be repaid over the remaining collection period of 21 months. Rate of interest for this loan is expected to be around 11.25% pa (excluding 0.75% as upfront fee) of the loan amount. Interest payable on the loan is charged to the profit & loss account.”*

**8.36.** The Authority had noted that the amount reflected in MIAL's submission towards DF funded assets is different from the amount of DF billed / collected in the respective year and the difference is being reflected as DF tied in Capital-Works-in-Progress (CWIP). MIAL submitted auditor certificates on the DF collected, value of DF funded assets as on 31.03.2012, and value of Development Fee tied in CWIP as on 31.03.2012.

**8.37.** The Authority further noted that MIAL has not considered any DF funded asset for capitalisation in FY 13. During discussions MIAL had submitted that the capitalisation of DF funded assets has been considered in August 2013 and August 2014 on account of commissioning of the domestic terminal and international terminal respectively.

**8.38.** The scheme proposed by MIAL along with their proposal for securitisation of DF discussed in para 8.35, essentially lead to inferring the following adjustments to RAB:

8.38.1. Reduction in RAB on account of DF, for the first three years of the current Control Period i.e. from FY 2009-10 to FY 2011-12, to be based on auditor certified figures of assets funded through DF mentioned in 8.33 above.

8.38.2. The DF amount of Rs 595.5 crores (tied in CWIP as on 31.03.2012) and additional Rs. 876 crores (billed and Rs. 780 crores proposed to be securitised after

issuance of Authority's order 02/2012-13 dated 18.04.2012) to be removed from RAB at the time of capitalisation of domestic terminal in August 2013.

8.38.3. Interest outgo on securitization of Rs. 780 crores to be considered as expense

8.38.4. The additional DF amount, as may be billed / securitised, will be removed from RAB in August 2013 since thereafter upto the end of the current Control Period i.e. 31.03.2014, there is no proposal for additional capitalisation.

8.38.5. The RAB reduction schedule would be as presented below:

**Table 16: RAB reduction schedule as per MIAL  
(in Rs crores)**

	<b>FY10</b>	<b>FY11</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>	<b>Total</b>
Capitalisation of Aero Asset (as per Authority consideration)*	421.0	580.0	466.4	1,437.9	6,354.0	<b>9,259.4</b>
Assets funded through ADF**	26.9	46.0	4.2	-	1,722.9	<b>1,800.0</b>
Capitalisation of Aero RAB, if MIAL's submission on assets funded through DF is accepted	394.1	534.0	462.2	1,437.9	4,631.1	<b>7,459.4</b>
Annual Depreciation charge on aeronautical RAB, if MIAL's submission on assets funded through DF is accepted	57.7	90.8	114.1	154.5	296.7	<b>713.8</b>

\* - As per the 2<sup>nd</sup> row of Table 15: Capitalisation schedule of the aeronautical RAB submitted by MIAL

\*\* - Figures till FY 12 are as per the 2<sup>nd</sup> row of Table 14: Details submitted by MIAL on ADF Collection and Assets funded through ADF and figures for FY 13 and FY 14 have been derived following MIAL's approach of DF capitalisation

**8.39.** With MIAL following the practice of mapping DF amounts to specific assets being constructed and subsequently capitalised, the Authority noted that this could imply mapping specific means of finance towards specific components of RAB. To this extent it would also impact determination of RAB and associated regulatory treatment (depreciation and return on RAB) for determination of tariff. The Authority sees the levy of DF as a measure of last resort. After levy of DF on passengers and billing of associated amounts in any given period, the above approach would appear to increase the burden on passengers if the assets being capitalised in the period are considered to be funded through other means of finance while assets funded through the amount of DF billed are taken to be capitalised with a time lag subsequently in later years.



**8.40.** Since, the Authority considered DF a measure of last resort, based on consideration of various aspects mentioned above, the Authority viewed the following alternate scheme of adjusting RAB on account of DF billed/ securitised as more appropriate:

8.40.1. Make adjustment to RAB during a particular year to the extent of DF amount billed/ securitised in that year in the current Control Period. This would imply applying this principle to the first three years of the Control Period as well.

8.40.2. Interest outgo on securitization to be considered as expense

8.40.3. The RAB reduction schedule as per this alternate scheme was proposed to be calculated as below:

**Table 17: RAB reduction schedule as per the Authority**

(in Rs crores)	FY10	FY11	FY12	FY13	FY14	Total
<b>Under scheme based on MYTP submissions by MIAL</b>						
Capitalisation of Aero Asset (as per Authority consideration)	421.0	580.0	466.4	1,437.9	6,354.0	<b>9,259.4</b>
Assets funded through ADF	26.9	46.0	4.2	-	1,722.9	<b>1,800.0</b>
Capitalisation of Aero RAB, if MIAL's submission on assets funded through DF is accepted	394.1	534.0	462.2	1,437.9	4,631.1	<b>7,459.4</b>
Annual Depreciation charge on aeronautical RAB, if MIAL's submission on assets funded through DF is accepted	57.7	90.8	114.1	154.5	296.7	<b>713.8</b>
<b>Under alternative scheme considered by the Authority</b>						
Capitalisation of Aero Asset (as per Authority consideration)	421.0	580.0	466.4	1437.9	6354.0	<b>9,259.4</b>
Assets funded through ADF*	285.6	325.1	25.9	981.3	437.0	<b>2,055.0</b>
Capitalisation of Aero RAB (as per Authority consideration)	135.4	254.9	440.6	456.6	5,917.0	<b>7,204.4</b>
Annual Depreciation charge on aeronautical RAB	50.3	69.7	86.2	102.1	249.4	<b>557.6</b>

\* - Figures till FY 12 are as per the 1<sup>st</sup> row of Table 14: Details submitted by MIAL on ADF Collection and Assets funded through ADF and figures for FY 13 and FY 14 have been derived following the Authority's approach of DF capitalisation

**8.41.** It was indicated in the Consultation Paper that the annual depreciation charge under the alternative scheme considered by this Authority is lower than that according to MIAL's scheme. Lower depreciation would result in lower X-factor, ceteris paribus.

**8.42.** The Authority noted that under both the approaches (MIAL's treatment as well as the Authority's alternative scheme), the DF levy, at the rates discussed in the Consultation Paper No.22/2012-13 dated 11.10.2012, would continue after the completion of the Project based on the present traffic projections. The Authority had in the Consultation Paper

No.22/2012-13 dated 11.10.201, recommended that the RAB adjustment on account of DF for the next control period may be considered as under:

8.42.1. RAB adjusted on account of DF billing / additional amounts securitised in respective future years;

8.42.2. On the declared date of project completion (as of now expected by MIAL to be August 2014), the RAB to be reduced by balance of DF to the extent not already reckoned/ adjusted

8.42.3. The interest outgo on securitisation of DF to be considered as expense

**Table 18: Illustration of calculation of RAB reduction under the alternative scheme of the Authority for accounting of DF**

Particulars (in Rs crores)	Amount
Final DF approved	2,000
DF amount billed upto the date of project completion	1,200
DF securitized amount	500
Amounts remaining to be billed / securitized as on date of project completion	300
Deemed RAB reduction on the date of project completion (balance of DF to the extent not already reckoned / adjusted)	300

8.42.4. The Authority had in Consultation Paper No.22/2012-13 dated 11.10.2012, indicated that the figures in the above table are merely for the purpose of illustrating the proposed scheme for the purposes of calculating impact of DF on RAB reduction on the date of completion of the project and that the actual figures may vary.

8.42.5. Further, the Authority also noted that MIAL may be able to make efforts in future and make alternative arrangements for means of finance before completion of the project including the funding gap of Rs. 819.05 crores (reference tentative Decision No.6 proposed by the Authority in Consultation Paper No.22/2012-13 dated 11.10.2012), where in such a case the Authority would review the levy of DF and make appropriate adjustments to RAB.

**8.43.** The Authority had in the Consultation Paper No.22/2012-13 dated 11.10.2012, proposed that pursuant to stakeholder consultations, it will seek auditor certification from MIAL of the amounts proposed to be adjusted from RAB under the alternate scheme presented at para 8.40 above and that the Authority will thereafter take a final view in the

matter and consider such RAB reduction schedule in the final calculations as part of the final Order on determination of tariffs and DF for MIAL.

**8.44. *The Authority had proposed to consider DF funding of RAB such that RAB to be capitalised in any tariff year would be first reduced to the extent of DF amounts billed / securitised and not already reduced from RAB.***

**8.45. *The Authority proposed to true up the RAB adjustment on account of DF based on actual RAB capitalisation schedule as well as the actual DF billing / securitisation schedule subject to Authority's review of the same.***

**b Stakeholder Comments on Issues pertaining to Regulatory Asset Base (RAB)**

**8.46.** The Authority has received comments from Stakeholders on its position on the issue of adjustment of RAB on account of DF as stated in the Consultation Paper 22/2012-13 dated 11.10.2012.

**8.47.** On the issue of adjustment of RAB on account of DF, ACI stated that the approach of AERA is inappropriate and needs to be modified. ACI further stated that amounts collected as DF can only be deployed towards assets that are under construction at that point in time and no way can be deployed towards that part of the assets on which cost has already been incurred before collection of DF. ACI also stated that assets undergo a typical construction cycle before they are completed and put to use. Assets capitalized in any year would normally take say 12 to 24 months for construction. ACI stated that reduction of entire amount billed as DF in a year, from the RAB, fails to recognize this construction cycle of any asset. ACI further stated that the approach suggested by the Authority will tantamount to denial of returns to debt and equity holders for the capital provided by them during the relevant period.

**8.48.** ACI further stated that CSIA has followed correct treatment which should be accepted by the Authority. ACI further proposed that

*"In case AERA still thinks otherwise, we strongly suggest to follow alternative approaches such as a) Apportion the DF collected in a particular year in the proportion of assets capitalized to incremental Capital expenses incurred and portion of DF related to capitalized asset is reduced from the*

*RAB or b) make the proposed approach effective from FY 13 and not for the past period i.e. upto FY 12."*

**8.49.** On the issue of adjustment of RAB on account of DF, CII stated that

*"The approach proposed by the Authority is not appropriate as it completely ignores the factual position and books of account maintained by the company. Company has been maintaining all the records for utilization of DF receipts and payments and has been utilizing these funds for construction of aeronautical assets in accordance with the approval of MoCA / AERA, as the case may be. Entire expenditure from DF funds has been subject to audit by Independent Auditor appointed by AAI and monthly reports for collection and utilization of DF have been submitted by the auditor to AAI/MOCA/AERA as applicable confirming that DF funds have been utilized in accordance with the approval. Company has also ensured usage of DF funds for construction and development of aeronautical assets as and when DF funds were available to ensure that approvals are complied in toto.*

*There has been no direction either from the Authority or MoCA that requires utilization of the entire DF funds towards assets that are to be capitalized in a given year. Neither has the Authority adopted this approach in the Tariff Order for IGI Airport, New Delhi. In this context, approach followed by MIAL should be accepted by the Authority without any change. However, if the Authority still decides otherwise, CII is of the view that the following two alternatives approaches should be considered for the purpose of adjustment of RAB:*

*a) Not to make any adjustment for the past period i.e. up to FY 12 and adopt the proposed approach from FY 13 onwards; or*

*b) The DF collected in a year may be apportioned in the ratio of assets capitalized in that year to incremental Capex incurred in that year and part of DF which is apportioned to capitalized asset may be reduced from the RAB. "*

**8.50.** APAO on the issue of adjustment of RAB on account of DF stated that

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*“DF is collected to fund construction and development of identified Aeronautical Transfer Assets, which typically take more than a year to build. While some of the DF funds may be deployed towards assets that get capitalized in the same year as that of DF billing / securitization, the remaining portion of the DF funds would go towards capital work-in-progress (CWIP). It would be inappropriate to reduce the capitalized RAB by the quantum of DF funds tied in CWIP.*

*Aeronautical assets of MIAL will be funded through a mix of equity, debt, RSD, IRG and DF. On account of various practical constraints, it is not possible to entirely fund the assets that are to be capitalized in a particular year through DF alone; other means of finance such as equity and debt are also used. If the approach suggested by Authority is considered and the RAB is adjusted entirely for the DF collected, equity and debt providers will be denied return for their contributions.*

*DF collected during a year can only be deployed towards assets that are under construction. Some of these assets would be ready for capitalization in the same year; other assets, for which DF funds were also utilized, would still be in WIP stage. In this context, it is erroneous to assume that all DF funds billed /securitized in a year can be capitalized in the same year. The approach of the Authority is also not in accordance with the accrual basis of accounting.*

*Actual utilization of DF funds, in respect of assets funded through it, is scrutinized by the Independent Auditor appointed by AAI. Further, monthly reports on collection and utilization of DF have been submitted by MIAL to AAI/MOCA/AERA. The approach suggested by the Authority completely disregards the utilization of DF funds for identified assets, which are clearly verifiable as capitalized and work-in-progress assets.*

*It is pertinent to note that the Airports Authority of India (Major Airports) Development Fees Rules, 2011 does not provide any guideline on adjustment of DF against capitalized assets.*

*Approach suggested by Authority is impractical, possible only with the advantage of hindsight and at the best could be considered as only theoretical. As explained above, it is incorrect to consider that a particular asset or assets capitalized in a year has been funded entirely through DF considering the fact that:*

*a) construction cycle of most of the assets is more than a year and for some assets it is as long as five years*

*b) completion date of some of the projects might change from original estimates due to various reasons and after having made payment from DF it may not be possible to capitalize the asset in that year*

*c) mismatch in cash-flows between requirement and availability of DF funds*

*APAO would request the Authority to take into account the extent to which DF billed / securitized in a given year is actually capitalized for the purpose of adjustment of the RAB.”*

**8.51.** AAI on the issue of adjustment of RAB on account of DF stated that

*“In the MYTP proposal, the AERA has followed the policy of the DF billed/securitized to be first adjusted against the completed assets in that financial year and any balance DF thereof is assumed to have funded the capital works in progress. MIAL has contended saying the amount of assets capitalized in all financial years exceed the DF billed/securitized and as a result the entire DF amount is assumed to have been utilized towards capitalized Eligible Assets which is not fair and as per normal practice.*

*In normal practice the amount of DF collected should be adjusted against the assets for which it has been sanctioned. However, as the AERA order does not specify the assets which are to be funded by DF, it is felt that the following methods can be adopted:*

*Adjust the amount of DF collected against assets for which it has been utilized, if it can be identified through any proper means and records/ alternatively apportion over all the eligible asset proportionately. The*

*treatment should be as per the guidelines given in AS- 12 issued by Institute of Chartered Accountant regarding grant against the asset.”*

**8.52.** Bid Services Division (Mauritius) Limited and ACSA Global Limited have provided comments on issue of Adjustment of RAB on account of DF and stated as under,

*“The Authority has proposed that RAB to be capitalized in any tariff year would be first reduced to the extent of DF amounts billed / securitized and not already reduced from RAB.*

*Amounts collected as DF can only be deployed towards assets that are under construction at a given point in time. The Authority will appreciate that after funds are available assets undergo a typical construction cycle before they are ready to be capitalized. Assets capitalized in a year normally take 2 to 3 years to construct. Reduction of all funds collected as DF in a year, from the RAB, fails to recognize this construction cycle. It also fails to recognize the other means of finance used to fund assets that are being capitalized. The approach suggested by the Authority will not compensate debt and equity holders for the capital employed by them and will be completely unjust to them.*

*Collection and utilization of DF funds is governed by the orders issued by MOCA and AERA from time to time. These funds have been subject to monthly audit by the independent auditor appointed by AAI who has been certifying collection and utilization of these funds in accordance with the orders issued by MOCA / AERA and SOP issued by AAI. MIAL has ensured that DF is utilized fully in accordance with these orders. More over MIAL, in order to ensure strict compliance with these orders, decided not to use DF funds to pay for expenses such as interest and pre-operative expenses, fee paid to architect, PMC and other consultants although they form part of the capital cost of an asset and therefore value of assets capitalised would include these expenses as well but these were not paid from DF funds.*

*We are not aware about any direction or guidelines either from Ministry of Civil Aviation or AERA that required DF collections to be used first towards assets that are to be capitalised every year. Neither has the Authority*

*adopted this approach in the Tariff Order for IGI Airport, New Delhi. It is pertinent to mention that Authority ought to have consistency in its approach as enshrined in the Schedule 1 of SSA and therefore we would request AERA not to change its approach in the instant case and accept the approach followed by MIAL in its books of account.”*

**8.53.** As regards the adjustment of RAB on account of DF, proposed by the Authority in its Consultation Paper – 22/ 2012-13 dated 11.10.2012, Assocham felt that *“AERA has proposed to reduce RAB to the extent of DF billed / securitized in each year irrespective of the fact as to when construction of the assets commenced, completed and where DF collection was utilized and in complete disregard of the audits conducted by independent auditor appointed by AAI on a monthly basis certifying collection and utilization of DF receipts.”*

**c MIAL’s Response to Stakeholder Comments on Issues pertaining to Regulatory Asset Base (RAB)**

**8.54.** MIAL has responded to the observations of CII and stated as under,

*“...While we broadly agree with the view of CII however suggestion of CII for allocation of DF in the ratio of assets capitalized to incremental CWIP in a year is not correct as such allocation, without prior intimation, is also an adhoc approach. Secondly it will also discriminate among other similar airports where no such hypothetical basis was adopted by the Authority...”*

**d MIAL’s own Comments on Issues pertaining to Regulatory Asset Base (RAB)**

**8.55.** MIAL submitted its own comments on the above issue and stated as under,

*“It is requested that the Authority may accept accounting of DF carried out by MIAL as per accepted and well established accounting policies and practices. The proposal of the Authority in this regard may kindly be withdrawn.*

*The DF fund was to be utilised only for the development of Aeronautical Assets, which are Transfer Assets, as per terms of OMDA (“Eligible Assets”).*

*MIAL started levy and collection of DF at CSI Airport, Mumbai, with effect from April 1, 2009 and had collected Rs. 641 crs. against the said order up*



*to 26th April 2011. Levy of DF was discontinued by an order of the Hon'ble Supreme Court w.e.f. 26th April, 2011. Post the Supreme Court order, AERA vide Order No. 2/2012-13 dated April 16, 2012, after following consultation process, approved DF of Rs. 1,517 crs. inclusive of Rs. 641 crs. already collected. This order did not specify any condition or instruction for any particular manner of utilisation of DF and accordingly accounting on hypothetical basis. There is also no mention of the process of DF adjustment from RAB either in AAI Act and AERA Act.*

*Further, Rule 5 of the Airports Authority of India (Major Airports) Development Fees Rules, 2011,(DF Rules), stipulates the utilisation of development fees in respect of airports other than airports managed by the Authority i.e. Airports Authority of India (AAI). In the said Rule, it may be kindly observed, there is no provision for hypothetical accounting.*

*As per the said DF Rules, the amount collected as DF is put in a separate escrow account and is utilised by MIAL towards payment for cost of Eligible Assets under construction. MIAL has always followed a consistent practice, compliant with the applicable laws, in utilising DF towards Eligible Assets. Further the escrow account is subject to independent audit by an Auditor appointed by AAI. The report issued by the said independent auditor is submitted to AAI, MoCA and AERA on a regular basis. It may be noted that so far no objections or suggestions on the said reports have been received from any of the Authorities including AERA. In the Consultation Paper, the Authority has proposed to adopt a hypothetical basis for the adjustment of DF billed / securitised against the assets capitalised in a particular financial year. The DF billed / securitised is to be first adjusted against the assets capitalised in that financial years and any balance DF thereof is assumed to have funded the capital works in progress. Since the amount of assets capitalised in all financial years exceed the DF billed / securitised, the entire DF amount is assumed to have been utilised towards capitalised Eligible Assets.*

*It is quite evident from the consultation papers and orders issued by AERA in the past, that it never intended to adopt such hypothetical adjustment. Additionally, in the tariff order issued by AERA for Indira Gandhi International Airport (IGI Airport), Delhi no such hypothetical adjustment has been made.*

*This approach of AERA is devoid of any sound accounting principle. If this approach of AERA is adopted then audit also becomes superficial, as the DF will be adjusted hypothetically against the capitalised assets. We believe that such a hypothetical adjustment was never the intention, while approving DF, of MoCA and AERA.*

*It is well established that any method of accounting which is consistent and is not against any accounting principle and has been duly subjected to audit should not be rejected by adopting a hypothetical adjustment.*

*It is quite clear that accounting practice adopted by MIAL in respect of the DF is as per normal practice and fully supports the control of funds by, inter alia, tracking used of its withdrawal to a particular assets while hypothetical adjustment as proposed by AERA is not normal. Even if such was the intention of MoCA or AERA, it should have been properly spelt out in the respective orders or should have been pointed out while all details of utilization, duly audited, were being submitted from time to time.*

*It will not be out of place to mention that if any unique treatment is adopted under any statute, it is clearly spelt out in relevant section itself or under relevant Rules.*

*In support of accounting, which MIAL has adopted, we would like to bring to notice of the Authority the following facts:*

*MIAL utilised DF collected so far entirely to meet cost of the project for creation of Eligible Assets.*

*The Integrated Terminal is the biggest and largest Aeronautical Transfer Asset to be built at CSIA. Commencement of construction of the Integrated Terminal in FY 09 coincided with the commencement of DF collection. In order to meet the compliance requirements and subsequent audit*

*requirements, MIAL had decided to limit the use of DF funds to a few identified assets that, inter alia, included Terminal 2 (including south-west pier). The sequence of capitalisation of assets had no bearing on the selection of asset to be funded through DF.*

*Further, the Authority, in para 9.36 of the Consultation Paper, has stated that since DF is a funding of last resort, it should be first adjusted against assets capitalised in a year so that the passengers are not burdened. But, it is humbly submitted, this explanation by the Authority in no way justifies retrospectively adopting hypothetical accounting.*

*Even if DF is the funding of last resort, retrospective hypothetical adjustment towards assets completed in a year is not justified. Assuming, that in a case where DF is utilised for an asset to be completed in a financial year and the asset is not capitalised due to unavoidable delays in completion, then in such a case it will not be possible, midway, to divert the utilisation to any other completed projects.*

*But if the approach of the Authority is adopted, it has to be assumed that DF is utilized for such completed assets, which is a deviation from the normal and well accepted accounting practices.*

*Amount of DF securitised in FY 13 is 750 crs.”*

**e Authority’s Examination of Issue pertaining to Regulatory Asset Base (RAB)**

**8.56.** The Authority has examined the comments from the stakeholders and the response made by MIAL to stakeholder’s comments. The Authority has also noted MIAL’s own comments on the issue. The Authority’s views are as follows:

**8.57.** The Authority has received a letter from Airports Authority of India (forwarded by MoCA vide letter no AV20036/4/2010-AD dated 21.12.2012), wherein AAI stated that,

*“1. As per the Airports Authority of India Development Fee Rules, 2011, the amount collected as DF should be utilized towards payment for the cost of Eligible Assets. As per approval, DF was to be utilized only for the development of Aeronautical Assets which are Transfer Assets. However, AERA while issuing this order has not mentioned specific condition for*

*manner of utilization of DF and did not mention any specific assets which are to be funded through DF.*

*2. In the MYTP proposal, the AERA has followed the policy of the DF billed/securitized to be first adjusted against the completed assets in that financial year and any balance DF thereof is assumed to have funded the capital works in progress. MIAL has contended saying the amount of assets capitalized in all financial years exceed the DF billed/securitized and as a result the entire DF amount is assumed to have been utilized towards capitalized Eligible Assets which is not fair and as per normal practice.*

*In normal practice the amount of DF collected should be adjusted against the assets for which it has been sanctioned. However, as the AERA order does not specify the assets which are to be funded by DF, it is felt that the following methods can be adopted:*

*i) Adjust the amount of DF collected against assets for which it has been utilized, if it can be identified through any proper means and records/alternatively apportion over all the eligible asset proportionately.*

*ii) The treatment should be as per the guidelines given in AS- 12 issue by Institute of Chartered Accountant regarding grant against the asset.”*

**8.58.** The Authority notes that the adjustment of RAB on account of DF has meaning when DF is received by the Airport operator to be utilized for aeronautical assets. It also notes that the DF collected by the airlines flows into the DF escrow account as provided in the AAI (Major Airports) Development Fee Rules, 2011 According to these Rules, the Airport Operator is required to submit a drawdown schedule to AAI based on which AAI disburses the DF amount to the Airport Operator. Hence it is only the DF amount which has been disbursed by AAI to the airport operator would be available to him for deployment in the project. If, however, the Airport Operator securitizes the DF amount, the disbursement(s) made by the lender(s) to the Airport Operator would be the amount attributable to DF, that is available with the Airport Operator for deployment in the project.

**8.59.** The Authority has also noted the AAI's observation that "AERA while issuing this order has not mentioned specific condition for manner of utilization of DF and did not mention any specific assets which are to be funded through DF". Regarding the condition for

manner of utilization of DF, the Authority observes that vide its Order No. 29/2012-13 dated 21.12.2012, the Authority had, inter alia, decided as under,

*“The Authority decides that the amount of Development Fee, levied and collected at CSI Airport, Mumbai, will be utilized by Mumbai International Airport Limited in accordance with provisions of Airports Authority of India (Major Airports) Development Fees Rules, 2011.”*

**8.60.** The Authority has carefully considered the two options indicated by AAI in the above letter for adjustment of RAB on account of DF as well as the reference to Accounting Standard 12. The Authority notes that in the first alternative, AAI has suggested to adjust RAB by the amount of DF collected *against assets for which it has been utilized, if it can be identified through any proper means and records (emphasis supplied)*. In its submissions to the Authority, MIAL has mapped different assets to be funded through DF and as and when those aeronautical assets get capitalized, the DF component that MIAL had ascribed to these aeronautical assets, get subtracted from the capitalized amount of these aeronautical assets. The Authority notes that under the Rule No 5 of AAI (Major Airports) Development Fee Rules, 2011, the Operator is required to submit a drawdown schedule to AAI, based on which instalments of DF are disbursed to the airport operator. The Airport operator has also to submit an utilization certificate within 15 days of the end of every quarter of the Financial Year. Coming to the operation of AS 12, as indicated by AAI, the Authority has given consideration to this aspect. AS 12 is regarding “Accounting for Government Grants” issued by ICAI. In this Standard, Government Grants are defined as *“Government grants are assistance by government in cash or kind to an enterprise for past or future compliance with certain conditions.”* One of its Main Principles state that, *“Government grants related to specific fixed assets should be presented in the balance sheet by showing the grant as a deduction from the gross value of the assets concerned in arriving at their book value.”*

**8.61.** The Authority therefore notes that AAI has treated DF as a kind of Government Grant. However the Authority also notes that according to the above principle of AS 12 the decision to grant subsidy across one or more assets rests with the Government. However, in the case of MIAL, this is not so and that the initial decision of mapping of specific aeronautical assets onto DF remains with MIAL. Hence the Authority feels that adjustment of RAB on account of DF can be better based on the progress of capital expenditure both in

terms of capitalized assets and capital works-in-progress and based on the audited figures thereof.

**8.62.** The Authority therefore decides to adopt the second approach (alternative approach) suggested by AAI namely adjust the amount of DF collected apportioned over all the eligible asset proportionately. For this purpose, the DF that MIAL receives in its hand each year is considered relevant for the purposes of such apportionment. The Authority has also noted that MIAL has securitized an amount of Rs. 750 Crores in the month of August 2012, the disbursement of which would be made by lenders in accordance with mutually agreed tranches. The repayment of the instalments to the banks as well as interest thereon would be made from the DF receipts in the hands of the airport operator. The Authority also understands that after its Order 29/2012-13 dated 21.12.12 MIAL may further securitizes the DF so determined, the repayment of which would also commence. The Authority recognizes that some or all part of the DF amount disbursed by AAI to MIAL in a given year may be required for repayment to the lender. The Authority understands from the structure of the DF loan securitization that the entire DF received by MIAL from AAI would be used for servicing of the DF loan. Hence, the Authority has decided that the RAB may be adjusted each year according to the following scheme:

**8.63.** The following will be taken into account while determining the DF amount that will be considered for apportionment in any particular year will comprise of following elements

- 1 DF disbursed by AAI to MIAL / received by MIAL in a given year
- 2 Disbursement made by the lender to MIAL in that year on account of securitization
- 3 DF (including disbursement, if any, as of item 2 above) that has been apportioned towards CWIP in the Previous Year (and will be brought forward for the given year)
- 4 Repayment of DF securitize loan (principal and interest) as certified by the auditor.
- 5 The total DF that will be available in the given year for apportionment towards expenditure incurred in the given year on assets capitalized in that year and expenditure incurred towards CWIP in that year would be  $1+ 2+ 3 -4$ .

**8.64.** Thus, the Authority would take the capital expenditure incurred in a particular year pertaining to aeronautical assets. The Authority notes that the aeronautical assets, which have been capitalized in a year, may be segregated into two sets of assets; (i) on which some expenditure has been incurred and the assets have been capitalized (ii) on which no

expenditure has been incurred but the assets have been capitalized in this year. For the purpose of arriving at the figure, which is to be considered for adjustment of RAB, the whole set (i + ii) of assets would be considered. Out of this expenditure incurred towards aeronautical assets, the Authority would consider segregation of this expenditure into two parts; (i) the assets, which have been capitalized in that year and (ii) aeronautical CWIP, which will capture the remaining expenditure in that year. For the purpose of apportioning of DF (as determined in Para 8.62 above), the Authority would consider the ratio of these parts (i.e. expenditure incurred towards aeronautical assets capitalized in a year to total expenditure incurred pertaining to aeronautical assets). The ratio thus arrived will be applied to the total DF (as determined in Para 8.62 above) to calculate that amount of DF which will be deducted from the value (total expenditure) of such capitalized aeronautical asset in that year. The remaining DF amount would be considered to have been applied towards aeronautical CWIP for that year and will be brought forward to the next year. This brought forward aeronautical CWIP will be considered for apportionment of DF in the next year. It is further clarified that in the last year of project completion any remaining balance of DF sanctioned by the Authority would be adjusted in the RAB in that year.

**8.65.** For the purpose of clarity, the scheme discussed in para 8.63 and 8.64 above is illustrated below:

		First Year	Second year
(a)	Expenditure incurred pertaining to aeronautical assets	P1	P2
(b)	Expenditure incurred towards aeronautical assets capitalized out of (a)	Q1	Q2
(c)	Expenditure considered to be part of aeronautical CWIP out of (a)	P1-Q1	P2-Q2
(d)	Total DF disbursed by AAI	D1	D2
(e)	B/F DF considered as a part of CWIP	0	$D1 * (1 - \gamma_1)$
(f)	Total DF to be apportioned (f=d+e)	D1	$D3 = D2 + D1 * (1 - \gamma_1)$
(g)	Ratio for apportionment of DF pertaining to Capitalized Assets	$\gamma_1 = Q1/P1$	$\gamma_2 = Q2/P2$

(h)	DF apportioned to Capitalized Assets	$D1 * \gamma_1$	$D3 * \gamma_2$
(i)	DF considered as part of CWIP	$D1 *(1-\gamma_1)$	$D3 *(1-\gamma_2)$

**8.66.** The Above table is for the purpose of illustration and does not include either loan disbursement on account of DF securitize or its repayment. These components would be suitably factored into as per Para 8.62 above)

**8.67.** In line with formulation presented in Para 8.62 to 8.64 above, the amount of DF apportionment to capitalized assets would be subtracted from the value of total aeronautical assets capitalized in a given year (nth year) to arrive at the addition to RAB (form the previous year) on account of such capitalized aeronautical assets in the given year. This calculation would yield the value of aeronautical RAB in the given year on which weighted average cost of capital would be applied. However depreciation would need to be calculated on the addition to RAB in the given year.

**8.68.** Steps to be followed for the purpose of calculating the depreciation for aeronautical assets capitalized in a year, where MIAL would receive certain fund on account of DF (either from AAI or Securitization), are stated as follows. The amount of DF, determined to be apportioned to capitalized assets, will be apportioned over all the assets, which form part of such capitalized aeronautical assets in particular year (nth year), in ratio of respective value of capitalization of these assets. After adjusting the value of each such asset by apportioned DF, their respective residual value will be subjected to respective rates of depreciation to arrive at the depreciation for that asset in that year (nth year). The value of depreciation, thus arrived, will be considered towards determination of aeronautical tariff. For the purpose of clarity, it is stated that this value of depreciation would be a part of the total depreciation to be considered as a building block for determination of aeronautical tariff for that year (nth year). Depreciation for this block of assets in future years (year n+1, n+2 onwards) would need to be calculated on their respective residual values.

**8.69.** Similarly for the next year ((n+1)th year) another block of aeronautical assets would be identified, which have been capitalized in this year ((n+1)th year) and same approach of segregation into assets capitalized and assets under CWIP, apportionment of DF over assets capitalized, adjustment of value of assets by the apportioned DF and calculation of depreciation on the residual value of assets would be performed. Depreciation for this block



of assets (which were capitalized in (n+1)th year) in future years (year n+2, n+3 onwards) would need to be calculated on their respective residual values.

**8.70.** The Authority notes that this approach (as stated in Para 8.69 above and 8.70) of determination of depreciation may be different from the one followed by MIAL for its books of accounts and also notes that to this extent a separate regulatory account for capitalization of assets, DF adjustment, determination of RAB and determination of depreciation would need to be maintained by MIAL. MIAL will need to provide all auditor certificates necessary for the Authority to perform these calculations.

**8.71.** Further, the calculation of depreciation of the asset in a particular year would have reference to the actual date of its capitalization and the provisions for calculation of depreciation in the Schedule XIV of the Indian Companies Act, 1956. While calculating the depreciation for aeronautical assets to be capitalized in future years where DF adjustment needs to be made, the approach of mid-year capitalization may be followed, subject to true-up on account of actual dates of completion in the next control period.

**8.72.** In order to be able to implement these steps of DF adjustment for determination of aeronautical tariff for the current Control Period, the Authority sought the necessary information, certified by the Auditor, from MIAL. MIAL, in discussions with the Authority, suggested an approach for calculation of depreciation. Under this approach, depreciation for the total value of all the aeronautical assets capitalized in a year (nth year) would be calculated assuming that there was no DF. The value of depreciation, thus arrived, when divided by, the total value of all the aeronautical assets capitalized in that year (nth year) would provide the weighted average rate of depreciation applicable for that year (nth year). Now this weighted average rate of depreciation would be applied over the DF apportioned over the capitalized aeronautical assets in that year (nth year) to arrive at the value of depreciation ascribable to DF funding of these assets. Subtracting the value of depreciation, thus arrived, from the value of depreciation determined for all the aeronautical assets capitalized in a year (assuming that there was no DF) would provide the value of depreciation to be considered towards determination of aeronautical tariff. Again for the purpose of clarity, it is stated that this value of depreciation would be a part of the total depreciation to be considered as a building block for determination of aeronautical tariff for

that year (nth year). This method of calculation of depreciation is in conformity with the steps outlined in Para 8.68 and 8.69 above.

**8.73.** MIAL further stated that for it to perform the calculations as indicated in Para 8.72 above and to obtain the necessary auditor certificates thereon it would need some more time. MIAL also submitted that it can immediately calculate the depreciation on the total value of capitalized assets *till the given year* (instead of depreciation on the total value of capitalized assets *in the given year*) based on certain average rate of depreciation for the total value of capitalized assets till that year. MIAL has requested the Authority to consider, for the time being, this average rate of depreciation for application over the DF, apportioned over the capitalized aeronautical assets in the given year (nth year), to arrive at the value of depreciation ascribable to proportionate DF-funded assets. MIAL acknowledges that this average rate of depreciation (being provided by MIAL for the time being) may be somewhat different from the weighted average rate of depreciation calculated by following the steps mentioned in Para 8.72.

**8.74.** MIAL is aware that no depreciation is admissible on DF. MIAL would need to calculate this portion of depreciation, which is attributable to the quantum of apportioned DF, that would need to be subtracted from the total depreciation during a particular year. MIAL is also aware that different values of depreciation would lead to different X-factors and on account of this difference, there may be a requirement to true-up the depreciation adjustments in the next Control Period. MIAL has further stated that it would provide the Auditor's certificate in due course for the applicable rate of depreciation for each of the year for assets capitalized (including from DF) in that year and has requested the Authority to true-up difference, if any, in the next Control Period.

**8.75.** The Authority notes MIAL's submission and accepts to consider the rates of depreciation, as suggested by MIAL, subject to the true-up of such derived depreciations based on the actual applicable rates of depreciation as were to be determined in line with the steps stated in Para 8.68 and 8.69 above. The Authority further notes that depreciation is one of the building blocks for determination of aeronautical tariff and that different values of depreciation would lead to different X-factors. The Authority, at present, is not in a position to assess the likely direction of movement of X-factor (either increase or decrease)

when the trued-up value of depreciation will be applied in determination of aeronautical tariffs in respect of CSI Airport, Mumbai in the next Control Period.

**8.76.** Based on the above workings, the Authority has calculated the RAB to be considered for the current Control Period as presented in the Table below:

**Table 19: Regulatory Asset Base as considered by the Authority for tariff determination in this Order**

In crore	2009-10	2010-11	2011-12	2012-13	2013-14
Opening HRAB	966.03	923.41	876.10	828.13	788.01
Depreciation	42.62	47.32	47.97	40.12	32.26
Closing HRAB	923.41	876.10	828.13	788.01	755.75
	-	-	-	-	-
Opening Regulatory Asset Base	848.37	1,147.00	1,580.82	1,890.09	2,718.10
Depreciation & Amortisation	55.49	87.13	109.11	131.08	247.35
Capitalisation During the year	354.12	520.95	418.37	959.09	4,250.23
Closing Regulatory Asset Base	1,147.00	1,580.82	1,890.09	2,718.10	6,720.99
Average Regulatory Asset Base	997.68	1,363.91	1,735.45	2,304.10	4,719.54
Average HRAB	944.72	899.75	852.11	808.07	771.88
Net Regulatory Asset Base	1,942.40	2,263.66	2,587.57	3,112.16	5,491.42

**Decision No. V. Regarding Regulatory Asset Base (RAB)**

**V.a.** The Authority decides to calculate RAB for each year as the average of the opening and the closing RAB (as presented in Table 13) and calculate return for each year on the average RAB.

**V.b.** In respect of Depreciation, the Authority decides that difference between the amount of depreciation calculated based on actual date of commissioning/ disposal of assets and the amount of depreciation calculated considering such asset has been commissioned/ disposed half way through the respective Tariff Year will be adjusted at the end of the Control Period considering Future Value of the differences for each year in the Control Period

**V.c.** Furthermore, the Authority decides that the difference between the value of RAB - calculated based on actual date of commissioning/ disposal of assets and that calculated considering such asset has been commissioned/ disposed half way through the respective Tariff Year, will also be adjusted at the end of the Control

**Period considering Future Value of the differences for each year in the Control Period.**

**V.d. The Authority decides to consider DF funding of RAB such that fund available to MIAL on account of DF for investment in a year (including any DF apportioned towards CWIP in the previous year brought-forward to the given year) would be apportioned over expenditure incurred on the aeronautical assets capitalized in the given year and the expenditure incurred on aeronautical CWIP in the given year as per the scheme indicated in Para 8.63, 8.64 and 8.65 above. While the fund apportioned to the expenditure incurred on the aeronautical assets capitalized in a year would be adjusted from RAB in the given year, that amount which is apportioned to expenditure incurred on aeronautical CWIP will be carried over to the subsequent years for adjustment from RAB in those years.**

**Truing Up: 2. Correction / Truing up for Regulatory Asset Base (RAB)**

**2.a. The Authority decides to true up the RAB adjustment on account of DF based on availability of fund to MIAL on account of DF in the given year (including any DF apportioned towards CWIP in the previous year brought-forward to the given year) and the actual depreciation attributable to DF apportioned for adjustment in RAB, based on auditor certificates for the same subject to Authority's review.**

## 9. Hypothetical Regulatory Asset Base

### a Authority's position on Issues pertaining to Hypothetical Regulatory Asset Base in the Consultation Paper

9.1. The Authority had in the Consultation Paper No.22/2012-13 dated 11.10.2012, presented MIAL's approach for determination of Regulatory Base for the first year of the control period. MIAL had stated as under:

*"The Regulatory Base for the first year of the control period has to be determined based on the RB for the year preceding the control period and the formula for computation of same has been defined as*

*RB<sub>0</sub> for the first regulatory period would be the sum total of*

*(i) the Book Value of the Aeronautical Assets in the books of the JVC and*

*(ii) the hypothetical regulatory base computed using the then prevailing tariff and the revenues, operation and maintenance cost, corporate tax pertaining to Aeronautical Services at the Airport, during the financial year preceding the date of such computation.*

*In order to determine the Regulatory Base for the first year of the control period, the RB for the preceding year has to be computed wherein hypothetical RB has to be added in addition to the book value of aeronautical assets in the books of MIAL."*

9.2. Further, for determination of Hypothetical Regulatory Base, MIAL submitted that

*"As per the Schedule-1 of the SSA, hypothetical regulatory base has to be computed using the then prevailing tariff and revenue, operation and maintenance expenditure and corporate tax pertaining to Aeronautical Services during the financial year preceding the date of such computation.*

*The control period for the filing is starting from FY 2009-10, thus the hypothetical regulatory base has to be computed as closing value for the year FY 2008-09 based on the specified parameters by solving the equation of Target Revenue for Hypothetical Regulatory Base for the year 2008-09."*

9.3. Details of calculation of Hypothetical Regulatory Base, submitted by MIAL in their initial submission, are as under:

**Table 20: Computation of Hypothetical Regulatory Base initially submitted by MIAL**

Particulars	2008-09 (in Rs. Crore)
Aeronautical Revenue [A]	375
Non-aeronautical Revenue [B]	563
Operation and Maintenance Expenditure pertaining to Aeronautical Services [C]	311
Tax pertaining to Aeronautical services [D]	1.6
WACC [E]	14.56%
Hypothetical Regulatory Base $(A+30\%*B - (C+D))/E$	1587

9.4. On the components in the above calculation, MIAL stated that

*“The operation and maintenance expenditure pertaining to Aeronautical services for FY 2008-09 has been determined based on the segregation of O&M cost for FY 2009-10 into Aeronautical and Non-Aeronautical Services as per the KPMG study.”*

*MIAL further stated that, “The Tax for Aeronautical Services has been computed on MAT basis as per the provision of the Income Tax Act, 1961. WACC has been determined based on the actual gearing of 68.17%, pre-tax weighted average cost of debt of 10.06% and post-tax cost of equity of 24.20%.”*

9.5. However, in their submission dated 23.11.2011, MIAL revised its Hypothetical RAB calculation stating the following:

1. *“MIAL had earlier considered WACC based on actual gearing, cost of debt and cost of equity for FY 09 while computing the Hypothetical Regulatory Base (HRB). However, upon careful reading of definition of HRB given in SSA it was noticed that actual values of only expenses and revenues as specified therein for FY 09 is to be considered. Since HRB is dependent on notional business value of the airport leased to MIAL at the time of privatisation during the year 2005-06, it would be appropriate if the WACC is considered equivalent to what is indicated at the time of bidding i.e. 11.6%. Further, the HRB once becomes part of the overall regulatory base, the same needs to be depreciated like any other physical fixed assets. Accordingly HRB calculation is being revised....”*

9.6. MIAL's revised calculation of Hypothetical Regulatory Base, as brought out in para 9.5 above, is as under:

**Table 21: Computation of Hypothetical Regulatory Base as revised by MIAL**

Particulars	2008-09 (in Rs. Crores)
Aeronautical Revenue [A]	375
Non-aeronautical Revenue [B]	563
Operation and Maintenance Expenditure pertaining to Aeronautical Services [C]	311
Tax pertaining to Aeronautical services [D]	1.6
WACC [E]	11.6%
Hypothetical Regulatory Base $(A+30\%*B - (C+D))/E$	1991

9.7. The various components of Hypothetical RAB as presented in the table above have been divided into sub-components as under:

**Table 22: Components of Hypothetical Regulatory Base in revised calculation of MIAL**

Particulars	2008-09 (in Rs. Crore)
Aeronautical Revenues	375
Landing Revenues	270
Parking Charges	18
PSF	83
X-Ray	4
Non Aeronautical Revenues	
30% of NAR of Rs.563 crore	169
Less - Aeronautical Expenses	
Operation and Maintenance Expenditure pertaining to Aeronautical Services	311
Corporate Tax pertaining to Aeronautical services (MAT rate 15% + SC 10% & EC 3%)	1.6
WACC (Bid WACC )	11.60%
Hypothetical Regulatory Base	1991

#### **Observations on Hypothetical Regulatory Asset Base:**

9.8. The Authority considered MIAL's submissions and had reviewed the following aspects in the Consultation Paper No.22/2012-13 dated 11.10.2012:

- 9.8.1. Definition of Hypothetical Regulatory Base under the SSA;
- 9.8.2. Date of determination of Hypothetical Regulatory Base; and

9.8.3. Each of the components for determination of Hypothetical Regulatory Base as per provisions of the SSA.

9.9. According to Schedule 1 of the SSA:

*RB<sub>0</sub> for the first regulatory period would be the sum total of*

- i) the Book Value of the Aeronautical Assets in the books of the JVC and*
- ii) the hypothetical regulatory base computed using the then prevailing tariff and the revenues, operation and maintenance cost, corporate tax pertaining to Aeronautical Services at the Airport, during the financial year preceding the date of such computation.*

9.10. The Authority had in the Consultation Paper No.22/2012-13 dated 11.10.2012, noted MIAL's computation of Hypothetical Regulatory Base considering a share of non-aeronautical revenue. MIAL had submitted auditor certificate for the amount of non-aeronautical revenue for FY 2008-09, certifying the components being considered in the calculation of Hypothetical Regulatory Base. One of the components certified was non-aeronautical revenue (including cargo income and net of revenue from non-transfer assets) for FY 2008-09 with a value of Rs 5,632 millions.

9.11. As discussed in para 4.13 above and tentative decision No.8 in the Consultation Paper No.22/2012-13 dated 11.10.2012, the first regulatory period for tariff determination for MIAL was proposed to be considered from 1<sup>st</sup> April 2009 to 31<sup>st</sup> March 2014. Accordingly, the hypothetical regulatory base had to be computed using the relevant costs and revenues for the financial year 2008-2009, as proposed by MIAL.

9.12. The hypothetical RAB had to be computed using values of the following components for financial year 2008-09:

- (i) Revenues at prevailing tariffs in the year;
- (ii) Operation and Maintenance cost; and
- (iii) Corporate tax pertaining to Aeronautical Services at the Airport.

9.13. Further, the computation required consideration and adoption of a suitable discount factor for the purpose of valuation.



**9.14.** The Authority noted that certain components, considered by MIAL in their calculation of HRAB, as indicated in the Table 22 above is not in line with the provisions indicated in the SSA and would change on account of the following factors:

- 9.14.1. MIAL had computed the Hypothetical Regulatory Base considering a share of non-aeronautical revenue, which was not in line with the methodology of calculation provided in the SSA;
- 9.14.2. Operation and Maintenance Expenditure pertaining to Aeronautical Services, does not include the extraordinary expense of Rs 54 crores (*reimbursed to AAI towards pay revision of AAI employees assigned to the Company during the operation support period*);
- 9.14.3. Aeronautical revenue, does not include the Fuel Throughput Charges (FTC), as the same is considered to be non-aeronautical by MIAL;
- 9.14.4. "Bid WACC" of 11.6% used to determine Hypothetical RAB.
- 9.14.5. Corporate Tax pertaining to Aeronautical services would hence have to be recalculated based on the treatment of FTC, the extraordinary expense of Rs 54 crores; and

***Consideration of Non-aeronautical Revenue in Hypothetical RAB***

**9.15.** MIAL had computed the Hypothetical Regulatory Base considering a share of non-aeronautical revenue (refer Table 22 above). MIAL had submitted an auditor certificate for the components being considered in the calculation of Hypothetical Regulatory Base. One of the components certified is non-aeronautical revenue (including cargo income and net of revenue from non-transfer assets) for FY 2008-09 with a value of Rs 563 crores.

**9.16.** As stated in para 9.2 above, MIAL had calculated the value of Hypothetical RAB by solving the the equation of Target Revenue, considering the 30% of non-aeronautical revenue for the calculation of Hypothetical RAB. The Authority had in the Consultation Paper noted that the SSA stipulates the calculation of Hypothetical RAB as stated in para ii) of 9.9 and not by solving the equation of Target Revenue. As per the SSA, revenues, expenses and corporate tax pertaining to aeronautical services has to be considered for the calculation of Hypothetical RAB.

9.17. In view of the above, the Authority had proposed not to consider 30% of non-aeronautical revenue for the calculation of Hypothetical RAB. The impact of not considering 30% of non-aeronautical revenue for the calculation of Hypothetical RAB on the X-factor was as follows:

**Table 23: Sensitivity – Impact on X-factor due to not considering 30% of non-aeronautical revenue in Hypothetical RAB**

Parameter	X Factor as per the Base Model	X Factor after change in assumptions
Not considering 30% of non-aeronautical revenue in the calculation of Hypothetical RAB	-873.36%	-446.38%

***Exclusion of Extraordinary expense of Rs 54 crores from Operation and Maintenance Expenditure***

9.18. The Authority also noted that in the definition of Hypothetical RAB (in Schedule 1 of the SSA), there is no reference to efficient Operation and Maintenance costs. Instead, it is referring to the prevailing i.e., actual cost of operation and maintenance.

9.19. While calculating the Operation and Maintenance Expenditure pertaining to Aeronautical services, MIAL had excluded the extraordinary expense of Rs. 54 crores. In response to the Authority seeking clarification, MIAL, vide their submission dated 31.07.2012, stated that

*“As per OMDA, MIAL was required to reimburse AAI towards pay revision of AAI employees assigned to the Company during the operation support period. Subsequent to the recommendations of pay commission during FY 09, the Company has reimbursed to AAI towards pay revision of AAI employees from 01.01.2007 to 31.03.2009 to the extent of Rs 54 crores.”*

9.20. In this regard, Principle 5 in Schedule 1 of the SSA states that:

*“... Further in respect of regulation of Aeronautical Services the approach to pricing regulation should encourage economic efficiency and only allow efficient costs to be recovered through pricing, **subject to acceptance of imposed constraints such as the arrangements in the first three years for operations support from AAI** (emphasis supplied).”*

9.21. The Authority had in the Consultation Paper No.22/2012-13 dated 11.10.2012 observed that this expense had to be incurred by MIAL on account of pay revision and thus forms part of operations support cost towards AAI. Hence treatment being made to operations support cost towards AAI should be extended to this extraordinary expense of Rs 54 crs also.

9.22. In view of the above, the Authority did not accept MIAL’s treatment of excluding the Rs 54 crores, as an extra-ordinary expense, from the calculation of Hypothetical RAB. The Authority considered the above amount of Rs.54 crores for calculation of the hypothetical asset base and its impact on the tariff increase requirements as under:

**Table 24: Sensitivity – Impact on X-factor due to including extraordinary expense as admissible aeronautical expense in Hypothetical RAB**

Parameter	X Factor as per MIAL submission	X Factor after considering extraordinary payment as admissible aeronautical expense
Considering extraordinary payment as admissible aeronautical expense	-873.36%	-750.26%

***Treatment of Fuel Throughput Charges***

9.23. The Authority had in the Consultation Paper No.22/2012-13 dated 11.10.2012, noted that MIAL have not considered Fuel Throughput Charges (FTC) as part of aeronautical Revenues in their calculation Aeronautical Revenues for the purpose of determining the HRAB. MIAL had stated as under:

*“FTC should be treated Non-aeronautical revenue for the purpose of tariff determination considering the views / decisions of the Authority that services such as Cargo Handling, Ground Handling and Into-plane not being provided by the Airport operator has been considered as Non – Aeronautical. FTC is a consideration for concession given to Oil Companies and no services are being provided by the Airport Operator to Oil Companies. AERA has also decided that Oil Companies are only selling ATF to the Airlines and not providing any services and therefore will not be covered under the Aeronautical services, hence FTC received by MIAL should not be considered as an Aeronautical charge.”*

9.24. The Authority did not find MIAL's proposal for consideration of FTC as non-aeronautical revenue to be acceptable and had proposed in the Consultation Paper No.22/2012-13 dated 11.10.2012, that the revenue from FTC for FY 2009 to be included in determination of Hypothetical RAB (Reference treatment of FTC as aeronautical revenue discussed and presented in paras 22.1 to 22.27 below, of this Order).

***WACC to be considered for Hypothetical RAB***

9.25. MIAL had also computed a WACC of 14.56% for determination of Hypothetical RAB. MIAL's submission on computation of WACC for determination of Hypothetical RAB is presented in para 9.5 above.

9.26. As per MIAL's submission dated 23.11.2011, presented in para 9.5, MIAL had proposed to use "Bid WACC" of 11.6% to determine the Hypothetical RAB in their tariff submission instead of the earlier proposed value of 14.56%. The Authority noted that decreasing the WAAC has the effect on increasing the capitalisation, that is to say, Hypothetical RAB. The issue arising for consideration is what WACC should be applied for this purpose.

9.27. The Authority had in the Consultation Paper No.22/2012-13 dated 11.10.2012, noted that at the time of restructuring of Delhi and Mumbai airports, an indicative WACC of 11.6% was given in the RFP. In the pre-bid clarifications, the significance of the same was stated as under:

*"The post-tax cost of equity and debt assumed under the indicative post tax nominal WACC of 11.6% are 22.8% and 6.0% respectively. The purpose of the indicative post tax nominal WACC of 11.6% given in the RFP is to ensure consistency between Business Plans submitted by Bidders as part of their Offer."*

9.28. The Authority noted that the WACC of 11.6% mentioned in the RFP document was only indicative and the same was indicated to ensure consistency between the Business Plans submitted by the Bidders as part of their offer. Such consistency would not have been possible if each bidder was to use its own estimate of WACC. In this view of the matter, it is clear that the figure of 11.6% mentioned in RFP cannot in any way be treated to be the return which the bidder could have expected from the transaction. As such, the use of "Bid WACC" for calculation of hypothetical RAB does not appear to be justified.

9.29. The Authority also noted in the Consultation Paper that the SSA does not provide any explicit guidance on the use of any particular WACC value for the determination of hypothetical regulatory base. Further, the SSA provides for determination of hypothetical regulatory base at the commencement of the first regulatory period. For determination of tariffs for aeronautical services during the first regulatory period, the SSA provides for consideration of WACC as the nominal post-tax weighted average cost of capital, calculated using the marginal rate of corporate tax for the purpose of considering returns on regulatory base in general.

9.30. In this light, the Authority had in the Consultation Paper No.22/2012-13 dated 11.10.2012 proposed to consider the WACC, which the Authority would allow and may be used being the Authority’s assessment of fair return.

9.31. The impact of considering such WACC on the hypothetical asset base on the tariff increase requirements was as under:

**Table 25: Sensitivity – Impact on X-factor due to considering WACC as may be determined by Authority in Hypothetical RAB**

WACC for determination of Hypothetical RAB	X Factor as per MIAL submission	X Factor after considering MIAL proposed WACC for determination of Hypothetical RAB
As determined by Authority for - 10.77%	-873.36%	-919.73%

***Corporate tax pertaining to Aeronautical Services***

9.32. As indicated in para 9.12 above, one of the elements to be considered for computing the hypothetical RAB is “Corporate tax pertaining to Aeronautical Services at the Airport, during the financial year preceding the date of such computation”. It is observed that the Income Tax Act, 1961 does not define the term “corporate tax”. As per FAQ available on the website of the Income Tax Department ([www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)) in reply to Q.6 it is stated that “when companies pay taxes under the Income Tax Act it is called corporate tax”. In a further reply under Q.34, the department has clarified that “The tax to be paid by the companies on their income is called corporate tax”.

**9.33.** The Authority observed that MIAL had calculated the corporate tax pertaining to aeronautical services for FY 08-09 as part of Hypothetical Regulatory Base in the MYTP model as under:

**Table 26: Calculation of tax for consideration in Hypothetical Regulatory Base, as submitted by MIAL**

Components	Amount (In Rs. Crores)
Aeronautical Revenue	375
Less: O&M Cost	311
Aeronautical EBIDTA	64
Less: Depreciation	31
Less: Interest	22
PBT	10.6
Tax considering MAT as applicable for FY 08-09	1.2

**9.34.** The Authority observed that the tax considered by MIAL in the Table 26 above, Rs 1.2 crore, was different from the value submitted by MIAL in their initial submission dated 11.10.2011 as well as the submission dated 23.11.2011, which is Rs 1.6 crore and is also different from the value of tax as per the Auditor certificate, which is Rs 1.7 crore and which may possibly be on account of rounding off.

**9.35.** MIAL had vide their submission dated 21.03.2012 clarified that while the applicable MAT rate under IT Act for FY 2008-09 was 10%, it had earlier considered MAT rate of 15%. MIAL further requested the Authority to make the necessary changes in the tariff model to reflect actual applicable MAT rate. On the basis of this correction, the value of tax for FY 2008-09 was worked out to Rs 1.2 crore instead of earlier calculated and auditor certified value of Rs 1.7 crore.

**9.36.** In the Consultation Paper, the Authority further observed that the components, considered in the Table 26 above for the purpose of calculation of tax, will change on account of the proposed views taken by the Authority on treatment of FTC and extraordinary expense of Rs 54 crores. The Authority had noted the following in the Consultation Paper:

9.36.1. Aeronautical revenue, considered in the Table 26 above, does not include the FTC, as this was considered to be non-aeronautical by MIAL.

9.36.2. The O&M cost, considered in Table 26 above, does not include the extraordinary expense of Rs 54 crores, discussed in para 9.19.

9.37. The Authority proposed that the calculation of tax pertaining to aeronautical services should be based on the revised values of components of the calculation and accordingly reworked the tax calculation as under:

**Table 27: Calculation of tax for consideration in Hypothetical Regulatory Base by the Authority**

Components	Amount (In Rs. Crore)
Aeronautical Revenue	445
Less: O&M Cost	365
Aeronautical EBIDTA	80
Less: Depreciation	31
Less: Interest	22
PBT	27
Tax considering MAT as applicable for FY 08-09	3.0

9.38. The comparison of Hypothetical Regulatory Base, as proposed by MIAL and as determined by the Authority based on the proposed views of the Authority, is as under:

**Table 28: Comparison of Hypothetical Regulatory Base by MIAL and by the Authority**

Components of Hypothetical RAB	Value (in Rs Crore)	
	MIAL submission	Authority's views
Aeronautical Revenue [A]	375	445
Non-aeronautical Revenue [B]	563	-
Operation and Maintenance Expenditure pertaining to Aeronautical Services [C]	311	365
Tax pertaining to Aeronautical services [D]	1.6	3.0
WACC [E]	11.6%	10.77%
Hypothetical Regulatory Base $(A+30\%*B - (C+D))/E$	1991	712.4

9.39. *In view of the above, the Authority had in the Consultation Paper proposed as under:*

9.39.1. ***Compute Hypothetical RAB in accordance with the principle of Schedule 1 of SSA***

9.39.2. ***Not to consider non-aeronautical revenue for inclusion in Hypothetical RAB***

9.39.3. ***To include Rs 54 crores (Extraordinary expenses in relation to AAI Operation support cost) in operating expenses in calculation of Hypothetical RAB***

9.39.4. *To consider revenue from fuel throughput charges as part of aeronautical revenue for calculation of Hypothetical RAB*

9.39.5. *To consider WACC, as may be calculated by the Authority, to be used for calculation of Hypothetical RAB*

9.39.6. *To calculate corporate tax based on the value of Hypothetical RAB as per Authority's proposed decisions above for computation of Hypothetical RAB*

**9.40. Accordingly the Authority proposed that the Hypothetical RAB be taken as Rs 712.4 crore. The Authority also proposed to depreciate the Hypothetical RAB at the tariff year wise average depreciation rate for aeronautical assets.**

**b Stakeholder's comments on Issues pertaining to Hypothetical Regulatory Asset Base**

**9.41.** On the issue of Hypothetical Regulatory Asset Base, ACI stated that in the Consultation Paper AERA has adopted a different methodology to determine HRAB than what was proposed by CSIA. ACI further stated that

*"It seems AERA has not followed the approach suggested in State Support Agreement (SSA) in totality and instead chosen to follow only portions of the suggestion. From SSA it is quite evident that to arrive at value of RAB, equation given for Target Revenue need to be solved using all the elements of equation. It would be totally incorrect and arbitrary not to consider one of the elements while solving the equation".*

**9.42.** ACI also stated that under the provisions of SSA, CSIA operates under the Shared Till approach where 30% of the non-aeronautical revenue is used to subsidize the target revenue requirement. It is imperative that Regulatory agencies maintain consistency in their approach. ACI further proposed that since AERA is determining aeronautical tariffs for the period FY 10 to FY 14 based upon the Shared Till approach, it should follow the same approach while arriving at the value of HRAB and therefore 30% of the non-aeronautical revenue earned in FY09 should be included as part of the total revenues earned to solve the Target Revenue equation to determine HRAB.

**9.43.** ACI further proposed that for the sake of consistency, if AERA decides to consider CUTE counter charges as aeronautical, it should be included in Aeronautical revenues to calculate HRAB.



**9.44.** On the issue of Hypothetical Regulatory Asset Base, FIA stated that

*“As per para 4.14 of CP No.22/2012-13, it is evident that principles laid out in the SSA with respect to HRAB are inconsistent with the Authority's regulatory philosophy and approach as stated in its Single Till Order and Guidelines. Since the concept of HRAB is neither envisaged in the Guidelines of Airport Order.*

*Considering, principles laid out in the SSA are inconsistent with the Authority's regulatory philosophy, it is submitted that Authority should not consider HRAB as part of target revenue. It is pertinent to note that exclusion of HRAB will reduce target revenue by 13%.”*

**9.45.** On the issue of Hypothetical Regulatory Asset Base, APAO stated that

*“Extraordinary expense of Rs. 54 cr, only Rs. 24.13 cr. pertains to FY09. After applying the ratio of aeronautical expenses to non-aeronautical expenses on the Rs. 24.13 cr. amount, the amount attributable to aeronautical activities alone may be considered for determination of HRAB”*

**9.46.** Bid Services Division (Mauritius) Limited and ACSA Global Limited on the issue of Hypothetical Regulatory Asset Base stated as under,

*“The State Support Agreement states in Schedule 1 that Hypothetical RAB is to be computed based on the “then prevailing tariff and revenue”. As per Schedule 6 (Aeronautical Charges) a nominal increase of 10% in Base Airport Charges is allowed for FY 09 provided MIAL completes and commissions the required Mandatory Capital Projects (listed in Schedule 7 of OMDA). Given that MIAL was in compliance of the above requirement before the commencement of FY09, 10% increase in Base Airport Charges was applicable from the start of FY09. The tariffs after 10% hike therefore become the prevailing tariffs for FY09. The fact that tariff increase was approved by Ministry of Civil Aviation from Jan 09 does not alter the position that MIAL was eligible for increased tariff from April 08. The aeronautical revenues used to calculate the Hypothetical RAB should be based on the prevailing tariffs and not on the actual tariffs which were not*

*revised by MOCA without any fault of MIAL. We request the Authority to make appropriate adjustments in the calculation of HRAB.*

*CSIA operates under the Shared Till approach where 30% of the non-aeronautical revenue is used to subsidize the Target Revenue requirement. This is as per the provisions of the SSA. However it is noted that while calculating HRAB, AERA has not considered this aspect and decided not to include 30% of non-aero revenues.*

*Approach of AERA seems to be totally wrong which will lead to a situation that on commencement of 4th year, aeronautical tariff will be reduced to the extent of 30% of non-aero revenues which is completely illogical, unacceptable and against the provisions of SSA. AERA has to be consistent in its own approach with regard to the till for the determination of HRAB and aeronautical tariffs. 30% of the non-aeronautical revenue earned in FY09 should be included as part of the total revenues earned to back solve the Target Revenue Requirement to determine HRAB.*

*We request the Authority to address the discrepancies mentioned above for determination of HRAB.”*

**9.47.** As regards Hypothetical RAB, Assocham suggested reconsideration of the Authority’s position on two components of the Hypothetical RAB, namely 30% of non-aero and extraordinary expenses. Assocham suggested as under,

*“AERA has reduced value of HRAB significantly compared to what was calculated by MIAL due to two factors which need to be reconsidered taking into account provisions of OMDA and SSA:*

*a. While calculating HRAB as on 31st March 2009, 30% of non aero revenue need to be included in Target Revenue to arrive at the value of HRAB since 30% cross subsidy is part and parcel of SSA and cannot be ignored.*

*b. Extra ordinary expenses of Rs 54 Cr. provided by MIAL towards wage revision payable to AAI cannot be included as part of O&M cost since these expenses pertain to a period of 27 months and not for FY 09 alone.*

*c. AERA should apply a consistent approach and include 30% of Non Aero revenues while calculating HRAB since it is considering the same while doing the tariff determination.”*

**c MIAL’s Response to Stakeholder Comments on Issues pertaining to Hypothetical Regulatory Asset Base**

9.48. MIAL’s response to the comments by the stakeholders is as follows:

*“Contention that there is no legal provision for HRAB is wrong, as AERA Act clearly stipulates that concession offered by the Central Government in any agreement or memorandum of understanding or otherwise needs to be taken in to consideration by the Authority.*

*“The basis for inclusion of Hypothetical RAB (HRAB) for tariff determination has been specified in the SSA. As per Schedule 1 of SSA, RAB (R<sub>Bi</sub>) for year i is to be calculated as:*

$$RB_i = RB_{i-1} - D_i + I_i$$

*“R<sub>B0</sub> for the first regulatory period would be the sum total of:*

*The Book Value of the Aeronautical Assets in the books of the JVC and*

*The hypothetical regulatory asset base computed using the then prevailing tariff and the revenues, operation and maintenance cost, corporate tax pertaining to Aeronautical Services at the Airport, during the financial year preceding the date of such computation.”*

*In a brownfield project, like CSI Airport, it is absolutely justified to arrive at RAB which, inter alia, is derived from the earning capacity of the Assets for Aeronautical services and actual additions as per book value.”*

**d MIAL’s own comments on Issues pertaining to Hypothetical Regulatory Asset Base**

9.49. On the issue of Hypothetical Regulatory Asset Base, MIAL stated that

*“Non-inclusion of non-aeronautical revenue – As per Schedule 1 of the SSA, if definition of R<sub>B0</sub> is picked up on standalone basis without referring to other provisions of the said Schedule, it will be impossible to calculate HRAB because relevant clause is not exhaustive. If the clause is adopted literally, without taking into account the equation specified for the Target*

Revenue, it would be impossible to compute HRAB. Adoption of equation specified for Target Revenue cannot be partial and has to be in totality. The Authority has adopted components of equation for the purpose of calculation of HRAB. We give below the equation stated in the Schedule 1 of the

SSA, derived equation for HRAB and the equation adopted by the Authority.

$$TR_i = RB_i \times WACC_i + OM_i + D_i + T_i - S_i$$

$$i.e. HRAB (RB_i) = (TR_i - OM_i - D_i - T_i + S) / WACC_i$$

However authority has adopted partial equation as below.

$$HRAB(RB_i) = (TR_i - OM_i - D_i - T_i) / WACC_i$$

Above approach of authority, it is humbly submitted, is not appropriate as the entire equation has to be back-solved instead of back-solving a fractured equation. We presume, being a matter related to concession, Authority would have obtained inputs on this issue from MoCA. If not so, there is a need of input from MoCA in this respect before finalising the issue.

Issue of extraordinary expenses of Rs. 54 crs. – As per Schedule 23 of OMDA, MIAL was required to bear expenses on account of revision of pay and allowances of AAI employees with effect from January 2007 as part of the Operation Support cost.

In absence of any basis for estimation and of any claim from AAI until FY08, a provision of Rs. 54 crs. for cumulative liabilities for the entire period of 28 months (January 2007 to 2 May 2009) was provided for in the final accounts for FY 09. Of this, the amount of Rs.30.86 crs. was provisioned for the period January 2007 to March 2008 and 1 April 2009 to 2 May 2009 pertains to financial years other than FY09, while the provision for April 2008 to March 2009 being Rs. 23.14 crs. was only attributable to FY09.

The fact that provision for Operation Support cost for 28 months period was made in the accounts of FY09 cannot be treated as expenditure

*pertaining to FY09. It will be inappropriate to consider the total amount of Rs 54 crs. as O&M cost for FY 09.*

*Further, Operation Support cost was towards employees providing either Aeronautical Services or Non-Aeronautical Services. Hence, it is appropriate to apportion Rs. 54 crs. also in the ratio of aeronautical and non-aeronautical expenses as has been done in the case of Retirement Compensation for AAI employees.*

*10% tariff hike in Base Airport Charges – MIAL during its presentation to the stakeholders in the meeting held on 29th October, 2012, had submitted that hike in tariff, for which it was eligible, but was delayed to be implemented by MoCA, should have been considered while calculating HRAB. Any delay by MoCA leading to delayed tariff hike for which MIAL was eligible, should not affect HRAB.*

*SSA very clearly stipulates that MIAL will be allowed 10% increase if it fulfills the conditions. The same is reproduced below:*

*As per Clause 1, Schedule 6 of the SSA:*

*“The existing AAI airport charges (as set out in Schedule 8 appended hereto) (“Base Airport Charges”) will continue for a period of two (2) years from the Effective Date and in the event the JVC duly completes and commissions the Mandatory Capital Projects required to be completed during the first two (2) years from the Effective Date, a nominal increase of ten (10) percent over the Base Airport Charges shall be allowed for the purposes of calculating Aeronautical Charges for the duration of the third (3rd) Year after the Effective Date (“Incentive”).”*

*There is no specific provision for obtaining approval of MoCA. However any tariff hike to be practically implemented needs specific MoCA approval for implementation. Like, in case of tariff approved by AERA, DGCA has to issue circular for its implementation. Any delay in issue of circular by DGCA does not mean that airport operator is not eligible for new tariffs as approved by AERA.*

*In view of the above, while calculating HRAB, tariff for which MIAL was eligible, needs to be considered. It is quite clear that in absence of specific order of MOCA, MIAL could not timely implement tariff for which it was contractually eligible.*

*The additional revenue, which MIAL would have got based on increased tariff from 3rd May 2008, would have been Rs. 23.83 crs. Hence, while calculating HRAB total revenue of Rs. 468.93 crs. including Rs. 23.83 crs. needs to be considered.*

*On account of the reasons articulated above, we request the Authority to:*

*(a) Back solve the Target Revenue Requirement equation in order to compute the Hypothetical RAB and thereby include 30% revenue from non-aeronautical services; and*

*(b) Apportion Rs. 54 crs. over the 28 months period (i.e. Jan 07 to 2 May 09) and accordingly include only Rs. 23.14 crs. in O&M cost for FY 09 since entire amount of Rs. 54 crs. cannot be considered as O&M cost for FY 09.*

*(c) Apply the ratio of aeronautical expenses to non-aeronautical expenses to the O&M cost of Rs 23.14 crs. for FY09 and consider only O&M cost attributable to aeronautical activities for determining HRAB. The auditor's certificate in this respect is enclosed as Annexure 6.*

*(d) Consider the revenue of Rs 23.83 crs. attributable to the period of delay in implementing contracted tariff hike."*

**e Authority's Examination of Issues pertaining to Hypothetical Regulatory Asset Base**

**9.50.** The Authority has examined the comments made by Stakeholders and the response from MIAL to the stakeholder comments. The Authority has provided detailed reasoning on each component of Hypothetical RAB, as proposed by MIAL in its MYTP, on whether these components can be considered as part of Hypothetical RAB or not in Para 10 of its Consultation Paper – 22/2012-13 dated 11.10.2012.

**9.51.** As regards the consideration of revenue from CUTE Counter service towards Hypothetical RAB, the Authority, in its Consultation Paper 22 /2012-13 dated 11.10.2012, had stated that the direct payment made by the airlines to MIAL, before the start of the

current Control Period i.e., before 01.04.2009, would be governed by OMDA and SSA at that point of time. As OMDA defines Ground Handling service as a non-aeronautical service and the CUTE Counter service relates to handling of passengers and baggages (Ground Handling), CUTE Counter service, as per OMDA, is to be considered as non-aeronautical service. This position of the Authority has also been discussed in details in its Order No. 3/2012-13 dated 24.04.2012 on determination of aeronautical tariff in respect of Delhi International Airport. Accordingly the Authority decides to consider revenue from CUTE Counter service as non-aeronautical revenue for the purpose of determination of Hypothetical RAB.

**9.52.** The Authority notes that MIAL has raised 3 points in its comments to the Authority's position on the issue of Hypothetical RAB in the Consultation Paper – 22/2012-13 dated 11.10.2012. As regards the first point on back solving the Target Revenue Requirement equation in order to compute the Hypothetical RAB and thereby including 30% revenue from non-aeronautical services, the Authority does not share the same view. The Authority notes MIAL's presumption that being a matter related to concession, the Authority would have obtained inputs on this issue from MoCA and if not so, there is a need of input from MoCA in this respect before finalising the issue.

**9.53.** The Authority notes that MIAL has raised 3 points in its comments to the Authority's position on the issue of Hypothetical RAB in the Consultation Paper – 22/2012-13 dated 11.10.2012.

**9.54.** At the outside, the Authority wants to clarify that it has taken separate element of the target Revenue equation in Schedule I of the SSA individually. The Regulatory base pertaining to aeronautical asset in the year I is also given in the separate equation

$$TR_i = RB_i \times WACC_i + OM_i + D_i + T_i - S_i$$

$$RB_i = RB_{i-1} - D_i + I_i$$

In the equation,  $RB_0$  for the first regulatory period consists of two parts as under:

- (i) the Book Value of the Aeronautical Assets in the books of the JVC and
- (ii) the hypothetical regulatory base computed using the then prevailing tariff and the revenues, operation and maintenance cost, corporate tax pertaining to Aeronautical Services at the Airport, during the financial year preceding the date of such computation.

**9.55.** The hypothetical RAB therefore is to be computed using the elements mentioned in item (ii), during the financial year preceding the date of such computation. The Authority has computed the Regulatory Base for the first Control Period commencing 01.04.2009. Hence it has taken the preceding year namely 01.04.2008 – 31.03.2009 as the year preceding the date of such computation. It therefore does not find any reason to deviate from this straight forward and unambiguous method of calculation Hypothetical RAB by resorting to back solving of any equation as suggested by MIAL. In the financial year preceding date of such computation namely during the year 2008-09, the Authority has taken into account all the component mentioned in the SSA (all components pertaining to aeronautical services at the airport) as under

**Table 29: Calculation of Hypothetical Regulatory Base in Consultation Paper**

Components of Hypothetical RAB	Value (in Rs Crore)
Aeronautical Revenue [A]	445
Non-aeronautical Revenue [B]	-
Operation and Maintenance Expenditure pertaining to Aeronautical Services [C]	365
Tax pertaining to Aeronautical services [D]	3.0
WACC [E]	10.77%
Hypothetical Regulatory Base $(A+30\%*B - (C+D))/E$	712.4

**9.56.** The Authority had then capitalised the above number by the weighted average cost of capital for the current Control Period (i.e. 10.77% in the Consultation Paper). Hence the hypothetical RAB was put at Rs. 712.4 crores in the Consultation Paper 22/2012-13 dated 11.10.2012.

**9.57.** In its submission MIAL has also made a presumption that being a matter related to concession, the Authority would have obtained inputs on this issue from MoCA and if not so, there is a need of input from MoCA in this respect before finalising the issue. The Ministry was appraised that AERA had issued Consultation Paper on 11.10.2012 regarding Determination of Aeronautical tariffs for CSIA, Mumbai. The Ministry has not given any response on this issue.

**9.58.** The second point raised by MIAL is about apportioning the extra-ordinary expense of Rs. 54 crs. over the 28 months period (i.e. Jan 07 to 2 May 09) and accordingly including only Rs. 23.14 crs. in O&M cost for FY 09 since entire amount of Rs. 54 crs. cannot be considered as O&M cost for FY 09. Further MIAL suggested application of the ratio of aeronautical



expenses to non-aeronautical expenses to the O&M cost of Rs 23.14 crs. for FY09 and consider only O&M cost attributable to aeronautical activities for determining HRAB.

**9.59.** The Authority notes from the MIAL submission that *“As per Schedule 23 of OMDA, MIAL was required to bear expenses on account of revision of pay and allowances of AAI employees with effect from January 2007 as part of the Operation Support cost.”* The Authority further noted from MIAL submission that MIAL had not received any claim from AAI until FY 2008 on this expense and accordingly MIAL had made a provision in its final accounts for FY 09 of Rs. 54 crs. for cumulative liabilities for the entire period of 28 months (January 2007 to 2 May 2009).

**9.60.** The Authority has noted the auditor certificate, submitted by MIAL, which states as under,

*“Based on our review books of account of the Company, Invoices from Airports Authority of India (‘AAI’) and Chapter VI - Operation Support of Operation, Management and Development Agreement (‘OMDA’) between Airports Authority of India and the Company dt 04 April, 2006 w.e.f. 03 May, 2006. We hereby certify that the company had made a provision of Rs. 54 Crores towards pay & perks of AAI employees for the period 01 January 2007 to 02 May 2009, which includes an amount of Rs 23.14 Crores on proportionate basis for financial year 2008-2009.*

**9.61.** The Authority has gone into the provisions of SSA and building blocks of target revenues. For the purpose of Hypothetical RAB, the revenues and costs to be taken into account are what can be ascribed to the financial year and pertaining to aeronautical services at the airport preceding the date of computation of Hypothetical RAB. Hence, the appropriate revenues and costs, pertaining to the aeronautical services during the year 2008-09, would need to be taken into account.

**9.62.** The Authority has noted that MIAL has made a provision for Rs. 54 crores in its Income Statement for the year 2008-09. Hence, the Authority has noted that in its initial submission, MIAL had not included this provision (Rs. 54 crores) as a cost item in its computation of Hypothetical RAB, on the ground that being an extraordinary item, this should not be included as a cost. In the Consultation Paper, the Authority had taken a view that the wordings of the SSA have no warrant to accept MIAL’s interpretation and had

included Rs. 54 crores as a cost element to be deducted from the aeronautical revenues during 2008-09.

**9.63.** In response to the Consultation Paper, MIAL has given an auditor's certificate stating that this provision pertains not entirely for 2008-09 but for the period 1.1.2007 till 2.05.2009, namely, a period of 28 months. The statutory auditor's certificate states that "the company had made a provision of Rs. 54 crores towards pay and perks of AAI employees for the period 1.1.2007 to 2.05.2009 which includes an amount of Rs. 23.14 crores on proportionate basis for the financial year 2008-09".

**9.64.** In this context, MIAL have made another submission, vide letter date 14.01.2013, wherein it has attached the invoices sent by AAI towards AAI operation support cost (wage revision). The Authority notes that these invoices do not mention the period (month / year) to which these expenses pertain to. Hence, the Authority is not in a position to determine the expenses towards wage revision component of AAI Operations Support Cost pertaining to 2008-09 from these invoices. The Authority notes that wage revision of AAI employees with MIAL had occurred. The amount ascribable to 2008-09 would finally have to be obtained from AAI. Hence, the Authority has decided that, for the present, it would take an amount of Rs. 23.14 crores as the cost pertaining to 2008-09 and calculate Hypothetical RAB, accordingly. It would also review the documents and evidence, as may be furnished by AAI/MIAL, and if it becomes necessary to adjust this amount, the Authority would do so as a one-time adjustment to Hypothetical RAB at the time of determination of the next control period. The Authority notes that such one-time adjustment may have an impact either way on the X-factor as is calculated in this Order for the current Control Period. The Authority decides to true up the impact of X-factor, if any, at the time of determination of aeronautical tariffs for the next control period.

**9.65.** As regards MIAL submission that only part of Rs 23.14 crores attributable to aeronautical activities should be considered in the Hypothetical RAB, the Authority notes that the MIAL in its initial submission has considered Operation Support Cost to AAI as fully Aeronautical and has not made any suggestion thereon. It is only now that they are referring this cost to be apportioned between aeronautical expense and non-aeronautical expense. The Authority therefore decides to consider this cost as 100% Aeronautical at Rs 23.14 crores.

9.66. The third point raised by MIAL is about considering the revenue of Rs 23.83 crs. attributable to the period of delay in implementing contracted tariff hike towards aeronautical revenue component of Hypothetical RAB. The Authority notes that the SSA stipulates that the hypothetical regulatory base has to be computed using the then prevailing tariff and the revenues. The Authority therefore decides not to consider any revenue that can be attributed to the period of delay in implementing contracted tariff hike.

9.67. The Authority had enunciated the principle of tax calculation based on the wordings appearing in Schedule 1 of SSA, which defines “Tax (T) = Corporate taxes on earnings pertaining to aeronautical services.” This was the same principle that it had followed in case of DIAL and accordingly had also decided to true-up for the actual tax that pertains to aeronautical services. However for the purposes of calculation of Hypothetical RAB, the tax liability for RAB was nil. Hence tax did not enter into the calculation of Hypothetical RAB in case of DIAL.

9.68. In case of MIAL, it paid Rs 19.50 crores towards tax for FY 2008-09 as a company. For the purposes of Consultation Paper the Authority had calculated the tax component on regulatory accounts (that do not consider revenue share of 38.7% as cost) pertaining to aeronautical services and arrived at a figure of Rs 3 crores for the year 2008-09 to be considered towards Hypothetical RAB. Since the regulatory accounts do not factor the revenue share as costs, the calculation of tax has an upward bias as compared to the normal accounts reflecting the actual tax liability. The Authority has now calculated the tax pertaining to aeronautical services for the year 2008-09 after considering normal accounting treatment to arrive at the tax liability on MIAL on account of aeronautical services. This calculation results in nil tax liability (as presented in Table 30) for the year 2008-09.

**Table 30: Calculation of tax for consideration in Hypothetical Regulatory Base by the Authority based on normal accounting (Para 9.68)**

Components	Amount (In Rs. Crore)
Aeronautical Revenue	445
Less: Revenue Share	172
Less: O&M Cost*	334
Aeronautical EBIDTA	(62)
Less: Depreciation	31
Less: Interest	22
PBT	(115)
Tax considering MAT as applicable for FY 08-09	0

\* - In line with the discussion and the Authority's proposition in Para 9.58 to Para 9.65, the Authority has considered Rs 23.14 crores in O&M Cost instead of Rs 54 crs considered at the time of Consultation Paper 22 / 2012-13.

**9.69.** Based on these workings, the Authority has now calculated the quantum of Hypothetical RAB at Rs 966.03 crores (as against the Hypothetical RAB of Rs 1,991 crores proposed by MIAL according to its calculation). The Table for the calculation of Hypothetical RAB is presented below:

**Table 31: Calculation of Hypothetical Regulatory Base in the Order**

Components of Hypothetical RAB	Value (in Rs Crore)
Aeronautical Revenue [A]	445.10
Non-aeronautical Revenue [B]	-
Operation and Maintenance Expenditure pertaining to Aeronautical Services [C]	334.52
Tax pertaining to Aeronautical services [D]	0
WACC [E]	11.45%
Hypothetical Regulatory Base $(A+30\%*B - (C+D))/E$	966.03

**Decision No. VI. Regarding Hypothetical Regulatory Asset Base**

**VI.a. The Authority decides, as under,**

- i. To compute Hypothetical RAB in accordance with the principle of Schedule 1 of SSA.**
- ii. Not to include non-aeronautical revenue in Hypothetical RAB.**
- iii. To include, for the present, Rs 23.14 crores (out of Rs 54 crores provisioned by MIAL as Extraordinary expenses in relation to AAI Operation support cost), as has been certified by the auditor to pertain to FY 2008-09, in the operating expenses in calculation of Hypothetical RAB. The Authority further decided that it would review the apportionment of the provision of Rs 54 crores, that is made by MIAL, in its Income Statement for FY 2008-09 after obtaining further documents, if any, from AAI and if necessary, make appropriate one-time adjustment to this component of Hypothetical RAB in the next Control Period. It will also make appropriate adjustment, if required, to the Target**

Revenue during this Control Period for taking into consideration while determining aeronautical tariffs for the next Control Period.

- iv. To consider revenue from fuel throughput charges as part of aeronautical revenue for calculation of Hypothetical RAB
- v. To consider revenue from CUTE Counter Charges as non-aeronautical revenue for calculation of Hypothetical RAB.
- vi. To consider WACC, as may be calculated by the Authority, to be used for calculation of Hypothetical RAB (for the purposes of capitalization factor)
- vii. To calculate corporate tax pertaining to earnings from aeronautical services as calculated using revenue share (Annual Fee) on these earnings as element of cost for the year 2008-09 and use this figure in the calculation of Hypothetical RAB

VI.b. Accordingly the Authority decides that the Hypothetical RAB be taken as Rs 966.03 Crores.

VI.c. Further the Authority also decides to depreciate the Hypothetical RAB at the tariff year wise average depreciation rate for aeronautical assets.

## 10. Voluntary Retirement Scheme – Treatment of payments made to AAI

### a Authority's position on Issues pertaining to Voluntary Retirement Scheme – Treatment of payments made to AAI in the Consultation Paper

10.1. In the Consultation Paper No. 22/2012-13 dated 11.10.2012, MIAL had considered, as part of RAB for tariff determination, a sum of Rs.261 Crores in FY 2009-10 towards Retirement Compensation payable to AAI and an additional amount of Rs. 56 Crores in FY 2011-12 payable to AAI towards Retirement Compensation post wage revision as per OMDA.

10.2. MIAL had submitted the treatment given to Retirement Compensation paid/payable to AAI in the books of accounts of MIAL and reasons for considering the same as part of the RAB (vide submission dated 23.11.2011). MIAL stated that they have capitalised the Retirement compensation paid / payable to AAI in their books of accounts and the same has been amortised over a period of 27 years being balance period of initial 30 years as per OMDA. MIAL had accordingly considered the Retirement Compensation as a part of Regulatory Base. Further, MIAL had also stated that in case the Authority feels otherwise and does not consider Retirement Compensation as part of Regulatory Base, the same be allowed as O&M Cost.

10.3. In their submission dated 31.07.2012, MIAL had submitted that:

*“MIAL provided Rs. 261 Crores in FY 10 towards Retirement Compensation payable to AAI pending finalization of wage revision of employees. Additional amount payable to AAI towards Retirement Compensation post wage revision of its employees of Rs. 56 Crs. was provided in FY 12. Payment schedule for the same has been agreed with the AAI. Expected payments as per the schedule for FY 13 and FY 14 are:*

<i>In Rs crore</i>	<i>FY 13</i>	<i>FY 14</i>
<i>Payments to AAI</i>	<i>21.1</i>	<i>20.8</i>

*Payment schedule has been certified by the Auditor, the same is attached.”*

### Observations of the Authority on Retirement Compensation amount

10.4. The Authority had while reviewing the treatment of Retirement Compensation amount requested MIAL to submit an Auditor's certificate for the historic payments made

by MIAL to AAI towards Retirement Compensation and the schedule of future payments to be made to AAI towards Retirement Compensation.

**10.5.** MIAL's auditor certificates, certified payment of a sum of Rs.154.20 crore to AAI towards Retirement Compensation in the FY 2009-10 and that there has been an adjustment of Rs 31.16 crores in FY 2010-11 as excess payment.

**10.6.** MIAL had further submitted that they received a letter from AAI dated 01.11.2010 for a One Time claim amounting to Rs. 93.84 crores and separately received monthly bills for the period upto March 2011 from AAI aggregating to Rs. 29.24 crores. Hence excess payment made of Rs 31.16 crores was adjusted by MIAL against amount payable to AAI during FY 11.

**10.7.** The schedule of future payment as per auditor certificate, submitted by MIAL, payable to AAI towards Retirement Compensation as indicated in the Authority's Consultation Paper No.22/2012-13 dated 11.10.2012 is as under:

**Table 32: Schedule of payment by MIAL to AAI towards Retirement Compensation**

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Future Payments (Rs. In Crores)	54.4	21.1	20.8	20.4	20.0	19.3	18.6	17.9	1.5

**10.8.** The Authority had requested AAI to furnish the details of retirement compensation bills raised on MIAL by AAI. As per the details furnished by AAI, the Authority noted that the amount of Rs 260.8 crores was billed by AAI on 08<sup>th</sup> March 2010. However this bill was withdrawn by AAI and separate bills were submitted in the heads of One time component, Monthly claims and Supplementary monthly bill due to pay revision.

**10.9.** The Authority observed that the aforesaid liability on MIAL is arising out of the provisions made in OMDA. As per clause 6.1.1 of OMDA, for a period of three years from the effective date, AAI was to provide operational support to the JVC through the general employees in the manner and subject to the terms provided in the OMDA. This period has been termed as Operation Support Period. Further, as per clause 6.1.4, at any time during the operation support period not later than three months prior to the expiry of the Operation Support Period, the JVC shall make offers (on terms that are no less attractive in terms of salary, position etc. than the current employment terms of such employees) of employment to the general employees that it wanted to employ. However, JVC was

required to make offers to a minimum of 60% of the general employees. The general employees had the option to accept or decline the offer within one month. The general employees who accepted offer of the JVC, upon resigning from AAI were treated to have ceased to be the AAI employees from the date of acceptance of offer or completion of the operation support period as applicable. The OMDA also provided that if less than 60% of the general employees accept the offer of employment made by the JVC then the JVC was required to pay to AAI retirement compensation for such number of general employees as represent the difference between the 60% of the general employees and the number of general employees accepting offer of employment made by the JVC.

**10.10.** As stated in para 10.1 above, MIAL had amortised the Retirement Compensation liability over the balance concession period, considering the Retirement Compensation amount as a part of RAB.

**10.11.** In this background, two options appeared to be available before the Authority regarding the treatment of Retirement Compensation liability:

10.11.1. Option I – The amounts paid by MIAL to AAI as certified by the Auditor in line with para 10.5 and 10.7 above, may be expensed out as operating expenditure as the payments are HR related and the amount of Rs.261 Crores in FY 2009-10 and of Rs. 56 Crores in FY 2011-12 may not be included in RAB; or

10.11.2. Option II – The amortisation of Rs.261 Crores and of Rs. 56 Crores proposed by MIAL on the grounds that of imposed constraints in OMDA may be considered.

**10.12.** The Authority, in line with its Tariff Order in respect of IGI Airport, New Delhi, had proposed to expense out the actual amount that is paid or will be paid by MIAL during the control period instead of capitalising the same.

**10.13. *The Authority had in the Consultation Paper No.22/2012-13 dated 11.10.2012, proposed to expense out the actual amount towards retirement compensation that is paid or will be paid by MIAL to AAI during the control period instead of capitalising the same.***

**10.14.** The impact of Option-I on the ‘X’ factor has been analysed as under:

**Table 33: Sensitivity – Impact on X-factor due to expensing out the Retirement Compensation instead of amortisation**

Parameter	X Factor as per the Base Model	X Factor after change in assumptions
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Parameter	X Factor as per the Base Model	X Factor after change in assumptions
Expensing out the Retirement Compensation instead of amortising the same	-873.36%	-829.15%

**b Stakeholder Comments on the Issue of Voluntary Retirement Scheme – Treatment of payments made to AAI**

**10.15.** On the issue of Voluntary Retirement Scheme, APAO stated that

*“As per AS10, cost related to bring an asset to its working condition would be treated as part of capital expenditure. Since, in the current scenario, MIAL could not have obtained the concession rights for CSIA without accepting the obligation of RC, such payments may be treated as cost related to bringing an asset to its working condition, subject to the conditions imposed under accounting standard issued by Institute of Chartered Accountants of India (ICAI). Hence, payments made towards RC could be capitalized. Relevant section from AS 10 is presented below:*

*“The cost of an item of fixed asset comprises its purchase price, including import duties and other non-refundable taxes or levies and any directly attributable cost of bringing the asset to its working condition for its intended use”*

*The Authority has proposed that since RC amount are not being paid on a one time basis, treatment of amortization would be incorrect. It would not be appropriate to consider it as part of operational expense only because the payments are staggered. It may be noted that interest during construction (IDC) is also paid to the lenders every quarter (or as based on the agreement between the lenders and the party) and is not a one-time expense. However, IDC is capitalized and amortized along with fixed asset.*

*On the basis of above arguments, APAO requests the Authority to consider capitalizing the RC payments as part of RAB in the year of actual payments made by MIAL and allow amortizing these expenses over the life of the asset.*

*The approach adopted by the Authority is also inconsistent with the principles of accrual based accounting mandated under Accounting Standards. Even if Authority decides to expense out this expenditure it should be done based upon the total liability to MIAL and not based upon payment made / to be made in future. It is incorrect to treat one particular item of asset / expenditure on cash basis while the entire accounting and tariff determination is being done on the basis of accrual accounting.*

*Alternatively, if the Authority decides to expense out the RC amount, it should be the total amount capitalized (not just the amount paid), including the interest on the loan taken to pay this amount which needs to be expensed out.”*

**10.16.** FIA on the issue of Voluntary Retirement Scheme pointed out discrepancies in the CP No. 22/2012-13 stating that

*“Retirement compensation expense (para 11 of CP no 22/2012-13) of Rs. 261 crores in FY2009-10 and Rs. 56 crores in FY2011-12 is not traceable to the explanation provided on the Auditors certificates submitted by MIAL.”*

**c MIAL’s Response to Stakeholder Comments on Issues pertaining to Voluntary Retirement Scheme – Treatment of payments made to AAI**

**10.17.** In response to discrepancies pointed out by FIA, MIAL responded that

*“The reference to Retirement Compensation in Auditor’s certificate is as follows:*

*Page 6 of Annexure I – C states:*

*“3. Gross block is exclusive of Rs 2608 Million incurred during the Financial Year 2009-10 on accounts of other compensation to AAI employees.”*

*Page 361 of Annexure I – C states:*

*“3. Gross block of projects excludes expenditure incurred on compensation to AAI employees Rs. 3,169.58 Million (2011: 2608.61)””*

**d MIAL’s own comments on Issues pertaining to Voluntary Retirement Scheme – Treatment of payments made to AAI**

**10.18.** MIAL on the issue of Voluntary Retirement Scheme stated that

*“Partial loan was drawn to meet the payments towards Retirement Compensation. However, interest expense incurred by MIAL on the loan has not been considered by the Authority as part of expense towards the said obligation.*

*The interest expense to meet liability of MIAL towards Retirement Compensation and therefore should be allowed to be expensed out.*

*The Authority has proposed to allow a pass-through of interest expense on other forms of debts either through capitalization or as an expense. A similar and consistent approach in case of interest expense on loan for Retirement Compensation needs to be extended.*

*We request the Authority to allow interest expense related to loan for meeting payment obligations on account of Retirement Compensation to be expensed out.”*

**e Authority’s Examination of Issues pertaining to Voluntary Retirement Scheme –  
Treatment of payments made to AAI**

**10.19.** The Authority observed that these costs are related to human resources and are being paid by MIAL to AAI. The payments to AAI are to provide for retirement compensation of those personnel who opted not to join MIAL and reverted to AAI. Hence, these payments are more in the nature of costs associated with staff matters under the concession agreements. Further, these costs do not build any additional assets. Hence, this is an expenditure which cannot be capitalised. The mechanism cannot alter the nature of the payment, i.e., an expenditure that needs to be expensed out based the actual payments made by MIAL, as certified by the Auditors.

**10.20.** The Authority also noted the submission of MIAL to allow interest expense related to loan for meeting payment obligations on account of Retirement Compensation to be expensed out. In this matter, the Authority observes that the debt raised by MIAL on account of Retirement Compensation has not been considered as an element in the means of finance. Therefore, the cost of this debt may not be allowed to be recovered through WACC. Hence, the Authority decides to consider expensing out the interest thereon.

**Decision No. VII. Regarding Voluntary Retirement Scheme – Treatment of payments made to AAI**

**VII.a. The Authority decides to expense out the actual amount paid or to be paid by MIAL to AAI towards retirement compensation during the control period instead of capitalising the same.**

**VII.b. The Authority decides to expense out interest related to loan for meeting payment obligations on account of Retirement Compensation.**

## 11. Cost of Debt

### a Authority's position on Issues pertaining to Cost of Debt in the Consultation Paper

11.1. MIAL had submitted that total of term loan sanctioned to MIAL is Rs 4,231 crs, out of which MIAL had already withdrawn Rs 3,747.6 crs till 31.03.2012 (Reference submission dated 31.07.2012). MIAL had further submitted that the balance of Rs 483.4 crores is envisaged to be withdrawn in FY 13 for project requirements.

11.2. The Authority had sought Auditor's certificate(s) supporting MIAL's submissions on the rates of interest, drawdowns and repayments of term loans which were submitted by MIAL. The same is reproduced as below:

**Table 34: Long Term Loan availed by MIAL as certified by MIAL's Auditor**

Long Term Loan availed by MIAL (in Rs millions)					
Financial Year	Balance as at the beginning of the year	Availed during the year	Repaid during the year	Balance as at the end of year	Weighted average rate of interest
2006-07	-	-	-	-	0.00%
2007-08	-	9,500	-	9,500	9.65%
2008-09	9,500	4,290	-	13,790	9.93%
2009-10	13,790	6,417	-	20,207	10.18%
2010-11	20,207	6,761	-	26,968	9.79%

11.3. MIAL had also submitted auditor certificate, certifying historical year wise medium term and short term loan availed, which are reproduced below:

**Table 35: Medium Term Loan availed by MIAL as certified by MIAL's Auditor**

Medium Term Loan availed by MIAL (in Rs millions)					
Financial Year	Balance as at the beginning of the year	Availed during the year	Repaid during the year	Balance as at the end of year	Weighted average rate of interest
2006-07	-	-	-	-	0.00%
2007-08	-	-	-	-	0.00%
2008-09	-	-	-	-	0.00%
2009-10	-	800	-	800	9.50%
2010-11	800	200	318	682	9.90%

**Table 36: Short Term Loan availed by MIAL as certified by MIAL's Auditor**

Short Term Loan availed by MIAL (in Rs millions)					
Financial Year	Balance as at the beginning of the year	Availed during the year	Repaid during the year	Balance as at the end of year	Weighted average rate of interest
2006-07	-	3,058	-	3,058	9.35%
2007-08	3,058	-	3,058	-	9.35%
2008-09	-	2,000	1,089	911	12.88%
2009-10	911	-	911	-	12.75%
2010-11	-	2,500	-	2,500	10.25%

11.4. MIAL further submitted the auditor certificate for the weighted average rate of interest as follows:

**Table 37: Weighted average rate of interest of MIAL as certified by MIAL's Auditor**

Total Loan availed by MIAL (in Rs millions)					
Financial Year	Balance as at the beginning of the year	Availed during the year	Repaid during the year	Balance as at the end of year	Weighted average rate of interest
2006-07	-	3,058	-	3,058	9.35%
2007-08	3,058	9,500	3,058	9,500	9.59%
2008-09	9,500	6,290	1,089	14,701	10.05%
2009-10	14,701	7,217	911	21,007	10.20%
2010-11	21,007	9,461	318	30,150	9.79%

11.5. MIAL had, in response to this Authority's communication seeking reasons for clubbing the loan drawdown schedule for long term and short term and also for deriving the interest rates as weighted average of long term and short term loans, vide their submission dated 21.03.2012, stated that:

*"Since the amount was taken as the bridge loan hence it is included in the short term loan schedule".*

MIAL had further clarified during the discussions that the loan amounts, indicated in the short term loan, were drawn as bridge loan towards funding the temporary gap in the means of finance for the capital expenditure. Hence these loans are to be considered along with the term loan.

11.6. The Authority also sought copies of the loan documents for these short term loans in support of MIAL's claim.

11.7. MIAL had also, vide their submission dated 31.07.2012, submitted the loan agreements entered into by MIAL with various banks for availing the short term loans. Based on the loan documents submitted by MIAL, the Authority noted the reasons for which these short term loans were sanctioned by various banks.

**Table 38: Short term loan raised by MIAL towards temporary gap in the means of finance for capital expenditure**

Sl.No	Short term loan (Rs. Crores)	Sanction date	Bank	Purpose mentioned as per the Loan Document
1.	200	29.04.2006	IDBI	Bridge Loan
2.	150	18.05.2006	UTI	As part of Rupee term loan towards modernisation and upgradation of Mumbai International Airport

Sl.No	Short term loan (Rs. Crores)	Sanction date	Bank	Purpose mentioned as per the Loan Document
3.	100	06.09.2008	Axis	Sub-limit to term loan for cash flow mismatch
4.	100	26.12.2008	Axis	Sub-limit to term loan for project vendor payments
5.	250	11.03.2011	Bank of India	Bridge loan to meet Capital Expenditure
6.	350	31.01.2012	Bank of India	Bridge loan to meet Capital Expenditure
7.	150	09.02.2012	IDBI	Bridge loan to meet Capital Expenditure
8.	300	06.03.2012	Axis	Bridge loan to meet Capital Expenditure

**11.8.** From the agreements, the Authority had noted that these short term loans were sanctioned with the purpose of meeting the gap in the means of finance for the capital expenditure and were disbursed to MIAL as sub-limit to the term loan arrangements entered into by MIAL with respective banks. Hence in view of the Authority, these short term loans can be considered as interim arrangement towards means of finance together with the term loan.

**11.9.** Further MIAL, vide their submission dated 26.06.2012, had submitted the auditor certificate for loan drawdowns and rates of interest for FY 2012

**Table 39: Weighted average rate of interest for FY 2012 as certified by MIAL's Auditor**

Loan	Balance as at the beginning of the year	Availed during the year	Repaid during the year	Balance as at the end of the year	Weighted average rate of interest
Long Term	26,968.10	10,507.70	-	37,475.80	10.09%
Medium Term	681.82	-	303.03	378.79	9.90%
Short Term	2,500.00	8,000.00	2,500.00	8,000.00	11.18%
Total	30,149.92	18,507.70	2,803.30	45,854.59	

**11.10.** MIAL, vide their letter dated 03.04.2012, had submitted that some of the loan facilities will see a reset of interest rates in FY 13 and FY14. MIAL stated that

*“Weighted average cost of debt for the Rupee Term Loan up to FY 2011-12 was 10.08% p.a. However last draw down in the month of October 11 was at an interest rate of 11.04 %. For the new draw-downs to be done during April 2012 to August 2012 interest rate is assumed to be higher at 11.50% considering hardening of interest rate and severe liquidity squeeze in the*

*banking system. In fact Banks have been quite reluctant to disburse loans at the current rate of interest as it is below their cost of funds. Taking into account these factors, it is expected that interest rates will further move up and accordingly projected to be at 12% and 12.5% as on 31st Dec 2012 and 31st Dec 2013 for the loan amounts where interest rate is to be reset i.e. a nominal increase of 50 basis points on every reset at December 2012 and December 2013.”*

**11.11.** Accordingly MIAL had calculated the annual average cost of debt for FY13 and FY14 to be 10.55% and 11.31% respectively.

**11.12.** MIAL, vide their submission dated 10.09.2012, had provided the extract of the Common Loan Agreement and subsequent modification and further submitted that:

*“As per the Common Loan Agreement signed between MIAL and consortium of 14 bankers, Applicable Interest Rate shall be 3 year G-sec (“Benchmark Rate”) plus spread of 215 basis (“Spread”) p.a. (amended to 265 basis points on 21.07.2011). On Reset dates the Benchmark Dates shall be re-fixed/calculated but the spread remains the same.*

*G-sec rate shall be calculated as simple average rate announced on six (6) immediately preceding business days of each Disbursement/ Reset Dates. The Benchmark Rate will be simple average rate of the annualized bid yields of the — year Government of India securities (G-sec yields) for 6 Business Days preceding the days of Disbursement/ Reset Date.*

*As per the Common Loan agreement Facility A and Facility D would reset in December 2012 and Facility B and Facility E would reset in December 2013 Considering the hardening of interest rate and severe liquidity squeeze in the banking system, Banks have been quite reluctant to disburse loans at the current rate of Interest as it is below their cost of funds. Taking into account these factors, it is expected that interest rate will further move up and accordingly projected to be at 12% and 12.5% as on 31.12.2012 and 31.12.2013 for the loan amounts where interest rate is to be reset i.e. a nominal increase of 50 basis points on every reset at December 2012 and December 2013.”*



11.13. The details of the loan facilities, as submitted by MIAL, are as follows:

**Table 40: Details of loan facilities submitted by MIAL**

Loan Facility	Amount (in Rs Crore)	Current Rate of Interest	Next Reset Date
Facility A	346.39	9.15%	December 31, 2012
Facility B	758.80	10.28%	December 31, 2013
Facility C	904.39	10.96%	December 31, 2014
Facility D	1,124.99	9.85%	December 31, 2012
Facility E	613.01	11.01%	December 31, 2013
Facility F	453.40	-**	December 31, 2014
Facility G	30.00	-**	December 31, 2015

*\*\* - These loans have not been drawn yet and MIAL have submitted that these are proposed to be drawn in FY 2013.*

11.14. As per their submission in para 11.12, MIAL had proposed to consider rate of interest of 12% for Loan Facility A and D after their scheduled reset on December 31, 2012 and 12.5% for Loan Facility B and Loan Facility E after their scheduled reset on December 31, 2013.

11.15. MIAL had also submitted that the current rate of interest for Facility C of the loans is 10.96% and provided evidence for the same in the form of the letter from the bank while the rate of interest for Facility C of the loans being considered in the tariff model is 10.42%.

11.16. The weighted average Cost of Debt ( $R_d$ ) for the control period, submitted by MIAL based on the computation from the outstanding debt and yearly average cost of debt as given in the table below, works out to be 10.46%.

**Table 41: Weighted average Cost of debt submitted by MIAL (certified by auditors till FY 12)**

Particulars	FY 10	FY 11	FY 12	FY 13	FY 14
Outstanding debt – In Rs. Cr.	2,021	2,947	4,548	4,231	4,231
Cost of Debt - %	10.20%	9.79%	10.13%	10.55%	11.31%

11.17. The Authority had in its Airport Order decided that:

*“For estimating the cost of debt, the Authority will consider the forecast cost of existing debt likely to be faced by the airport, subject to the Authority being assured of the reasonableness of such costs based on review including of the sources, procedure and method through which the debt was raised. For future debt likely to be raised over the control period or debt which is subject to a floating rate, the Authority may use forecast*

*information on the future cost of debt, subject to the Authority being assured of the reasonableness of such costs, based on a review including of its sources, procedures and methods to be used for raising such debts.”*

**11.18.** The Authority noted MIAL’s submissions (presented in para 11.1 above) that the total debt sanctioned to MIAL towards means of finance for undertaking the capital expenditure for CSIA is Rs 4,231 crores, out of which MIAL had already withdrawn Rs 3,747.6 crores and would withdraw the remaining amount of Rs.483.4 crores in FY 13. The Authority, for the purpose of consideration of future rates of interest, had segregated the debt, to be raised by MIAL, in three categories:

11.18.1. Debt, which is contracted and already drawn by FY 12 (i.e. Loan Facility A, B, C, D and E): Current rates of interest for these tranches of loan are mentioned in the loan agreement and the reset of rates of interest is based on a formula indexed to G-Sec rates;

11.18.2. Debt, which is contracted and yet to be drawn during the first control period (i.e. Loan Facility F and G): Rates of interest for these tranches of loan are not mentioned in the loan agreement and the reset of rates of interest is based on a formula indexed to G-Sec rates in the same manner as that for tranches A, B, C, D and E

11.18.3. Debt, which has not been contracted and may need to be raised afresh during the current control period

**11.19.** In respect of the debt, which is contracted and already drawn by FY 12 (i.e. Loan Facility A, B, C, D and E), the Authority noted that MIAL have incurred an interest cost till FY 12, which is also certified by their auditors. The Authority had proposed to consider the actual cost of debt incurred by MIAL as certified by the auditors.

**11.20.** The Authority noted that while the loan facilities A, B, C, D and E have been drawn and are scheduled to see a reset of rates of interest in FY 13 and FY 14, the loan facilities F and G have not been drawn yet. The rates of interest likely to be levied on these seven tranches of the term loan contracted by MIAL are as under:

**Table 42: Projected rates of interest as submitted by MIAL**

Loan Facility	Projected Rate of Interest after reset	
	FY 13	FY 14
Facility A	12%	12%

Loan Facility	Projected Rate of Interest after reset	
Facility B		12.5%
Facility C	No reset in the first control period	
Facility D	12%	12%
Facility E		12.5%
Facility F**	11.5%	11.5%
Facility G**	11.5%	11.5%

*\*\* - These loans have not been drawn yet and MIAL have submitted that these are proposed to be drawn in FY 2013.*

**11.21.** In respect of the debt, which is contracted and yet to be drawn in the current control period (Loan Facility F and G), MIAL had proposed to consider rate of interest of 11.5%. On this issue, the Authority noted the following:

11.21.1. MIAL had not availed all the loan facilities including Loan Facility F and Loan Facility G of the Common Loan and hence it was difficult to ascertain the total cost of debt for this Common Loan. The Authority also noted that the current rates for Loan Facility C and Loan Facility E are at 10.96% and 11.01% respectively.

11.21.2. The Authority had reference to the most recent Mid-Quarter Monetary Policy Review (September 2012) by Reserve Bank of India and had observed that RBI decided to reduce the Cash Reserve Ratio by 25 basis points but RBI did not alter the interest rates. RBI stated in its review that,

*“.....However, in the current situation, persistent inflationary pressures alongside risks emerging from twin deficits – current account deficit and fiscal deficit - constrain a stronger response of monetary policy to growth risks.....”*

**11.22.** In view of the above, the Authority felt that it is not possible to take a definitive view in this matter. However, considering the RBI review and the current rate of interest applicable for MIAL, the Authority felt that it may consider giving 50 basis points as a head room to MIAL from its current rate of interest at around 11%. Thus the Authority proposed to consider 11.5% as a ceiling on the rate of interest for Loan Facility F and G.

**11.23.** As regards the rates of interest of Loan facilities A, B, C, D and E, which are scheduled to be reset during balance years in the current control period (FY 13 and FY 14), refer Table 42 above, the Authority was of the view that while interest rates may go up, but not to the levels (12% and 12.5%) projected by MIAL. In view of the interest rate ceiling considered in

para 11.22, the Authority had proposed to consider the same ceiling for these loan facilities as well.

11.24. In respect of the debt, which had not been contracted yet and may need to be raised by MIAL in view of the gap in the means of finance, the Authority had proposed to consider the cost of such debt on actuals subject to the ceiling of 11.5%.

11.25. *The Authority had proposed to consider the actual cost of Rupee Term Loan, paid by MIAL for the years 2009-10, 2010-11 and 2011-12. As regards the cost of debt for the period 2012-13 to 2013-14, the Authority had proposed to consider the actual cost incurred (weighted average rate of interest for the term loan, which has been certified by auditors of MIAL at 10.09%) by MIAL for the years 2009-10, 2010-11 and 2011-12 as the cost of debt for the years 2012-13 and 2013-14.*

11.26. *The Authority further proposed to true-up the cost of debt for the current control period with actual values (determined as weighted average rate of interest for the individual tranches of loan drawn within the control period) subject to the ceiling of 11.5% for individual tranches of loan.*

11.27. In view of the above, Cost of Debt ( $R_d$ ) for the loans availed by MIAL, works out as under:

**Table 43: Cost of debt as considered by the Authority**

Particulars	FY 10	FY 11	FY 12	FY 13	FY 14
Outstanding debt – In Rs. Cr.	2,021	2,947	4,548	4,231	4,231
Cost of Debt - %	10.20%	9.79%	10.13%	10.09%	10.09%

11.28. The impact of considering the future cost of debt as proposed by the Authority on the 'X' factor has been analysed as under:

**Table 44: Sensitivity – Impact on X factor from future cost of debt**

Parameter	X Factor as per the Base Model	X Factor after change in assumptions
Not considering upward revision proposed by MIAL (50 basis points) in future cost of debt for the present	(-)873.36%	(-)857.07%

## **b Stakeholder Comments on Issues pertaining to Cost of Debt**

**11.29.** FIA in its submission stated that tax savings have not been considered for the purpose of determining cost of debt. FIA noted that the Authority in the Consultation Paper No. 22/2012-13 has tentatively decided to consider the following as cost of Debt for the control period:

(a) FY10 to FY12 -cost of Rupee Term Loan, paid by MIAL.

(b) FY13 to FY14 -the Authority has tentatively decided to consider the actual cost incurred (weighted average rate of interest for the term loan, which has been certified by auditors of MIAL at 10.09%) by MIAL for the years FY10 to FY12 as the cost of debt for the years FY13 and FY14

**11.30.** FIA further stated that cost of debt is the effective rate that a company pays on its current debt post adjustment for tax savings. Referring to Schedule 1 of SSA, FIA stated that WACC is to be calculated post adjustment of taxes.

**11.31.** FIA further stated that based on aforementioned tentative decision taken by the Authority and review of Consultation Paper, it appears that cost of debt has not been adjusted for any tax savings. FIA further stated that post adjustment of such tax savings (assuming tax rate at 30%) in cost of debt, WACC will reduce from 10.77% to 8.42% and reduction in WACC from 10.77% to 8.42% will reduce target revenue by 10%. FIA further submitted that the Authority should factor such tax saving for computing WACC of MIAL.

**11.32.** With regards to cost of debt, Assocham reasoned that interest rates are market driven and suggested that cost of debt should be trued up based upon actual cost. Assocham stated as under,

*“AERA has proposed to cap the cost of new debt to be raised to fund the gap in means of finance or applicable rate of interest at the time of every reset which is not correct and therefore cost of debt should be trued up based upon actual cost as interest rates are market driven and it may not be possible to raise new loans at the terms of the earlier loan as there is significant change in underline assumptions.”*

## **c MIAL Response to Stakeholder Comments on Issues pertaining to Cost of Debt**

**11.33.** MIAL responded to the comments from FIA on the matter as under,

*“Authority has already analyzed this aspect thoroughly in the Tariff order for IGI Airport, New Delhi’ and decided to use pre-tax cost of debt. Since it has decided to consider the actual tax as part of building block after considering impact of savings in tax expense due to interest expense on debt, it has, rightly, decided to use pre-tax cost of debt for WACC calculation. Alternatively, if Authority was to consider post-tax cost of debt it will have to consider tax expense before considering interest cost as an expense and therefore net impact would remain same in both the approaches.”*

**d MIAL’s own comments on Issues pertaining to Cost of Debt**

**11.34.** MIAL in their submission stated that the cost of debt is subject to prevailing market conditions that may vary from time to time. MIAL further stated that as a company, MIAL has very little control over such economic changes and the cost of debt would be based on the then prevailing market condition. Based on the fact that the cost of debt for loans recently taken by MIAL varies in the range of 11.75% to 12.5%, it is not appropriate to cap the cost of debt at 11.5%.

**11.35.** MIAL further stated that the Authority may also note that there is a gap in the means of finance to the extent of Rs. 1347.74 crores, that may have to be met through debt. The cost of such debt may be higher considering the current market scenario. The decision to cap the cost of debt may limit availability of debt, causing difficulties in bridging the funding gap and eventually adversely affecting the project completion. MIAL further stated that the Authority has the means and the opportunity to ascertain the reasonableness of the cost of debt.

**11.36.** MIAL requested the Authority not to cap the cost of debt (including interest cost on DF loan) at 11.5% as indicated in the CP.

**e Authority’s Examination of Issues pertaining to Cost of Debt**

**11.37.** The Authority has examined in detail the comments made by the stakeholders in respect of the Authority’s position regarding capping the cost of debt at 11.5% in the Consultation paper No. 22/2012-13 dated 11.10.2012. The Authority finds that there are two issues being highlighted by the stakeholders. First issue is the issue of use of post-tax cost of debt, which has been discussed in para 15.43 and para 15.44 below.

**11.38.** Second issue is on the consideration of a cap on the cost of debt. The Authority has examined in detail the issue of capping the cost of debt for MIAL in Para 12.12 to Para 12.24 of its Consultation Paper – 22/2012-13. Further the Authority had reference to the most recent Mid-Quarter Monetary Policy Review (December 2012) by Reserve Bank of India (RBI). The Authority observed that on the basis of its assessment of macroeconomic conditions, RBI did not alter the bank rates, policy repo rate and the cash reserve ratio. Also while providing Guidance on the monetary policy, RBI has indicated towards policy easing in the next quarter (January 2013 – March 2013) meaning that there could be softening of interest rates going forward and mentioned as under,

*“Overall, recent inflation patterns and projections provide a basis for reinforcing our October guidance about policy easing in the fourth quarter. However, risks to inflation remain and accordingly, even as the policy emphasis shifts towards growth, the policy stance will remain sensitive to these risks.”*

**11.39.** The Authority has also noted that as per the Auditor Certificate dated 22.11.2012 submitted by MIAL (Annexure 5 of MIAL’s response to AERA’s Consultation Paper No. 22/2012-13 dated 11 October 2012 on Determination of Aeronautical Tariff and Development Fee in respect of Chhatrapati Shivaji International Airport, Mumbai for the 1<sup>st</sup> Regulatory Period) in respect of term loan taken on securitization of ADF during the financial year 2012-13, rate of securitization of ADF is 11.25% p.a. along with one time upfront fee of 0.50%. The Authority also notes that availability of finance is an important factor in completion of the project (that includes the DF securitization). The Authority expects MIAL to obtain the debt at most comparative rates. It has also noted MIAL’s request in para 11.36 above as well as its letter dated 14.01.2013 on this issue. If MIAL presents to the Authority reasonable evidence regarding inability to obtain finance within the ceiling of 11.5%, the Authority may review the ceiling in the light of such evidence.

**11.40.** Based on the above, the Authority presently does not find any reason to reconsider its position taken on the issue of cost of debt. Hence the Authority decides to consider the actual cost of Rupee Term Loan, paid by MIAL for the years 2009-10, 2010-11 and 2011-12. As regards the cost of debt for the period 2012-13 to 2013-14, the Authority decides to consider the actual cost incurred (weighted average rate of interest for the term loan, which

has been certified by auditors of MIAL at 10.09%) by MIAL for the years 2009-10, 2010-11 and 2011-12 as the cost of debt for the years 2012-13 and 2013-14.

**11.41.** The Authority notes that for the years 2012-13 and 2013-14, the actual cost of debt may be different from that weighted average rate of interest for the term loan during the first three years (2009-10, 2010-11 and 2011-12) of the current Control Period. This may impact WACC for the years 2012-13 and 2013-14. The Authority decides to true-up the difference, if any, on this account during calculation of aeronautical tariffs in the next Control Period.

#### **Decision No. VIII. Regarding Cost of Debt**

**VIII.a.** The Authority decides to consider the actual cost of Rupee Term Loan, paid by MIAL for the years 2009-10, 2010-11 and 2011-12. As regards the cost of debt for the period 2012-13 to 2013-14, the Authority decides to consider the actual cost incurred (weighted average rate of interest for the term loan, which has been certified by auditors of MIAL at 10.09%) by MIAL for the years 2009-10, 2010-11 and 2011-12 as the cost of debt for the years 2012-13 and 2013-14.

#### **Truing Up: 3. Correction / Truing up for Cost of Debt**

**3.a.** The Authority further decides to true-up the cost of debt for the current control period with actual values (determined as weighted average rate of interest for the individual tranches of loan drawn within the control period) subject to the ceiling of 11.5% for individual tranches of loan. The Authority may review this ceiling upon reasonable evidence that MIAL may present to the Authority in this behalf.

### **12. Treatment of the Interest free Refundable Security Deposits (RSD)**

#### **a Authority's position on Issues pertaining to Treatment of the Interest free Refundable Security Deposits in the Consultation Paper**

**12.1.** In the Consultation paper No.22/2012-13 dated 11.10.2012, the Authority had after considering all the submissions made by MIAL on the Refundable Real Estate Security Deposits (RSD) proposed to consider RSD at zero cost for the present. MIAL had submitted that the RSD, totally amounting to Rs. 1,000 crores, which it used for financing the project,

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should be treated as part of equity. MIAL had, in their initial submission, projected Rs. 1000 Crores as Real Estate security deposits. In the initial tariff filing, the Real Estate security deposits had been projected to be realised in two installments of Rs 700 crs and Rs 300 crs in FY 12 and FY 13 respectively.

**12.2.** MIAL had, vide their submission dated 26.06.2012, submitted that there has not been any realisation of Real Estate security deposits in FY 12. Accordingly MIAL submitted a revised schedule of real estate security deposits, which envisages realisation of Rs 220.75 crs, Rs 435.09 crs and Rs 344.16 crs in FY 13, FY14 and FY15 respectively keeping the total amount same as of Rs 1,000 crs.

**12.3.** MIAL had, vide their submission dated 24.07.2012, submitted that,

*“MIAL had earlier envisaged to generate Security Deposit through Real Estate Monetization of Rs. 700 Crores in FY 12 and Rs. 300 Crores in FY 13 respectively based on assumption that 22.33 acres and 12.78 acres of land would be available for monetization in FY 12 and FY 13 respectively.*

*However due to ongoing Airport Development works and non-availability of alternate land most of these lands were to be put to temporary use for the purpose of Project Development and therefore till FY 12, no land was available for Real Estate development. Similarly, parcel of land considered earlier at AAI colony at Sahar Road for Real Estate Monetization could not be monetized pending vacation of colony by the AAI Employees. In addition to the above, MIAL has been awaiting necessary clearances from MMRDA for Development Plan for more than 2 years.*

*MIAL had to revise its Real Estate Monetization forecast considering availability of clear land and prevailing market scenario.....”*

**12.4.** MIAL had, in the same letter, also submitted that as per OMDA and SSA, revenues from other than Revenue Share Assets (Non Transfer Asset) are not to be used for cross subsidy. MIAL further submitted assigning zero cost for such deposits disregard their economic significance and intrinsic cost and in effect tantamount to providing 100% cross subsidy in tariff determination when zero cross subsidy is envisaged in concession documents.

**12.5.** .

## Observations on Refundable Security Deposits

12.6. Above submission of MIAL has been examined. It is observed that while Equity is not defined under the SSA, OMDA defines equity as under:

*“ ‘Equity’ shall mean the paid-up share (equity and preference) capital of the JVC and shall include any Sub-ordinate Debt advanced by shareholders of the JVC to the JVC, provided that the Lenders’ or their agent classifies such Sub-ordinate Debt as equity and conveys the same by a written notice to the AAI; provided however that notwithstanding the foregoing, any amounts that have been infused in the JVC as paid-up share capital or Subordinate Debt would not be classified as ‘Equity’ to the extent that such amount do not related to Transfer Assets.”*

12.7. It is to be noted that the above definition is exhaustive in nature and not inclusive. Therefore, only the items specifically stated therein can be considered as “equity” and it may not be permissible to include any other items therein.

12.8. Further, the Authority is of the view that MIAL may receive this amount as interest-free security deposit. In view of the nature of transaction involved, the amount would be received by MIAL as a corporate entity. As such, with reference to the definition of Equity under OMDA, such amount is neither paid-up share capital nor subordinate debt advanced by shareholders of MIAL to MIAL.

12.9. Further, the Authority has noted from MIAL submissions that they have not been able to raise deposits as part of RSD as yet and the cost of the same is not known at present to the Authority. In absence of any factual evidence towards cost of RSD, the Authority is inclined to consider the cost of RSD at present as zero.

**12.10. The Authority had proposed to consider RSD at zero cost for the present.**

12.11. The impact of considering a 0% cost of the RSD on the 'X' factor is analysed as under:

**Table 45: Sensitivity – Impact on X factor from considering RSD at zero cost**

Parameter	X Factor as per the Base Model	X Factor after change in assumptions
Cost of RSD at 0%	-873.36%	-812.16%

**b Stakeholder Comments on Issues pertaining to Treatment of the Interest free Refundable Security Deposits**

**12.12.** Various stakeholders (ACI, APAO, CII, Cathay Pacific and Bid Services Division (Mauritius) Limited and ACSA Global Limited (ACSA)) have provided comments on the Authority's position on return to be considered for Refundable Security Deposit, as presented in the Consultation Paper 22 / 2012-13 dated 11.10.2012.

**12.13.** ACI in their submission stated that it is evident that there is an opportunity cost associated with RSD in terms of the foregone lease rentals. ACI stated that considering that cost of capital can be defined as the "opportunity cost of all the capital invested in an enterprise". ACI further stated that CSIA could have kept RSD as fixed deposit in bank and could have borrowed funds against it and used the same for project funding on which AERA would have allowed cost of debt.

**12.14.** ACI further stated that

*"This approach of AERA is also not consistent with SSA under which revenues from Non Transfer Assets are not to be used for cross subsidization. However, by not giving any return on Security Deposit, AERA has assumed 100% cross subsidy which is totally arbitrary and against the principles of concession agreement signed with the Government of India. Treatment proposed by the Authority amounts to saying that the zero interest deposit has no inherent cost, which is incorrect and fallacious."*

**12.15.** APAO in its submission, provided reasons to propose that at the least, RSD should earn return equivalent to the benchmark returns available on long-term fixed deposits. Referring to the opportunity cost of the RSD and the WACC to be based on opportunity cost of capital invested in an enterprise, APAO stated that

*"In lieu of upfront deposit received by MIAL in the form of RSD, it is expected that MIAL would have to forego a part of the lease rentals. Additionally, MIAL had the option to invest RSD in the non aeronautical business or other related businesses which could have earned a higher return....."*

*.....Professor Aswath Damodaran, defines cost of capital as "opportunity cost of all the capital invested in an enterprise". "Opportunity cost is what*

*you give up as a consequence of your decision to use a scarce resource in a particular way". By this definition, the opportunity cost of RSD, in MIAL's case, may need to be measured by returns from RSD in the next best use, and NOT by the associated cost or source of funds."*

**12.16.** APAO has also referred to the possible interest, which might have been generated by MIAL through investment of the RSD in a bank fixed deposit and may have to be foregone in wake of its deployment in the project cost and stated that,

*".....Even if MIAL were to invest the RSD in a bank fixed deposit (FD), it would earn interest between 8-9 % depending on the prevailing FD interest rates. It is evident that there is a cost associated with RSD. Since the RSD will be raised from lessees of the Non-Transfer Assets, it is also outside the purview of any cross-subsidy for the aeronautical users as per the terms of the SSA....."*

**12.17.** APAO further stated that

*"SBI Caps in its report to the government for cost of RSD has mentioned as under: "On the quasi-equity for the airport sector, the study has concluded that the rate of return would depend on the type and feature of the instrument being used for such form of finance. The report further states that in quasi-equity, the risk / return profile lies above that of debt and below that of Equity". It is worth noting that RSD has all the characteristics of Equity such as no associated fixed costs, nature of funds being very long term and are subordinate to long term debt. Therefore RSD can be regarded as quasi-Equity."*

**12.18.** APAO also stated that other infrastructure sectors, where tariff is also regulated, allow a return on the capital employed. Regulators in these sectors do not provide return on the basis of source and associated cost of funds.

*"City Gas Distribution (CGD): Petroleum and Natural Gas Regulatory Board (PNGRB) allows return to concessionaires on the basis of the capital employed. It even recognizes that the security deposits received by the concessionaire would exist as liability and these should not be reduced from the total capital employed while determining tariff. Relevant extracts from*

*the guidelines issued by PNGRB for determination of network tariff for city or local natural gas distribution network and compression charge for CNG have been reproduced below:*

*“Entity<sup>13</sup> may collect refundable interest free security deposit as specified under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities for Laying, Building, Operating or Expanding City or Local Natural Gas Distribution Networks) Regulations, 2008. Such deposit is towards the safe-keeping of the meter and is to be refunded in full to the domestic PNG customer in case of a dis-connection. Further, since the amount collected as interest-free refundable security deposit shall exist as a liability in the books of accounts of the entity, the same shall not be reduced from the total capital employed while determining the network tariff.*

*The reasonable rate of return shall be the rate of return on capital employed equal to fourteen percent post-tax considering the rate of return on long-term risk-free Government securities and the need to incentivize investments in creation of CGD infrastructure”*

*“Other factors to be considered from the CGD guidelines:*

*i) PNGRB guidelines regulates tariff for CGD networks, which **applies directly to end-users**. PNGRB allows the security deposits provided by end users to be invested in the business and earn return on such investments, whereas in case of MIAL, security deposits have been availed from lessees of land.*

*ii) **Demand risks are less for a CGD network** as compared with traffic risk at an airport. Additionally, tariffs for CGD networks are for an essential commodity.*

*iii) Guidelines issued by PNGRB are one of the **most recent** guidelines in the Infrastructure sector in India and could be considered as learning from other regulated sectors. “*

*In port sector, Tariff Authority for Major Ports (TAMP) sets tariff for Major Ports based on cost plus Return on Capital Employed (ROCE) approach. Capital Employed is calculated as a summation of net fixed assets and*

*working capital. Relevant extracts from the regulation have been reproduced below:*

*“Return will be allowed on Capital Employed (ROCE), both for Major Port Trusts and Private Terminal Operators, at the same pre-tax rate, fixed in accordance with the Capital Asset Pricing Model (CAPM).”*

*“Capital Employed will comprise Net Fixed Assets (Gross Block minus Depreciation minus Works in Progress) plus Working Capital (Current Assets minus Current Liabilities)”*

**12.19.** APAO, in conclusion, stated as follows,

*“The Authority has proposed to provide zero returns on aeronautical assets funded through RSD. However, it is evident that there is an opportunity cost associated with RSD in terms of the foregone lease rentals. Professor Aswath Damodaran, a Professor at New York University and one of the leading corporate finance experts in the world, defines cost of capital as “opportunity cost of all the capital invested in an enterprise”. As per Principle 1 of Schedule 1 of the SSA, Authority is required to follow an ‘incentive-based’ approach for tariff determination. A zero return on RSD does not provide any incentive to investors to utilize RSD as a means of finance going forward. This is significant considering that RSD will be raised from lessees of the Non-Transfer Assets and is outside the purview of any cross-subsidy for the aeronautical users as per the terms of the SSA. At the least, RSD should earn return equivalent to the benchmark returns available on long-term fixed deposits, which would continue to incentivize the operator to utilize such funds for financing aeronautical assets, as opposed to employing debt or equity at a higher cost, in a capital constrained scenario. There are also examples from other infrastructure sectors where the regulator provides return on the capital employed by the Concessionaire without considering the source or cost of funding while calculating tariff.”*

**12.20.** CII stated that

*“It is inappropriate to ignore the opportunity cost of these deposits. Had the deposits not required for project funding and not collected, lease rentals would have been higher. It is worthwhile to note that as per provisions of State Support Agreement (SSA) revenues from real estate development (Non Transfer Assets) are not supposed to be used for cross subsidizing aeronautical charges. However approach of Authority by implication assumes 100% cross subsidy which is against the provision of concession agreement signed by the company with Govt. of India.*

*Refundable Security Deposits (RSDs) has been raised against lease of real estate. Real estate does not form part of Revenue Share Assets, i.e. it is a Non-Transfer Asset. As per the SSA, no contribution from Non-Transfer Asset is envisaged either towards project cost or target revenue requirement. Despite the non-encumbered nature of the*

*Deposits, CSIA decided to deploy RSD only as a means of finance for timely completion of the project. It will be completely unfair and against the principles of SSA which requires as highlighted above that Regulator is required to give return of capital (capital without any doubt would cover deposits) and give a reasonable return on investment ( investment would obviously include assets funded from RSD). Moreover, a specific cost (Le. opportunity cost) can be attributed to the interest-free RSD when deployed from real estate business to aero business. CSIA may be considered to be operating two distinct businesses viz. aeronautical and real estate. RSD can be considered to be raised by the real estate part of the business and lent to the aeronautical part at the market prevalent cost of long-term debt. The cost so determined should be used by the Regulator as a reasonable return for use of RSD for aeronautical business (project funding).”*

**12.21.** Referring to OMDA and the Lease Deed, Cathay Pacific urged the Authority to work with MIAL in estimating the potential profit from exploitation of land in order to mitigate the burden of the airport users. Cathay Pacific, in its submission on the issue, stated as under,

*“As per OMDA and the Lease Deed, the entire airport land has been leased to MIAL for an annual lease rental of INR 100 and MIAL is entitled to commercially exploit 10% of the airport land. The entire scheme of Mumbai airport privatization is to let the private airport developer generate revenue out of real estate so as to cross subsidise the cost incurred for rendering aeronautical services. MIAL has failed to take any effective ways to monetize its land banks after privatization. As a result, the cost of CSI Airport project does not benefit at all from this initiative.*

*We urge AERA to look into this and work with MIAL to estimate the potential profit, in part if not all, in exploitation of the land in order to mitigate the burden of the airport users.”*

**12.22.** On the issue of revenue from real estate, Cathay Pacific stated that

*“As per OMDA and the Lease Deed, the entire airport land has been leased to MIAL for an annual lease rental of INR 100 and MIAL is entitled to commercially exploit 10% of the airport land. The entire scheme of Mumbai airport privatization is to let the private airport developer generate revenue out of real estate so as to cross subsidise the cost incurred for rendering aeronautical services. MJAL has failed to take any effective ways to monetize its land banks after privatization. As a result, the cost of CSI Airport project does not benefit at all from this initiative. We urge AERA to look into this and work with MJAL to estimate the potential profit, in part if not all, in exploitation of the land in order to mitigate the burden of the airport users.”*

**12.23.** With regards to the Real Estate with MIAL, BAR (India) stated as under,

*“The CSI Airport, Mumbai is situated in the heart of the city and airport lands spread across an area of nearly 2000 acres. As per the terms of the OMDA and the Lease Deed, the entire airport land has been leased to MIAL for an annual lease rental of INR 100. Further, MIAL is entitled to commercially exploit 10% of the airport land, i.e., nearly 200 acres. The entire scheme of Mumbai airport privatization as in the case of Delhi Airport privatization is to let the private airport developer generate revenue*



*out of real estate so as to cross subsidise the cost incurred for rendering aeronautical services (except to the extent of the non-transfer assets). MIAL has failed to take any effective steps to monetize its land banks even after nearly 7 years of privatisation. There are no details disclosed as to the reasons for MIAL's failure on this front. The market conditions surely ought not to be a reason for such prolonged inactivity on the part of MIAL and in any case the airlines and the passengers should not be burdened with the cost of such inaction on the part of MIAL. In fact, there has been no tender or any other bid document for real estate that has been disclosed anywhere in the MIAL tariff application submitted to AERA nor has any road map for such tender/bid been set out in the said application.”*

**12.24.** Bid Services Division (Mauritius) Limited and ACSA Global Limited (ACSA) stated as under,

*“The SSA provides the Regulator to observe the following principle while determining tariffs amongst others:*

*“Commercial: In setting up the price cap, AERA will have regard to the need for the JVC to generate sufficient revenue to cover efficient operating costs, obtain the return of capital over its economic life and achieve a reasonable return on investment commensurate with the risk involved.”*

*It is inappropriate to ignore the opportunity cost of these deposits. Had the deposits not required for project funding and not collected, lease rentals would have been higher. It is worthwhile to note that as per provisions of State Support Agreement (SSA) revenues from real estate development (Non Transfer Assets) are not supposed to be used for cross subsidizing aeronautical charges. However approach of Authority by implication assumes 100% cross subsidy which is against the provision of concession agreement signed by the company with Govt. of India.*

*Refundable Security Deposits has been raised against lease of real estate. Real estate does not form part of Revenue Share Assets, i.e. it is a Non-Transfer Asset. As per the SSA, no contribution from Non-Transfer Asset is mandated either towards project cost or target revenue requirement.*

*Despite the nonencumbered nature of the deposits, MIAL decided to deploy RSD as a means of the finance only in the interest of timely completion of the project. It will be completely unfair and against the principles of SSA which requires as highlighted above that Regulator is required to give return of capital (capital without any doubt would cover deposits) and give a reasonable return on investment (investment would obviously include assets funded from RSD).*

*Moreover, a specific cost (i.e. opportunity cost) can be attributed to the interest-free RSD when deployed from real estate business to aero business. MIAL may be considered to be operating two distinct businesses viz. aeronautical and real estate. RSD can be considered to be raised by the real estate part of the business and lent to the aeronautical part at the market prevalent cost of long term debt. The cost so determined should be used by the Regulator as a reasonable return for use of RSD for aeronautical business (project funding)."*

**12.25.** Presenting reasons with regard to the return to be considered for Real Estate Deposits, Assocham suggested that the Authority's consideration of providing zero return on real estate deposits, as presented in the Consultation Paper – 22 / 2012-13 dated 11.10.2012, is not correct. Assocham stated as under,

*AERA has proposed Zero return on real estate deposits proposed to be utilized for project funding by MIAL which is totally incorrect considering the following:*

*a. These funds have inbuilt opportunity cost and if deposits are not to be collected for project, lease rentals would have been higher accordingly.*

*b. These funds have all characteristics similar to that of equity considering very long tenure of these deposits and taking into account the fact that lenders have considered these deposits as quasi equity. For all purposes, these deposit should be considered similar to equity and accordingly appropriate return should be given.*

*c. It is against the principles of State Support Agreement (SSA) which clearly envisages no cross subsidy from real estate development (Non Transfer*

*Assets) while by not giving any return on these deposits AERA has in effect assumed 100% cross subsidy.*

*d. MIAL had decided to use deposits as means of finance since no other sources were available. For funds available through other sources such as debt or equity AERA would have given cost of debt or equity and therefore assuming that these deposit have zero cost is patently wrong as these funds have implicit cost.*

*e. Infact TAMP (Port Regulator) and Petroleum and Natural Gas Regulatory Board (PNGRB) allows return on all kind of capital employed including security deposits at a uniform rate of 14 to 16% and will be completely unfair to Airports if no return is provided on these deposits.*

**c MIAL's Response to Stakeholder Comments on Issues pertaining to Treatment of the Interest free Refundable Security Deposits**

**12.26.** MIAL has not provided response to stakeholder comments on the issue.

**d MIAL's own comments on Issues pertaining to Treatment of the Interest free Refundable Security Deposits**

**12.27.** MIAL has provided its own comments on the Authority's position on return being considered for Refundable Security Deposit, as presented in Consultation Paper 22/2012-13 dated 11.10.2012. MIAL stated that,

*"Assuming, without admitting, the Authority's view, that RSD cannot be equated to equity, to be correct there are other facts to be taken in to consideration as discussed below.*

*There are two critical issues in respect of RSD: - (i) RSD being interest free and (ii) collection of RSD is not certain.*

*RSD being interest free - It may be kindly noted that MIAL is yet to collect RSD. In spite of several constraints at CSIA, MIAL has taken a very ambitious target to collect Rs. 1,000 crs. of RSD, for funding airport project. The time target of MIAL is already missed due to inherent constraints at CSIA. Further, it is evident that RSD amount collected by one business unit*

*i.e. Non-Transfer Asset business, is given to other business unit i.e. Aeronautical business, has to be based on an arm's length transaction.*

*Providing funds from one business unit to the other at zero cost is not, admittedly, an arm's length transaction, irrespective of whether other unit pays interest or not.*

*Assuming, but not admitting, that the Authority's view in case of RSD being interest free is correct, the basic presumption that RSD will be interest free cannot be predecided and will depend on prevailing market conditions. In such case if interest is payable on RSD, the same has to be allowed as cost.*

*The SSA does not require any form of cross-subsidization, either towards revenue requirement or capital expenditure, from deposits raised or revenue earned against Non- Transfer Assets (i.e. assets other than Revenue Share Assets).*

*However, as mentioned above, considering zero cost for RSD even if there is no interest payment on such RSD by one business unit, is not correct. Interest cost has to be considered for borrowing unit, while calculating cost of debt, on the basis of arm's length transaction.*

*Consideration available to lessor from land lease transactions comprises of two components – upfront RSD and annual lease rentals. As per normal business practice consideration in such transaction is composite and there is an interplay between the two components. Assuming zero cost for deposits for borrowing unit is apparently wrong as it involves an opportunity cost.*

*Had there been no necessity to deploy RSD towards project funding, MIAL could have invested it in the non-aeronautical business or for other business purposes and earned a market determined return on it. Even, in the absence of any suitable investment opportunity within the business, RSD could have been invested as fixed deposit.*

*Case Studies – Other infrastructure sectors, where tariff is regulated, allow a return on the capital employed. Regulators in these sectors do not*

*provide return on the basis of source and associated cost of funds. Case studies from the relevant sectors are presented below:*

*City Gas Distribution (CGD): Petroleum and Natural Gas Regulatory Board (PNGRB) allows return to concessionaires on the basis of the capital employed. It even recognizes that the security deposits received by the concessionaire would exist as liability and these should not be reduced from the total capital employed while determining tariff.*

*Relevant extracts from the guidelines issued by PNGRB for determination of network tariff for city or local natural gas distribution network and compression charge for CNG have been reproduced below:*

*“Entity1 may collect refundable interest free security deposit as specified under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities for Laying, Building, Operating or Expanding City or Local Natural Gas Distribution Networks) Regulations, 2008. Such deposit is towards the safe-keeping of the meter and is to be refunded in full to the domestic PNG customer in case of a disconnection. Further, since the amount collected as interest-free refundable security deposit shall exist as a liability in the books of accounts of the entity, the same shall not be reduced from the total capital employed while determining the network tariff. The reasonable rate of return shall be the rate of return on capital employed equal to fourteen percent post-tax considering the rate of return on long-term risk-free Government securities and the need to incentivize investments in creation of CGD infrastructure”*

*Other factors to be considered from the CGD guidelines:*

*(a) PNGRB guidelines regulates tariff for CGD networks, which applies directly to end-users. PNGRB allows the security deposits provided by end users to be invested in the business and earn return on such investments, whereas in case of MIAL, security deposits have been availed from lessees of Non Transfer Asset.*

*(b) Demand risks are less for a CGD network as compared with traffic risk at an airport. Additionally, tariffs for CGD networks are for an essential commodity.*

*(c) Guidelines issued by PNGRB are one of the most recent guidelines in the Infrastructure sector in India and could be considered as learning from other regulated sectors.*

*Port Sector: In the port sector, Tariff Authority for Major Ports (TAMP) sets tariff for Major Ports based on cost plus Return on Capital Employed (ROCE) approach. Capital Employed is calculated as a summation of net fixed assets and working capital.*

*Relevant extracts from the regulation have been reproduced below:*

*“Return will be allowed on Capital Employed (ROCE), both for Major Port Trusts and Private Terminal Operators, at the same pre-tax rate, fixed in accordance with the Capital Asset Pricing Model (CAPM).”*

*“Capital Employed will comprise Net Fixed Assets (Gross Block minus Depreciation minus Works in Progress) plus Working Capital (Current Assets minus Current Liabilities)”*

*Collection of RSD is not certain – In case there is no collection of RSD or if there is a shortfall in collection of RSD, the Authority has to review and true up cost of debt / WACC based on actual position.*

*Opportunity cost from interest free RSD, which is deployed for project funding, should be considered while calculating WACC. In case of interest payment on RSD the same has to be considered.*

*In case there is shortfall in collection of RSD, for funding the project, and such shortfall is met out of other means of finance, cost of such means of finance has to be considered.”*

**e Authority’s Examination of Issues pertaining to Treatment of the Interest free Refundable Security Deposits**

**12.28.** The Authority has carefully considered the comments made by stakeholders as well as the comment made by MIAL on the position taken by the Authority in respect of return to

be considered for Refundable Security Deposit for MIAL. The Authority also had reference to the letter dated 13.12.2012, submitted by MIAL to Chairman, AAI, where MIAL has requested AAI to convey its view on the issue of *“Deposits from leasing of Assets other than Revenue Share Assets”*. However the Authority has not received any communication from AAI on the issue. The Authority’s examination of the submissions is presented below:

**12.29.** MIAL in its letter dated 13.12.2012 to Chairman, AAI (copy marked to Chairman, AERA) has requested that the RSDs should be held entitled to ‘opportunity cost’ even if the deposit is interest free. It has also stated that according to MIAL ‘even notional cost is a legitimate cost because of inter-play between interest of deposits and yearly lease rentals’.

**12.30.** MIAL has enclosed its earlier letter dated 20.11.2012 to Secretary, MoCA in which it had requested the Ministry for interpretation of SSA and deposits from leasing of assets other than revenue share assets.

**12.31.** AERA had an occasion to examine this issue in detail while issuing its tariff determination order for Delhi airport (Order No. 03/2012-13 dated 24.04.2012). In its letter to Government, MIAL had made certain assertions that revenue from lease of land for real estate purpose is not revenue from revenue share assets and that ‘broadly it may be categorized as revenue from non transfer assets (NTA)’. It has stated that SSA envisages 30% cross subsidization for aeronautical charges only from the revenue generated from revenue share assets. It has further stated that MIAL has offered RSDs as one of the means of finance of the project and that charging zero cost for fixed deposits, as a means of finance, if RSD is obtained interest free (which was the approach of AERA), was not correct because such treatment of deposits equates it with interest free capital grant, which is not the case.

**12.32.** The Authority’s approach to treat the cost of RSDs is that it would not be correct to estimate and determine any opportunity cost for any component of the means of finance. What the Authority can determine is the reasonable or fair rate of return on an objective basis. If the promoter has been able to obtain any capital at a certain interest rate (even if it is zero), it would not be appropriate for the Authority to give it (the presumably) higher notional or opportunity cost. This is more so in case of Mumbai as well as Delhi where 29% of the total capital cost is to be financed through DF which according to Supreme Court is a tax on the passengers.

**12.33.** MIAL has alleged that the Authority's approach towards giving zero interest on RSD (though they are raised at zero interest cost) tantamounts to treating such deposits as interest free capital grant. The Authority does not accept this view. Neither does Capital grant (subsidy or subvention) attract any interest nor is any depreciation given on this. (For example – no interest or depreciation is given on the means of finance from DF). However, in case of interest free deposits, though the interest cost is taken on actuals (i.e., zero) depreciation is nevertheless permitted on the same. The Authority notes that the RSD is raised on monetizing the land which AAI has made available to MIAL at annual consideration of Rs. 100 for about 1,950 acres. Interest free deposits raised on such land by MIAL could conceivably be regarded as subsidy (capital grant) in kind. The Authority has not treated it as such. The Authority, therefore, is unable to accept the inference of the MIAL on this issue.

**12.34.** It is, now, fairly well-settled that the charging of DF is a means of last resort. This provision is to be invoked only when all other resources of project funding are exhausted and the sum total of which is found to fall short of the revenue required to complete the project. Secondly, the means of finance is with reference to what is obtained by the JVC, namely, MIAL and not its shareholders. For example, the debt component is granted to the JVC and not to its individual shareholders. The equity part is contributed by the shareholders to the JVC. It is the JVC which is responsible to implement the project and thereafter done it. The legal distinction between the JVC and its shareholders needs to be kept in view.

**12.35.** Whatever be the business details of obtaining RSD and the suppression between the revenue (rentals) and the capital receipts from such land monetization, the Authority has taken into account the capital receipts as a means of finance to fund the project determining the DF as a gap after taking into account such receipts. It has not taken into account the revenue receipts, if any, obtained by the JVC from land monetization in tariff determination. The revenue share, which the JVC gives to AAI in accordance with the relevant agreements, is with reference to such revenue receipts.

**12.36.** MIAL has also stated that 'aggressive revenue shares' to AAI were quoted by successful bidders in case of Delhi and Mumbai airports with clear understanding that NTA are out of purview of AERA. They have further stated that 'in order to fund the project if resources are used from one business, which is out of purview of AERA, in another business



namely airport', ignoring opportunity cost is detrimental and against the understanding of bidders while they quoted such revenue shares. From the statement, it appears that the bidders were under the impression that land granted to them (specially the land for land monetization) was a grant, the proceeds of which, the company could use for any purpose entirely at its discretion. The Authority has not found any explicit warrant of such an understanding. If this were to be the case, it would be necessary to put the matter in overall perspective. The allowable project cost of Rs 11,647.46 crores in case of CSI Airport, Mumbai is proposed to be funded as under:

**12.37.** The Authority notes that the land of around 2000 acres has been leased by AAI to JVC at a rental of Rs. 100 per annum vide Lease Deed dated 26.04.2006 executed between AAI and MIAL. The contribution of AAI (a public sector entity) in the equity of MIAL is 26% namely Rs 312 crores. Hence, the equity of the promoters comes to slightly less than Rs. 900 crores. Based on this equity as well as contribution from other means of finance (notably the DF of Rs. 3400 crores and proposed RSD of Rs. 1000 crores), the total project of Rs. 11647.46 crores is proposed to be completed.

**12.38.** MIAL has been permitted an area of around 195 acres for land monetization of which around 34 acres would yield the proposed Rs. 1,000 crores of RSD, leaving a balance of around 160 acres of land at the airport location namely, Santa Cruz in possession of JVC to further monetize the same. The Authority understands that the current market value of these 160 acres of land can be expected to be substantial (depending on the floor space index permitted for a particular user).

**12.39.** Above statement of MIAL would appear to indicate that the understanding of bidders was that such quantum was proposed to be permitted to remain with them to be used at their discretion to the extent that the above land value is realized from capital receipts and not from rentals. The Authority understands that in case of capital receipts received from the monetisation of this land, no revenue share would be payable to AAI. The revenue share to AAI would be payable to the extent of the land monetization through the rental route. In such a revenue share, 60% of the revenue would be retained by the JVC, a money that has been obtained through exploitation of land belonging to AAI and which has been leased to it at Rs. 100 per annum.

**12.40.** The Authority understands that land was made available by AAI to JVC for the purpose of the airport and to that extent would be regarded as the subsidy in kind. The Authority has not gone into the treatment of the revenue receipts (as contrasted from the capital receipts) from land monetization, since as stated by MIAL that is revenue arising from Non-Transfer Assets.

**12.41.** The Authority has also noted the provisions of the Lease Deed signed on 25<sup>th</sup> April 2006 between Airports Authority of India (AAI) and DIAL. This deed defines “project” to mean “the design, development, construction, finance, management, operation and maintenance of the Airport, as provided for under the OMDA” It defines “Airport” as “the Indira Gandhi International Airport as located on the Airport Site” According to the lease deed, the land leased to DIAL is “for the sole purpose of the Project, and for such other purposes as are permitted under the lease deed”. The Authority understands that the monies raised by MIAL through land monetisation must first be applied to the Project. ACI has commented that *“CSIA could have kept RSD in fixed deposit in bank and could have borrowed funds against it and used the same for project funding on which AERA would had allowed the cost of debt”*.

**12.42.** This indeed is an interesting argument. The Authority understands that the cost of borrowing is higher than interest on deposits in bank and the spread can be high. So if MIAL were to raise Rs. 1,000 crore (say interest free), put them in bank as deposit at say 7%, borrow an equal amount from the bank at say 11.5% and then put such borrowed funds in the project, this would mean that MIAL has paid unnecessary (extra) interest to the bank at 4.5% or an amount of Rs. 45 crores in the first year (declining in subsequent years as the loan gets repaid). Apart from its impact on the debt-service coverage ratio, the Authority does not believe this to be a prudent financing arrangement for the airport project. The Authority is unable to accept MIAL’s (or for that matter ACI’s) contention that MIAL was under no obligation to utilise such receipts only for the project, it could have utilised these receipts elsewhere and hence MIAL should be held eligible to grant of that “opportunity cost” though it may have raised the deposits interest free.

**12.43.** MIAL has also stated that *‘it will not be out of place to mention that these deposits are refundable and if no return is allowed on such amount invested in the project how funds will be generated to refund this amount in future’*. The Authority is unable to appreciate this

argument. This is so because and as is mentioned above the Authority has permitted grant on depreciation on the amount of RSD. Generally speaking, if the amount of depreciation could be put in a sinking fund and the fund attracts normal interest, the proceeds from sinking fund at the end of the relevant period should normally be adequate to repay the security deposits. The Authority had mentioned that it is aware of the likely maturity mismatch and if pointed out would have been able to address the issue appropriately in its tariff determination, if sufficient details had been provided by MIAL. Contrarily, MIAL countenances a possibility that it may not be able to raise the deposits, a submission that is addressed elsewhere by the Authority.

**12.44.** The Authority is unable to examine this issue in more granularity in the absence of details regarding the time period of RSDs.

**12.45.** MIAL has also stated that since SSA is a concession offered by the Central Government, the Authority is mandated to determine tariff taking these agreements into account [under section 13(1)(a)]. The Authority is conscious of the legal requirement of taking into account concessions offered by the Central Government. It has done so while determining the tariffs. The Authority does not feel that there are any differing views as to the interpretation of the SSA with respect to treatment to be given to the proceeds of the RSD especially when the capital receipts of the RSDs form integral part of the finance and only thereafter the quantum of DF, which is a means of last resort, is computed. MIAL has also indicated based on a presumptive case where the entire project cost is funded through RSD and in which case there will be no return accruing to it on the entire project if the RSD also has zero interest cost. The Authority would not like to comment on hypothetical case except observing that in the absence of any fund from the promoters it is not clear to it as to what return is expected by such promoters in such a hypothetical case.

**12.46.** In Authority's view giving any notional interest or opportunity cost to the capital receipts of RSDs even when such capital receipts have been obtained by the JVC at zero cost would tantamount to mean that capital receipts belonging to the JVC with full discretion not to invest the same in the project when there are gaps in the means of finance which are further proposed to be bridged through DF. The Authority does not feel that this could have been the interpretation of the SSA or the grant of rights.

**12.47.** MIAL has also indicated in its letter dated 13.12.2012 that it is not possible for it to predict whether deposits would be interest free or will carry interest as the same is dependent on prevalent market scenario. The Authority is in agreement with this observation. That is why it has adopted the approach of interest considering cost of such deposits on actuals and not taking into account any notional or opportunity cost for the same.

**12.48.** The Authority has noted the comment of ACI that *“CSIA could have kept RSD in fixed deposit in bank and could have borrowed funds against it and used the same for project funding on which AERA would have allowed the cost of debt”*. It appears that ACI has not properly appreciated the different components of the means of finance. When the Government sanctioned DF in respect of CSI Airport, Mumbai (vide Government’s letter dated 27.02.2009), MIAL in its submission had indicated Rs. 1,000 crores as RSDs which they would raise and utilize for the project. That position has continued except that so far it has not been able to raise any RSD. MIAL had initially indicated that they would be able to raise Rs. 700 crores in 2011-12 and Rs. 300 crores in 2012-13 and later revised its estimates postponing the likely raising of these deposits with the revised schedule being Rs 221 crores in 2012-13, Rs 435 crores in 2013-14 and Rs 344 crores in 2014-15 (upto August 2014). The Authority is, therefore, unable to take into account the hypothesis indicated by ACI.

**12.49.** The statement of ACI regarding the revenues from transfer assets not to be used for cross subsidization is also based on incomplete appreciation of the provision of SSA, nature of RSD etc. As mentioned above, MIAL had considered Rs. 1,000 crores as capital receipts towards project financing in their own submission to the Government. The hypothesis of ACI presupposes that the AAI land has been leased out to MIAL for raising capital receipts as well as revenue receipts and the manner of utilization of such receipts is left to MIAL’s discretion. The Authority does not find any explicit warrant either in SSA or in OMDA for such a hypothesis.

**12.50.** The Authority also noted the comments of treating capital receipts from non-transfer assets as if it was a separate business, operated by a notionally separate business entity. The Authority is of the view that this comment is based on internal appreciation and assessment of the stakeholder regarding, inter alia, the nature of RSD and the purpose for which land has been given for monetization. The Authority has stated that its treatment of

expenses would be based on actual outflow of funds and not any notional value. The land is acquired by the government and leased to AAI. AAI has further sub-leased the same to MIAL for the airport project, permitting around 34 acres of the land to be used for monetization.

**12.51.** The Authority has noted the comment that *“MIAL may be considered to be operating two distinct businesses viz. aeronautical and real estate.”* In the Authority’s understanding the JVC is for the purpose of development of a modern airport. The Authority is, therefore, unable to accept the preposition that Government or AAI contemplating MIAL to conduct real estate business on land which it has made available to MIAL at a total consideration of Rs.100 per annum for 2000 acres.

**12.52.** The Authority has also noted the statement that the deposits, which MIAL is contemplating to raise, would be non-encumbered and further that MIAL would decide to deploy them as a means of finance only in the interest of timely completion of the project. As has been mentioned by the Authority, generating necessary adequate funds for the timely completion of the project is the responsibility cast upon the JVC by mutually signed contractual agreement namely; OMDA. The Authority is, therefore, unable to counting as the alternative circumstance that MIAL would contemplate use of these RSDs for purposes other than the investment in the project specially when there is large funding gap for the same and which has been proposed to be bridged through DF.

**12.53.** The Authority has noted the reference, made by the Stakeholder, to principles mentioned in Schedule 1 of SSA namely, Incentives based, and its linkage with the issue of return on RSD leading to the inference by the Stakeholder that *“A zero return of RSD does not provide any incentive to investors to utilize RSD as a means of finance”*. It appears that while making this comment, no distinction has been made between investors (shareholders) in the JVC and the JVC itself. The land is given on sublease to the JVC and not to the shareholders. It is the responsibility of the JVC to generate funds. For so doing, it may make a call on the investors to contribute additional equity, approach lenders for additional loans, or monetize land to generate additional funds in the form of RSD. Viewed from this perspective, it would become clear that the incentive to JVC is to obtain as much funds as possible to complete the project. The incentive to the investors does not form part of this structure. As has been pointed out by other stakeholders like FIA, IATA as well as

Comptroller and Auditor General (C & AG), one of the covenants of OMDA require that the JVC shall arrange for financing and / or meeting of financing requirements to complete the project. The Authority is unable to accept the argument that to fulfill contractual obligation, any incentive is warranted. The Authority has in its determination of DF adequately addressed this expressed provision in OMDA and after review of all possible means of finances that can be arranged by the JVC determined an amount of Rs. 3400 crores as total DF amount.

**12.54.** The Authority has also noted the MIAL's submission that "in case there is shortfall in collection of RSD for funding the project and such shortfall is met out of other means of finance, cost of such means of finance has to be considered". The Authority notes that all in all and right from the time it applied to the DF to the Government, MIAL had factored an amount of Rs. 1000 crores to be raised through RSD. As late as, July 2012, MIAL has stated that it will be able to raise the entire amount before August 2014 (i.e. the project completion date) albeit in 3 tranches. It has not stated what are the reasons for the recent apprehension voiced in its submission dated 26.11.2012 in response to the Consultation Paper – 22/ 2012-13 dated 11.10.2012 that there may be a possibility of such RSD not coming forth either in full or part.

**12.55.** The Authority recognizes that MIAL has been given land by AAI for the airport project. The stakeholders notably IATA, FIA, etc. have specifically commented on lack of evidence of efforts made by MIAL in raising RSD. The Authority thus expects MIAL to make all out efforts to raise RSD. The Authority has determined DF of Rs. 3400 crores as a measure of last resort and after considering all possible means of finance that included RSD of 1000 crores ( vide its Order No. 29/2012-13). The Authority has also left a funding Gap of Rs. 819 crores for reasons indicated in the DF Order.

**12.56.** At the time of determination of DF, MIAL had given evidence that neither additional debt nor additional equity infusion is feasible despite the preparedness of AAI to do so. If under any change circumstances, some additional resources through debt or equity are available, the Authority would need to review the same as is indicated in Decision II.e made by it in the DF order. MIAL is now requesting that it may be in a position to raise additional resources (not from RSD) and that it wishes to substitute RSD (Rs. 1000 crores) in full or partly by such additional resources. In view of the above, the Authority is unable to accept

the request of MIAL that *“in case there is shortfall in collection of RSD for funding the project and such shortfall is met out of other means of finance, cost of such means of finance has to be considered”*, unless the Authority examines any such evidence that MIAL may make available to the Authority.

**12.57.** The Authority has noted MIAL’s comment that *“RSD amount collected by one business unit i.e. Non-Transfer Asset business, is given to other business unit i.e. Aeronautical business”*. The Authority observes that MIAL has tried to put a corporate veil in its airport and real estate operations for consideration of RSD towards means of Finance. In the Authority’s view this is not a correct representation of the facts. MIAL, as a JVC, had entered into agreement with the Government for development of CSI Airport, Mumbai. As per Clause 13.(1) (a) of OMDA, *“It is expressly understood that the JVC shall arrange for financing and/or meeting all financing requirements through suitable debt and equity contributions in order to comply with its obligations hereunder including development of the Airport pursuant to the Master Plan and the Major Development Plans.”* In view of this Clause, the Authority believes that it is an obligation of the JVC to arrange for necessary funds for development of the airport and that putting a corporate veil around its businesses is not appropriate in this matter.

**12.58.** In view of the above discussions, the Authority decides to continue with earlier position on treatment of Refundable Security Deposits and decides to consider Refundable Security Deposits at zero cost for the present.

**Decision No. IX. Regarding Treatment of the Interest free Refundable Security Deposits (RSD)**

**IX.a.** The Authority decides to consider RSD at zero cost for the present. It also decides that in case of reasonable interest payment on RSD by MIAL, it will be considered towards calculation of WACC as RSD is being considered as a means of finance and would also enter into the balance sheet (the Authority has separately decided that it would calculate WACC based on the figures from the audited balance sheet).

**IX.b.** For the present, the Authority decides not to accept the request of MIAL that *“in case there is shortfall in collection of RSD for funding the project and such*

**shortfall is met out of other means of finance, cost of such means of finance has to be considered”, unless MIAL presents compelling evidence to the Authority for its review.**



### 13. Cost of Equity

#### a Authority's position on Issues pertaining to Cost of Equity in the Consultation Paper

13.1. The Authority had in the Consultation Paper No.22/2012-13 dated 11.10.2012, brought out the various submissions made by MIAL on the equity being infused by them as part of financing the project. MIAL had vide their submission dated 23.11.2011 submitted that the total equity being infused as part of financing the project capital expenditure of Rs 12,380 crs comprises the following components:

- paid-up capital of Rs 1,200 crs,
- internal accruals projected to be Rs 2473 crs and
- real estate security deposits projected to be Rs 1,000 crs.

13.2. MIAL had submitted auditor certificates certifying amount of equity invested in the project. The year wise equity infused in the project by MIAL as certified by the auditor certificates is as under:

**Table 46: Equity infused by MIAL certified by MIAL's Auditor**

In Rs. Crore	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12
Equity infused by MIAL annually	200	-	200	200	200	400

13.3. MIAL had vide their submission dated 11.10.2011, submitted the following on cost of equity:

*“ The Cost of Equity for CSIA has been taken on the basis of Report prepared by KPMG..... wherein Cost of Equity has been computed based on CAPM formula as given below:*

$$Re = Rf + \beta^* (Rm - Rf)$$

*Where: Rf = the current return on risk-free rate*

*Rm = the expected average return of the market*

*(Rm -Rf) = the average risk premium above the risk-free rate that a "market" portfolio of assets is earning*

*$\beta$  = the beta factor, being the measure of the systematic risk of a particular asset relative to the risk of a portfolio of all risky assets*

MIAL submits that it is relying on the analysis done by KPMG for Cost of Equity. KPMG has arrived at Cost of Equity of 24.17% for CSIA, which has been considered as 24.2% for WACC calculation. For details, enclosed report of KPMG may kindly be referred. The cost of Equity for CSIA has been worked out as follows:

<i>Cost of Equity (Re) Parameter</i>	<i>Value</i>
<i>Risk free rate -10 year benchmark government bond yield</i>	<i>8.428%</i>
<i>Beta for Infrastructure companies</i>	<i>1.596</i>
<i>Market risk premium</i>	<i>9.863%</i>
<i>Cost of Equity (Re)</i>	<i>24.2%</i>

”

**13.4.** MIAL had provided the bases / reasons for choosing the components considered in the calculation of cost of equity vide their submission dated 23.11.2011, .

**13.5.** In respect of Risk Free Rate, MIAL had submitted that:

*“.....the reasons for choosing yield on 10 years Government Bonds as Risk Free Rate and source of data used. In this regard it is submitted that sovereign bonds are considered to come closest to a risk-free investment. They satisfy two basic conditions to qualify as risk-free:*

*Absence of default risk*

*No reinvestment risk – In order for an investment to fetch a return that is exactly equal to the expected return for a given time horizon, the rate of return for that risk free investment needs to remain unchanged throughout that period. For this reason, treasury bills which have a maturity period of less than a year are not considered. The investment horizon of T bills is much shorter than the investment horizon in case of an airport. So, although they are risk-free investments, they fail to eliminate the reinvestment risk as yields of such instruments are unlikely to remain the same for the said period.*

*Accordingly, the yield on government bond securities with long-term maturity is a preferred option for estimating the risk-free rate. MIAL have*

*considered yield on 10-year GOI securities as at the calculation date as the risk-free rate, over bonds with different maturity periods, as a benchmark risk-free rate for two key reasons. First, the price of the 10 year bond is less sensitive to unexpected change in inflation compared to the 30-year bond. Second, the trading volumes of 10 years bond are higher compared to the trading volumes of longer tenure bonds and hence the liquidity premium built into 10-year rates is generally lower compared to that of 30-year bonds. Our methodology is in line with the ones followed by major airports around the world, e.g. Dublin international airport uses yields on long-term deflated German government bond to estimate the risk-free rate.”*

**13.6.** In respect of Market Rate of Return, MIAL had stated as under:

*“.....MIAL have used the 10 year CAGR on 90 days moving average of the BSE Sensex value as the market rate of return ( $R_m$ ). The 10 year time frame corresponds to the time period which is a decade after the onset of liberalization (91) of the Indian economy. Varma and Barua (IIM Ahmedabad) in their paper [Varma, Jayanth R, Samir K Barua, “The First Cut Estimate of the Equity Risk Premia in India”] have also emphasized the fact that structural changes have taken place in the Indian economy during the decades of ‘80s and ‘90s and the characteristics of the economy are markedly different as compared to periods preceding it. However, in order to provide for sufficient time period, for development and ripening of the economy and the markets post the structural changes, the 10 year time frame (2001-11) has been used. The 90 day moving average instead of a daily average is used so that day-to-day volatility of the markets is eliminated while calculating the return. Further, as the half-yearly or yearly moving average may have large deviations from the market trend due to averaging over larger period, they have not been used. 10 year CAGR of 90 days moving average, rather than arithmetic or geometric mean of annual growth rates in 90 days moving average has been used to eliminate the impact of cyclical variations in economy over a long horizon of 10 years.*

*The BSE Sensex represents free-float marked capitalization weighted index of 30 well established and financially sound companies in India and thus is a good proxy for the Indian markets. While a broader index (e.g. BSE- 500, Nifty) may include a wider portfolio of stocks in the market, given the relative instability of some of the smaller stocks in these broader indices, Sensex is chosen as a more robust indicator of returns on a diversified matured market portfolio.*

*Equity Risk Premium (ERP) has, therefore been computed as  $R_m - R_f$ .”*

**13.7.** In respect of selection of airports from emerging markets for computing Beta, MIAL had submitted as under:

*“In the absence of any pure play publicly listed airport in India that can be used to estimate the beta for airport business in India, betas of listed airport operators in the emerging markets have been considered as a proxy for the Indian airport operators. For selecting listed international airport operators only from countries with emerging markets, their semblance to Indian airports on the following factors has been considered:*

- *Economic profile*
- *Operating environment*
- *Opportunities and constraints*
- *Financial position”*

**13.8.** MIAL had also submitted the information on definition of “emerging markets” and “less economic developed countries” and submitted that India is comparable to China, Thailand, Indonesia etc and hence airports in these countries have been used to arrive at the beta value for the Indian scenario. MIAL also provided the equity beta for airports across the globe which included developed countries having similar passenger traffic for sake of comparison. The same is reproduced below:

<i>S No</i>	<i>Airport/Operator</i>	<i>Passenger Capacity in Mn</i>	<i>5 Years Beta</i>
<i>1.</i>	<i>Kuala Lumpur International Airport/Malaysia Airports Holdings</i>	<i>34.08</i>	<i>0.848</i>
<i>2.</i>	<i>Shenzhen International Airport/ Shenzhen Airport Company Ltd.</i>	<i>26.71</i>	<i>0.861</i>

S No	Airport/Operator	Passenger Capacity in Mn	5 Years Beta
3.	Auckland Airport	13.20 (New Zealand)	1.041 (New Zealand)
4.	Australia	27.73 (Melbourne) 35.99 (Sydney)	0.623
5.	Flughafen Wien AG	19.7	0.822 (Vienna)
6.	Flughafen Munchen AG	34.7	0.860 (Munich)
7.	Japan Airport Terminal	64.07	0.779
8.	Xiamen International Airport Co. Ltd, China operates 3 airports	13.2 (Gaoqi) 6.5 (Shuzhou Changli)	0.742
9.	Fraport, Germany	53.00	0.898
10.	Flughafen Zuerich, Switzerland	21.92	0.763

**13.9.** Based on the table above, MIAL submitted that

*“It may be seen that 5 year beta for these airports is close to the range of 0.89 to 1.12 for chosen airports in emerging markets by MIAL. Even for developed countries the beta is not very low. It is, however, pointed out that Traffic risk, while being a significant risk, is only one of many business risks that an airport operator faces. While comparing airports with similar traffic profile is preferable, airports with lower traffic levels can exhibit a similar risk profile (beta) as airports with higher traffic, if the underlying business and economic environment are similar. Further, International traffic is not location neutral. International air travel is influenced by factors such as business leisure and personal needs as well as the prevailing political, economic and security environment of the country. Even though airports may have similar international traffic volumes and passengers profiles, volatility of demand is likely to be different for different airports based on the strength of underlying demand drivers and risks. For example, in a global recession, the impact on international air traffic will be different in different economies. Comparing beta of airports with similar international traffic profile may, therefore, not be the right approach. Further, this approach ignores the impact of volatility in domestic demand.”*

**13.10.** In respect of taking different debt / equity ratios during un-levering and re-levering of Beta, MIAL had stated that:

*“The beta of a stock (or business) is determined by three factors- (1) business risk, (2) operating leverage and (3) financial leverage. (1) Business risk means the more sensitive a business is to market conditions, the higher the risk with respect to the market and hence higher is its beta. (2) Operating leverage refers to the variability in earnings for an investor due to fixed cost vs. variable cost split of the cost structure of the business. As for (3) financial leverage, all things remaining equal, an increase in financial leverage will increase the beta as the variance in net earnings of investors increase with higher obligated payments to the lenders. Since financial leverage impacts the beta, it becomes imperative to un-lever the (equity) beta determined for publicly traded stocks to arrive at the (asset) beta which reflect the risk only due to business risk and operating leverage. Hence, by un-levering the equity beta with D/E ratio the normalized asset beta is obtained which reflects the business and operating risk for that industry. To arrive at equity beta of a particular stock in that industry, the asset beta (considered as proxy for business in a different country) needs to be re-levered with financial leverage of that particular business to capture additional riskiness due to financial leverage. Since un-levering and re-levering are done for similar stocks/businesses but with different financials; the financial leverage and hence, equity beta for both is bound to be different.*

*Further, the Indian private airport operators have a significantly high debt to equity ratio compared to the listed airports in the emerging markets. The median debt equity ratio for the airports in emerging markets is only ~0.15. Such a debt equity structure translates into further fixed cash outflows in the form of huge interest and repayments, which translates to a longer gestation period to equity investors before any dividends are paid. Further, CSIA faces unique risks as have been brought out by KPMG in their Report on cost of Equity submitted earlier with MYTP. Hence asset beta of 0.85,*

*which is slightly higher than median asset beta of 0.80, has been considered.”*

**13.11.** On the issue of considering market capitalisation while de-levering and book value of equity while re-levering of Beta, MIAL had submitted as under:

*“As CAPM is a prospective model as opposed to a retrospective model, it attempts to measure the return on capital in the company going forward. Since the inception of a business, changes in capabilities, value proposition, business environment, competitiveness, etc. of the underlying asset or business are likely to happen. Consequently, the present valuation of the stock is a better indicator of the worth of the equity. Therefore, the relative risk due to obligated payments to lenders may be more appropriately reflected using the Debt-Equity Ratio (DER) based on market value than on book value. Hence, market capitalization has been used for de-levering equity beta.*

*The market value of equity is ideally the one based on the price of actively traded shares of a listed entity. Since MIAL is a Private Limited Company its market value is not available. Clause of 2.5 of OMDA prohibits transfer of equity shares upto initial 5 years and puts restrictions on transfer of shares upto 7<sup>th</sup> year and hence no realistic market value of equity can be determined. Since these restrictions are within the present control period starting from 4<sup>th</sup> year, realistic estimation of market value of equity is not possible, Hence, projected value of DER in books, which is the best available substitute for market value of equity and debt, has been used to re-lever the beta. This approach is also preferred since it is important to be consistent in using the same DER both for re-levering the beta and for calculating the costs of debt and equity for calculating the FRoR.”*

**13.12.** MIAL had vide their additional submission dated 24.07.2012 further submitted that there is no significant difference between asset beta of airports calculated based on either book value or market value of equity. MIAL stated that :

*“No significant difference noticed between asset beta of the Airports calculated based on either book value or market value of equity. We have*

primarily calculated asset beta for CSIA, Mumbai by both the methods as shown below, which clearly shows that there is no significant change in value of beta as shown below:

	Submitted in MYTP (for levering market value used, for relevering book value used)	Revised (Book value of Equity used for both levering and relevering)
Rf	8.43%	8.43%
Rm	18.29%	18.29%
Rm-Rf	9.86%	9.86%
D:E	1.3	1.3
Tax	32.45	32.45
Beta	0.85	0.79
Levered Beta	1.60	1.48
CoE	24.17	23.06

”

**13.13.** Further, MIAL had also proposed an inclusion of an additional factor in the calculation of cost of equity using CAPM model, wherein they stated:

*“MIAL currently faces unique situation of severe capacity constraint, working effectively almost at its full capacity. There is no possibility of significantly increased capacity within this control period. On the other hand, MIAL business is susceptible to significant downside risk due to its dependency on the airline business which is exposed to significant volatilities and frequent negative shocks. This combination of circumstances makes MIAL quite different from other regulated entities.*

*The capacity constraint has become increasingly onerous and since a response of raising prices is prevented by regulation, the upside is limited.*

*In view of the additional downside risk as mentioned above an addition should be made to the Cost of Equity in the form of lamda.*

*Heathrow Airport, London which is also experiencing the similar constrained scenario of MIAL, has in their submission to CAA in September 2011 has requested for increased cost of equity which is agreed in-principal by CAA.*

*Cost of Equity by CAPM model*

$$K_e = R_f + B(R_m - R_f) + \lambda_i * CRP$$

$$\lambda_i * CRP = Co\text{-skewness coefficient} * Co\text{-skewness Risk premium}$$



*Where  $\lambda_i$  is the co-skewness coefficient for share  $I$ , and CRP is the market-wide co-skewness risk premium (which is negative indicating that negative co-skewness attracts a higher return)."*

### **Observations on Cost of Equity**

**13.14.** The Authority had, in its Consultation Paper No. 03/2009-10 dated 26.02.2010 (*on the Regulatory Philosophy and Approach in Economic Regulation of Airports and Air Navigation Services*), stated that it recognizes that the assessment of the cost of equity will be highly material to the Authority's reviews of airport charges. The Authority considers that the CAPM is the most appropriate approach for determining the cost of equity. However, the CAPM approach will potentially result in a wide range of results, depending on assumptions made around different components of CAPM and where the range of results derived from CAPM is considerable, the Authority will consider the application, where appropriate, of benchmarks for the cost of equity, most notably from other regulatory estimates, but recognising the differences in risk profiles between sectors. In estimating the cost of equity the Authority will also take account:

- 13.14.1. the issues reported in regulatory consultation papers, responses to those papers and decision papers supporting those decisions;
- 13.14.2. differences in the structure or operation of the respective regulatory regimes compared with that operated by the Authority;
- 13.14.3. any differences in the commercial environments of the respective airports compared with those in India;
- 13.14.4. decisions relating to cost of equity assessments made by other regulators in India and comparable jurisdictions;
- 13.14.5. other aspects of the overall regulatory regime (e.g. forecasting error correction term etc.);
- 13.14.6. any other relevant academic or other studies and, in particular;
- 13.14.7. responses to the Authority consultation by airports, users and other interested parties.

**13.15.** The Authority had in the past noted that none of the private airports are listed companies. Therefore, the equity betas for these companies are not available thereby

making the task of assessing the cost of equity difficult. In this background, the Authority had requested the National Institute of Public Finance and Policy (NIPFP), New Delhi to estimate the expected cost of equity for the private airports at Delhi, Mumbai, Hyderabad, Bangalore and Cochin.

**13.16.** Accordingly NIPFP gave its report in respect of DIAL on 19.04.2012 on the methodology of cost of equity in respect of DIAL. This report is already annexed to the Authority's DIAL Tariff Determination Order. Thereafter NIPFP gave its report in respect of MIAL on 17.09.2012. This report is built on their earlier report on DIAL. The salient features of the Report submitted by NIPFP in respect of cost of equity for MIAL on 17.09.2012 are as under:

13.16.1. Keeping in view the Authority's decision, the CAPM has been used for estimating the cost of equity.

13.16.2. The Risk free rate (Rf) has been assessed as percentage (%) on the basis of arithmetic average of daily yields on 10-year Government of India bonds over the period from September 10, 2002 to September 10, 2012. The average yield of 10 year Government of India bonds during this time period was 7.25% and NIPFP has recommended to consider this as the risk free rate.

13.16.3. The Equity risk premium ( $R_m - R_f$ ) has been assessed as percentage (%) taking into account the historical risk premium of 4.1% for the US markets (geometric average of premium for stocks over treasury bonds over the period of 1928-2010) and a default risk spread of 2% for India (given the local currency sovereign rating of Baa3). Thus the equity risk premium estimated by NIPFP is 6.1%. NIPFP noted in its report that given the negative outlook received by India recently, AERA may consider taking a slightly higher equity risk premium, but even if India's rating were to be downgraded by one notch, the equity risk premium will go up only by 0.4%.

13.16.4. NIPFP has proposed that AERA could consider an asset beta of 0.54 for MIAL based on information on asset beta in respect of 29 foreign airport companies.

13.16.5. The asset beta of 0.54 has been re-levered on the basis of normative debt/equity ratio of 1.5:1 to estimate the equity beta of 1.08.

13.16.6. The cost of equity for MIAL have been estimated at 13.84% (equity beta=1.08, if asset beta = 0.54)

**13.17.** The Authority observed that, NIPFP in their DIAL report dated 19.04.2012, had estimated the asset beta from a list of 29 airport companies in the range of 0.58 - 0.61. It also indicated that after adjusting for risk mitigating factors the asset beta should be around 0.55 range and that AERA may consider any value in the range of 0.45 - 0.65.

**13.18.** NIPFP calculated the asset beta for MIAL at 0.59, which is close to what was calculated for DIAL. After considering certain risk mitigating factors, NIPFP had suggested taking a value of asset beta of 0.54.

**13.19.** The Authority had expressly mitigated volume risk through the mechanism of trueing-up. Similarly it had proposed to use the legislative instrument of user development fee as a revenue enhancing measure to enable the Airport Operator earn the Target Revenue (which, in turn, depends on Fair Rate of Return on equity as well as other means of finance like debt, internal resource generation, refundable security deposits etc).

**13.20.** Further NIPFP while estimating the Cost of Equity for MIAL in its recent report have considered both Normative Debt Equity Ratio of 1.5:1 as well as market value-based debt – equity ratio (0.67) to relever the asset beta to arrive at the equity beta. The cost of equity under normative debt ratio as calculated by NIPFP is 13.84% and that calculated based on the debt-equity ratio obtained on the basis of market value of equity works out to 12.01%. It was noted that NIPFP had taken total debt at Rs 5636.78 crores comprising Rs 4192.09 crores of Non-current liabilities and Rs 1444.69 crores of current liabilities (as available in the balance sheet of MIAL as on 31.03.2012). It was noted that the market value of equity calculated at Rs 8400 crores was based on the purchase by GVK Power and Infrastructure Limited of 13.5% equity stake in MIAL from Bid Services Division (Mauritius) Limited for Rs 1134 crores.

**13.21.** NIPFP had presented another variant of market-value based debt-equity ratio, where they had considered only the long term debt (at Rs 4,231 crores) and not the total liabilities of MIAL (at Rs 5,636.78 crores). Under this approach, the debt-equity ratio works out to 0.50 and accordingly cost of equity had been estimated to Rs 11.64%.

**13.22.** The Authority noted that MIAL had in their submissions stated that “.....No significant difference noticed between asset beta of the Airports calculated based on either

*book value or market value of equity.” (Refer para 13.12 above). MIAL had not furnished details of market valuation of their equity.*

**13.23.** The Authority observed that the estimation of cost of equity (RoE) is a technical matter and requires expert assessment and computation. NIPFP is a centre for advanced applied research in public finance and public policy. It is an autonomous society which is widely believed to be used as a think tank by the Ministry of Finance and other Government departments/ agencies. NIPFP report, dated 19.04.2012, also discussed the reasons for differences in the RoE estimates suggested in the reports prepared at the instance of the airport operators. NIPFP’s initial report dated 13.12.2011, which inter alia, discussed various elements of CAPM as well as risk mitigating factors was annexed to the Consultation paper No.22/2012-13 dated 11.10.2012 along with updated report on MIAL dated 17.09.2012.

**13.24.** As far as the issue of co-skewness is concerned, the Authority noted the observations of Professor Ian Cooper of London Business School dated 13.09.2011, where Professor Cooper had stated that,

*“the upside potential of Heathrow is limited by capacity constraint, whereas there is significant downside risks, risk profile giving rise to negative skewness.”*

**13.25.** Further, the downward risk of traffic is proposed to be completely eliminated unlike CAA airports. Furthermore the instrument of UDF as revenue enhancing measures is used by the Authority to enable the airport operator to get fair rate of return. The Authority, therefore, felt that this concern is not relevant for MIAL.

**13.26.** During several discussions with the merchant bankers, regulated entities, mutual funds etc., it had been suggested that the Authority should benchmark its proposed return on equity with the returns given by other sectoral regulators. Otherwise, the airport sector will be perceived as less attractive for investment, which will not be in the long term interest of the sector. In this background, an attempt was made to review the RoE in other sectors.

**13.27.** Central Electricity Regulatory Commission (CERC), in its Terms and Conditions of Tariff Regulations for 2009-14 issued on 20.01.2009, vide regulation 15, computes the RoE at the base rate of 15.5% in the manner indicated therein. The Authority, had noted that in its regulatory framework the Corporate Tax is being allowed as a cost pass through and the RoE on CAPM.

**13.28.** It is understood that State Electricity Regulatory Commissions normally consider 16% as cost of equity in respect of distribution companies.

**13.29.** In the Port sector, the Tariff Authority of Major Ports (TAMP) is understood to be using 16% as return on equity. However, the model of tariff determination of TAMP is understood to be different – TAMP finalizes and announces the tariff upfront and then bids out with revenue share as the decision or selection parameter.

**13.30.** In case of National Highways, the NHAI is also understood to determine the toll upfront. In a recent report, a Committee headed by Shri B.K. Chaturvedi, Member, Planning Commission had stated that Equity IRR of upto 18% may be acceptable for certain types of projects.

**13.31.** Another issue which had been raised from time to time is that at the time of restructuring of Delhi and Mumbai airports a “Bid WACC” of 11.6% had been considered. As per a clarification issued at the relevant time this was based on an assumption of post tax cost of equity and debt of 22.8% and 6.0%, respectively. Therefore, the bidders were “assured” of a RoE of 22.8%.

**13.32.** This matter has been discussed earlier in the section pertaining to hypothetical RAB. As has been brought out therein, it is evident from the clarification that WACC of 11.6% given in the RFP was only “indicative” and for the purpose of ensuring consistency between the Business Plans submitted by the Bidders as part of their offer. Therefore, there appeared to be no substance in the argument that a WACC of 11.6% and RoE of 22.8% was assured to the bidders. As such, treatment of 11.6% as “Bid WACC” was completely misplaced and incorrect. Briefly, the WACC of 11.6% was only indicative for comparison purposes and cannot be construed as assured return by any stretch of imagination.

**13.33.** The MoCA had vide its letter dated No.AV.24032/037/2011-AD dated 12.03.2012, forwarded a report of M/s. SBI Capital Markets Ltd. (SBI CAPS) titled, “*Fair Rate of Return on equity for Indian Airport Sector*” on the return on Equity for airport sector in India. AAI had got a study conducted through SBI CAPS which had opined a return on the Equity in the range of 18.5% to 20.5% would be reasonable for airport sector in India. The Authority had discussed the SBI CAPS report extensively in its Delhi Tariff Determination Order dated 24.04.2012 and had provided reasons for not considering the return on equity in the range of 18.5% to 20.5%.

**13.34.** In view of its significance, the Authority had given a detailed consideration to the issue of cost of equity at hand. It had also noted the range of estimates of RoE as calculated by NIPFP in accordance with the CAPM framework adopted by the Authority.

**13.35.** The Authority had noted that the range of cost of equity, calculated by NIPFP, falls between 11.64% - 13.84%. It also noted that if the equity risk premium is increased to 7.5% (from 6.1% calculated by NIPFP), the cost of equity comes to 15.37% for an asset beta of 0.54. If asset beta of MIAL is taken at 0.59 (i.e. without considering risk mitigating factors), the cost of equity comes to around 16% for equity risk premium of 7.5%. The Authority therefore observes that its methodology and estimation of cost of equity appear to be sufficiently robust.

**13.36.** In the light of the above and considering that in the current i.e., first control period, the Authority would be inclined to give some allowance for the uncertainties in estimation of different parameters, the Authority, had in the Consultation paper No.22/2012-13 dated 11.10.2012, proposed to consider the Cost of Equity at 16%. The Authority had in the Consultation paper also stated that the rate proposed is reasonable for the current control period and provides for sufficiently generous allowance for such uncertainty in estimation.

**13.37.** The sensitivity had accordingly been considered for Cost of Equity at 16% and is presented in the Table 47 below. This sensitivity is limited to the equity (including RSD) being considered at 16% instead of 24.2%, as proposed by MIAL.

**Table 47: Sensitivity - Impact on X Factor from Cost of Equity**

Cost of Equity @	X Factor as per MIAL submission	X Factor after change in assumptions
16%	-873.36%	-623.30%

**13.38.** *The Authority had proposed that the de-levering of the equity beta of the comparators will be in accordance with the market capitalisation figures to arrive at the asset betas (as is advised by NIPFP).*

**13.39.** *The Authority had also proposed that the re-levering of the asset beta of MIAL will be at the notional Debt-Equity Ratio of 1.5:1 (as indicated by SBI Caps).*

**13.40. The Authority further had proposed to adopt Return on Equity (post tax Cost of Equity) as 16% in the WACC calculation.**

**b Stakeholder Comments on Issues pertaining to Cost of Equity**

**13.41.** ACI in its submission stated that while setting the return on equity the peculiarities of the airport sector vis-à-vis other regulated infrastructure sectors in India need to be kept in mind. The aviation sector is cyclical in nature with significantly higher uncertainty in cash flows. Given the anaemic economic growth in the global economy and falling growth rate in the domestic economy, significant growth is seen in traffic in recent past which is a key business driver for both aeronautical and non-aeronautical revenues. This further increases the risk for the airport investors in emerging markets.

**13.42.** ACI further stated that while a Return on Equity (RoE) of 16% proposed by AERA is apparently comparable vis-a-vis return allowed to electricity distribution companies by the State Electricity Regulatory Commissions (SERC), the effective return in the power sector is higher. ACI further stated that while return on equity (RoE) is provided on Equity in the power sector, in the case of airports, the weighted average cost of capital (WACC) is applicable on the regulated asset base which is subject to depreciation every year thereby bringing down effective return to equity investors.

**13.43.** ACI also stated that for the purpose of estimation of beta for CSIA, the National Institute of Public Finance and Policy has used betas of airports from both the emerging and developed economies. ACI also stated that there are significant differences between emerging and developed economies. Some of the characteristic features of emerging economies are low per capita air trips, volatility in air traffic growth rate and an absence of a strong politico-legal framework. Airport betas from developed economies are not comparable to Indian airports even if they operate at similar levels of traffic and service quality standards due to inherent different structural factors.

**13.44.** ACI also submitted that in Greece a 15% RoE is assured to the private investors despite mere 2.4% inflation currently. ACI proposed that the difference of approximately 7% in inflation, as compared to 9.4% inflation in India, should be adequately factored in while arriving at the fair RoE.

**13.45.** ACI also submitted that CSIA currently faces unique situation of severe capacity constraint, working effectively almost at its full capacity. There is no possibility of significantly increased capacity within this control period. ACI further stated that on the other hand, CSIA business is susceptible to significant downside risk due to its dependency on the airline business which is exposed to significant volatilities and frequent negative shocks. This combination of circumstances makes CSIA quite different from other regulated entities.

**13.46.** ACI further stated that the capacity constraint has become increasingly onerous and since a response of raising prices is prevented by regulation, the upside is limited. It is also important to point out that, as outlined by the UK's Civil Aviation Authority (CAA), investing in the business of airport operations is considered riskier than other sectors. In fact recently CAA has agreed in-principle to increased cost of equity for Heathrow Airport, London, which is also experiencing the similar strained scenario of CSIA, in September 2011.

**13.47.** IATA stated that NIPFP has presented a sound basis for arriving at the range of cost of equity of 11.64% to 13.84% for MIAL. IATA stated that it is of the view that AERA should therefore adopt a cost of equity for MIAL which is within that range and strongly disagrees with AERA's proposal to arbitrarily grant over two additional percentage points to the upper range value of NIPFP's cost of equity estimate. IATA proposed that AERA uses a cost of equity figure of 12% which is consistent with the assessment of NIPFP.

**13.48.** APAO stated that the cost of equity of 16% as proposed by the Authority for determination of aeronautical tariffs at CSIA underestimates the riskiness of the CSIA. APAO further stated that the aviation sector in India competes with other sectors in India as well as global airport projects around the world for investments and if reasonable return on investment is not allowed, it will certainly affect future investment in the sector adversely.

**13.49.** APAO further stated that Authority has not considered MIAL's submission that during the bidding process AAI had clarified to the bidders that it has considered a WACC of 11.6% based upon cost of equity and debt of 22.8% and 6% respectively for the purpose of bid comparison and advised bidders to submit bids accordingly. APAO further stated that

*“Authority has disregarded the above submission mentioning that it was only indicative for comparison purposes and cannot be construed as assured return by any stretch of imagination. However, Authority must*



*appreciate that bidders had prepared their bids on the specific cost of equity and debt indicated by AAI and quoted the revenue share percentage accordingly. If AAI had indicated a lower cost of equity (say, 16%), the revenue share percentage quoted by bidders would have certainly been lower. It is unfair to change the critical assumption on cost of equity which was indicated during the bid stage, as it affects the viability of the airport adversely.”*

**13.50.** APAO referring to AERA Act and State Support Agreement further stated that

*“It is important to note that the Authority has a responsibility to ensure economic and viable operations of the airport, both under the AERA Act and State Support Agreement entered into by MIAL with the Government of India. The relevant extracts are reproduced below:*

*Section 13(1)(a) of the AERA Act required the Authority to determine tariff for the aeronautical services taking into consideration :“ economic and viable operations of major airports.”*

*Schedule 1 of SSA provides that “..... in undertaking its role, AERA will observe the following principles:“ 2. Commercial – In setting the price cap, AERA will have regard to the need for the JVC to generate sufficient revenue to cover efficient operating costs, obtain the return of capital over its economic life and achieve a reasonable return on investment commensurate the risk involved.”*

*From the above it is evident that AERA needs to provide reasonable return on the investment so that airport is able to generate sufficient revenues which after meeting cost of operation are able to provide reasonable return to the investors. AERA has taken a position in the case of tariff determination for Delhi airport that while ensuring viability of the airport, it will not consider Annual Fee (revenue share) payable to AAI since the same is not a pass through cost as per SSA. While it is fact that Annual Fee is not a pass through cost in accordance with SSA and has accordingly not been included by the Authority while calculating Target Revenue, it cannot be ignored while considering viability of the airport as Annual Fee is a*

*contractual and legal obligation which airport has to meet. Therefore to ensure viability of the airport, Authority should have considered this fact also and provided commensurate return on equity.*

*APAO request the Authority to duly consider these submissions while determining the cost of equity. We firmly believe that Authority should provide a minimum return on equity of 24% for CSIA to remain viable.”*

**13.51.** Bid Services Division (Mauritius) Limited and ACSA Global Limited in their submission stated that risk-free rate should not be average of historical yields but should be forward looking. Bid Services Division (Mauritius) Limited and ACSA Global Limited further proposed that Current yield on 10-year Government of India bonds should be adopted as the risk-free rate.

**13.52.** On determination of Beta, Bid Services Division (Mauritius) Limited and ACSA Global Limited proposed that in the absence of listed airport companies in India, comparable airports in economies that are similar to India should be looked at. In our view it would be prudent to limit the comparator set to airports in emerging economies rather than including airports from developed economies.

**13.53.** On Equity Risk Premium, Bid Services Division (Mauritius) Limited and ACSA Global Limited proposed that , Equity Risk Premium should be calculated using indices maintained by Indian stock exchanges viz. BSE Sensex or NSE Nifty. Using an index from US stock market may not be relevant to the Indian context as the macro-economic indicators of the economies, growth and inflation expectations, etc. are very different.

**13.54.** On the Authority’s review of cost of equity granted by regulators in other infrastructure sectors, Bid Services Division (Mauritius) Limited and ACSA Global Limited stated that

*“a) Revenue sharing with the Government – Unlike most of the airports globally, airport operated by MIAL involves significant revenue-sharing with AAI. Cash flows available to capital providers are highly susceptible to changes in air traffic volumes due to the high degree of operating leverage. The revenue share at Mumbai airports makes it more susceptible to risks than airports in emerging markets*

*b) UDF cannot be treated as a risk mitigation measure as it is essentially a component of target revenue like landing, parking or PSF charge*

*c) Capacity constraint – Capacity constraint at CSIA will adversely impact growth in non-aeronautical revenues. It may be noted that CAA, UK has given an in-principle approval to increase in cost of equity to Heathrow airport, on grounds of similar constraints facing the airport.*

*d) Construction risk – Period of project development spans beyond the current control period. Most of the other airports, whose tariffs are determined by Authority, have had a shorter part of the construction period within their respective control periods. This reduces the construction risk significantly for such airports. However, Authority has granted the same RoE of 16% to airports such as Delhi and Kolkata. Most of the comparator airports used by NIPFP to estimate beta have no construction risks as their development is already complete.*

*e) Capital constraints – One of the foremost reasons for government to adopt the PPP model for developing airport infrastructure was to bring in private financing and efficiencies in operations. However, with the revenue sharing model the ability of a private airport operator to borrow is constrained as the cash available to service debt is relatively lower and this translates into a lower debt service coverage ratio, thereby making funds available at a premium compared to other businesses.*

*f) Financing risk – Authority has acknowledged a gap in the means of finance of Rs 819 cr. and is unable to identify means of finance to cover such gap. In this scenario, unavailability of funds or costly funding may enhance the risk profile of the airport and jeopardize the completion of the project. For no other regulated Indian airport has a gap in funding been left unmet by Authority."*

**13.55.** Bid Services Division (Mauritius) Limited and ACSA Global Limited further stated that during the bidding process of Mumbai and Delhi airport privatisation, bidders were informed by AAI that it has assumed post tax cost of equity and debt of 22.8% and 6% respectively under the indicative post tax nominal WACC of 11.6% for the purpose

comparing bids. Based upon this MIAL had worked out revenue share to be paid to AAI. Changing cost of equity to 16% now reduces returns available to equity investors significantly which is in contravention of the terms of the bidding.

**13.56.** Bid Services Division (Mauritius) Limited and ACSA Global Limited requested AERA to take into account the factors presented above and to increase return on equity suitably so that risk assumed by foreign investors are covered adequately and sanctity of the bidding process is maintained.

**13.57.** British Airways stated that the National Institute of Public Finance and Policy has presented a sound basis for arriving at the range of cost of equity of 11.64% to 13.84% for MIAL and they therefore do not understand or support AERA's decision to grant over two additional percentage points to the upper range value of NIPFP's cost of equity estimate.

**13.58.** On the issue of asset beta, Cathay Pacific stated as under

*"The calculation and justification of one of the factors in determining the FROR, the asset beta, is determined by using the sample airports suggested in the paper of KPMG. There are no specifications of the selection criteria of these "comparable airports" to be chosen.*

*For the calculation of the Cost of Equity ( $R_e$ ), one of the components being used is the expected rate of return on the market portfolio ( $R_m$ ). The market rate of return ( $R_m$ ) has been calculated using the I3SE Sensex, which is a free-float market capitalization-weighted stock market index of 30 well-established and financially sound companies listed on Bombay Stock Exchange (BSE). The 30 component companies which are some of the largest and most actively traded stock, are representative of various industrial sectors of the Indian economy. However, given that CSI Airport is a public infrastructure and an important means to support sustainable development and prosperous economy of India, the expected return should not be the same as the private companies. Hence, using market return indicator of BSE Sensex for the benchmark of the expected rate of return for purely private business sector is inappropriate and would obviously be on the high side."*

**13.59.** FICCI in their submission stated that from the Consultation Paper it has noted that AERA has proposed a return of 16% on equity based upon a study by National Institute of Public Finance and Policy. FICCI further stated that while 16% may seem to be a reasonable return in normal course and for sectors such as power & ports, it needs to be appreciated that this return in power projects is provided on the total equity for the complete concession period. In the airport sector, however, it is based on the Regulated Asset Base (RAB) which is subject to depreciation every year. These factors should be considered when evaluating the return to be provided in the airport sector vis-à-vis other infrastructure sectors.

**13.60.** FICCI further stated that

*“• Given the risks, lenders are cautious when issuing long-term debt to capital intensive and long-gestation infrastructure projects*

*• FICCI understands, from speaking to some PE firms, that such Investors expect a return of 20% or more from their investments in infrastructure sector in India*

*• According to a report by SBI Caps, a return on the Equity in the range of 18.5% to 20.5% would be reasonable for airport sector in India.*

*Thus, considering the requirement of massive private investments - both foreign and domestic over next 10-15 years for airport development and modernization, it is imperative that attractive and adequate rates of return are provided to investors.*

*In view of the above, AERA may like to revisit the proposed 16% RoE.”*

**13.61.** CII stated that in the airport sector return (i.e. WACC) is provided on the Regulated Asset Base (RAB) which is depreciated each year. In effect this means that 16% return proposed by AERA will be decreasing every year as RAB depreciates every year and for a concession period of 30 years 16% return on equity proposed by AERA would translate to a much lower return which would be grossly inadequate and will discourage any further investment in the sector by the prospective investors. CII further stated that CSIA is also liable to pay 38.7% revenue share to AAI on all its revenues including return on equity and therefore in effect 16% return on equity proposed by AERA will translate to a net return of only 9.8% to the shareholders which is far below the reasonable return expectation of any

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investor. Based on the above submission, CII urged the Regulator to take a considered decision on the issue of RoE and fix the RoE in the range of 22% to 24%.”

**13.62.** Commenting on the issue of Cost of Equity for MIAL, proposed to be considered by the Authority in its Consultation Paper – 22/ 2012-13 dated 11.10.2012, Assocham mentioned that the return of 16% needs to be revisited by the Authority. Assocham stated as under,

*“1. AERA has proposed return on equity at the rate of 16% which is significantly lower than sought by MIAL of 24% and needs to be revisited by AERA considering the following facts.*

*a. Return on equity in other sectors such as power, port, roads etc is given return on equity ranging between 15.5 to 18%. However, the difference between these sector and the Airport is that in these sectors return is given on the amount of equity infused by the investors while in the case of Airports return is given on the value of asset base (RAB) which is subject to depreciation every year. In effect this means that 16% return proposed by AERA will be decreasing every year as RAB depreciates every year and for a concession period of 30 years 16% return on equity proposed by AERA would translate to a return of around 8% only which is grossly inadequate and will discourage any further investment in the sector by the prospective investors.*

*b. MIAL is liable to pay 38.7% revenue share to AAI on all its revenues including return on equity and therefore in effect 16% return on equity proposed by AERA will result in a return of only 9.8% to the shareholders which is far below the reasonable return expectation of the investors.*

*c. Risk profile and traffic volatility is much higher for the Airport sector.*

*d. CSIA is a land and capacity constraint Airport limiting its capacity for further expansion. In fact recently CAA,UK has recommended higher cost of equity for Heathrow Airport for the similar reasons.*

*e. Airport such as Mumbai and Delhi need to have higher return on equity considering the fact that developed Airports will go back to AAI without any consideration to the Airport operator unlike the other sectors wherein*

*benefit of appreciation in terminal value of the assets is retained by the developer / operator.*

*f. Report prepared by NIPFP on cost of equity is flawed on many counts.*

*g. It is worth mentioning that studies done by various other experts and agencies including Government appointed agency SBI Capital Market have given a range of 18.5% to 24% for return on equity for Airport sector.”*

**c MIAL Response to Stakeholder Comments on Issues pertaining to Cost of Equity**

**13.63.** MIAL stated that CSIA is a severely land constrained airport with very high risk profile. MIAL further stated that the project has also suffered because of delay which was beyond our control and such risks are typical to CSIA. The entire development has to take place while airport is under operations. There are various land issues with various agencies. Being a congested airport the ultimate capacity is also limited which enhances the risk. MIAL further stated that the return on equity of 16% granted by the Authority is grossly inadequate. In case of Hyderabad airport the Authority has allowed return on equity @ 18.33%.

**13.64.** MIAL also stated that the airport sector is going through a turbulent period. During course of last six years, since airport has been taken over by the JVC, traffic has dropped intermittently. With increase in fuel cost and high taxation on fuel and due to high price elasticity there is again de-growth in traffic, both passengers and aircraft movements. Other sectors like power, port and road are not exposed to such high volatility. Even in such sectors, effective returns on equity offered are more than 16% as in these cases return on equity is perpetual and does not decrease with depreciation of RAB.

**13.65.** MIAL referring to study by SBI Capital Markets Ltd. stated that AAI initiated a study by engaging SBI Capital Markets Ltd., a subsidiary of State Bank of India, a public sector bank, while tariff proposal of DIAL was under consideration of the Authority. MIAL also quoted a conclusion of this report as under

*“The Rate of Return on Equity based on the estimates of various factors as detailed in earlier chapter works out to about 19.5%. However, taking into account the variation in the airports in terms of capacity, size, location, classification, capital structure, risks perception etc., it may be prudent that concerned authorities have flexibility of fixing Rate of Return on Equity*

*investments, for the airport project as a whole, within a range. For the present purpose, a range of (+/-)5% i.e. 18.5% to 20.5% could be considered reasonable. (Page 31 of the report)”*

**13.66.** MIAL stated that if airport sector is not permitted reasonable RoE, it will be very difficult, in the long run, to attract private investment in this sector. MIAL further stated that because of very high revenue shares at both the airports if fair return on equity, which substantially goes down after considering revenue share, is not permitted these airports will continue to incur losses. MIAL also stated that these revenue shares were quoted on understanding of RoE in the range of 22-23%.

**13.67.** MIAL further referred to studies conducted by KPMG on behalf of CSIA, APAO and other airports and stated that these studies clearly support a return on equity of around 24%.

**13.68.** MIAL further submitted that it had engaged CRISIL Risk and Infrastructure Solutions Limited, a subsidiary of CRISIL Limited (CRISIL) to determine fair rate of return on equity. CRISIL in its report dated 11th April, 2011 has concluded that

*“(i) CRISIL adopted the CAPM approach for estimation of the cost of equity for various levels of debt-equity ratio which is shown in the table below:*

<b>Capital Asset Pricing Model</b>				
<b>Parameter</b>	<b>D/E – 1.33</b>	<b>D/E – 1.5</b>	<b>D/E – 1.75</b>	<b>D/E – 2</b>
<i>Risk-free rate</i>	8.5702%			
<i>Market Return</i>	15.3%			
<i>Equity Beta</i>	1.42	1.51	1.64	1.76
<b>Cost of Equity</b>	<b>18.16%</b>	<b>18.74%</b>	<b>19.59%</b>	<b>20.44%</b>

*(ii) CRISIL had also estimated the cost of equity as per the Arbitrage Pricing Model (APM). The cost of equity as per the APM was estimated to be in the range of 21.09% to 23.71%.*

**13.69.** MIAL also stated that there are unique factors enhancing the risk at CSI Airport

*“(a) Competing Airport -CSI Airport is a severely land constrained airport limiting the possibility of capacity increase not just in the long run but also*



*in the very near term. The capacity at CSIA is expected to saturate in the near future requiring a second city airport which has already been planned for. In case of other Indian airports, there exists no threat of a second competing airport to be set-up in the near future. This, without doubt, enhances the business risk. Investors of such a project will expect to recoup investment as early as possible. Naturally, investors expect to have fair rate of return on equity which has to be certainly higher than applicable for other airports, where the threat of a second airport is not there. The Right of First Refusal (RoFR) for a second airport within 150 kms of CSIA is not an adequate measure to mitigate the said risk. The RoFR is not absolute and only gives a small window of comfort.*

*(b) Land Constraints – CSIA is severely land constrained as compared to other Indian and international airports.....*

*(c) Limited Growth Potential for Non Aeronautical Revenue – Capacity constraint at CSIA will adversely impact growth in non-aeronautical revenues.*

*There is no possibility of significantly increased capacity within this control period. On the other hand, MIAL business is susceptible to significant downside risk due to its dependency on the airline business which is exposed to significant volatilities and frequent negative shocks. This combination of circumstances makes MIAL quite riskier as compared to other Indian airports.*

*(d) Construction risk – Period of project development spans beyond the current control period. Most of the other airports, whose tariffs are determined by Authority, have had a shorter part of the construction period within their respective control periods. This reduces the construction risk significantly for such airports. However, Authority has granted the same RoE of 16% to airports such as Delhi and Kolkata.....*

*Most of the comparator airports used by NIPFP to estimate beta have no construction risks as their development is already complete.*

*(e) Financing risk – The Authority has acknowledged a gap in the means of finance of Rs 819 crs. which in fact is effectively Rs. 1347.74 crs. and is unable to identify means of finance to cover such gap. In this scenario, unavailability of funds or costly funding may enhance the risk profile of the airport and jeopardize the completion of the project. For no other regulated Indian airport has a gap in funding been left unmet by the Authority.”*

**13.70.** MIAL also stated that in the comparative chart provided by the stakeholder, rate of return on Capital employed for MIAL is taken as 18% and for DIAL at 5% both of which are factually incorrect.

**d MIAL’s own comments on Issues pertaining to Cost of Equity**

**13.71.** MIAL in their submission stated that the cost of equity of 16% as proposed by the Authority for determination of aeronautical tariffs at CSIA underestimates the riskiness of the CSI Airport. MIAL further stated that the aviation sector in India competes with other sectors in India as well as global airport projects around the world for investments and if reasonable return on investment is not allowed, it will certainly adversely affect future investment in the sector.

**13.72.** MIAL further stated that the methodology adopted by NIPFP underestimates the risks inherent to an emerging market such as India and more specifically to an evolving sector like aviation. MIAL also stated the key concerns with the NIPFP report as listed below.

a) **Comparable Companies** – MIAL stated that the NIPFP report included a number of companies which are not directly related to or limited to airport operations. The diverse operations of these companies affect the overall business risk of the company. Using their beta estimates for such companies as comparable provides an incorrect assessment of risk for the aviation sector.

b) **Comparable Airports** – MIAL stated that NIPFP has included airports from developed as well as emerging markets as comparable airports while determining comparable beta for CSIA. Beta is a measure of systemic risk of an asset as compared to the market as a whole. Inclusion of airports from developed markets implies that airport assets in these markets have similar risk as airport from emerging markets.

MIAL further stated that India, as a result of its large population, has traffic volumes similar to some airports in developed countries. However, the risk profile of Indian airports is comparable to those in emerging markets than in developed markets. Inclusion of airports from developed markets while determining beta of CSIA tends to underestimate the beta (risk).

On the survey conducted by Airports Council International (ACI) and referred to in NIPFP's report on Cost of Equity, MIAL stated that ACI rankings primarily reflect service quality of airports and are not a measure of riskiness of an airport asset. On the contrary, the stringent quality norms for Indian Airports as specified under OMDA have necessitated capital expenditure to maintain minimum service quality levels and thus increase riskiness of the assets because of higher operating leverage.

MIAL also submitted asset betas of airports in emerging economies based on NIPFP and KPMG estimates and stated that

*“the median asset betas of airports in emerging economies are higher than the asset beta recommended by NIPFP for CSIA (0.54). This difference is also due to the fact that the risks being faced by the aviation industry are closely linked to general state of the economy. Hence, despite CSIA being comparable to airports in the developed economies in terms of traffic volumes and service levels, their betas are not comparable as they operate under very different economic conditions.”*

c) **Revenue sharing with the Government** – MIAL stated that unlike most of the airports globally, airport operated by MIAL involves significant revenue-sharing with the Government. The revenue share at CSIA makes it more susceptible to risks than airports in emerging markets due to availability of lower cash flows with the capital providers. Further, MIAL is liable to pay 38.7% revenue share to AAI on all its revenues including return on equity and therefore in effect 16% return on equity proposed by AERA will result in a return of only 9.8% to the shareholders which is far below the reasonable return expectation of any investor.

d) **Capital constraints** – MIAL stated that one of the foremost reasons for government to adopt the PPP model for developing airport infrastructure was to bring in private financing and efficiencies in operations. However, with the revenue sharing model the ability of a

private airport operator to borrow is constrained as the cash available to service debt is relatively lower and this translates into a lower debt service coverage ratio, thereby making funds available at premium compared to other businesses.

e) **Re-levering of beta** – MIAL stated that for one of the estimates of cost of equity, NIPFP has calculated the debt-equity ratio based on the market value of equity. NIPFP has estimated the market value of equity based on the purchase of 13.5% equity stake in MIAL by GVK Power and Infrastructure Limited from Bid Services Division (Mauritius) Limited for Rs. 1,134 crs.

MIAL also stated that

*“We would like to highlight the above approach of re-levering of asset beta using market value of equity is not appropriate. Market value of equity should be based on the price of actively traded shares of a listed entity. Off-market and sporadic transaction of the shares of a listed or unlisted entity may be at a premium or discount to the actual market value and is dependent on various strategic, financial, legal or other considerations. The purchase of the equity stake from Bid Services was strategic in nature; the share price discovered in that transaction is not reflective of the market value of the MIAL’s share price. Financial literature suggests that for an unlisted entity, the debt-to-equity ratio used to re-lever the beta should be based either on the industry average financial or the management’s view of the long-term debt-equity ratio.”*

**13.73.** On the Equity Risk premium calculated by NIPFP, MIAL referred to Aswath Damodaran and stated that Aswath Damodaran recommends using the Melded Approach (Bond Default Spread and Relative Standard Deviation) approach for calculation of equity risk premium. MIAL also quoted Aswath Damodaran on the same, which is as under

*“The country default spreads provide an important first step in measuring a country equity risk, but still only measures the premium for default risk. Intuitively, we would expect the country equity risk premium to be larger than the country default risk spread. To address the issue of how much higher, we look at the volatility of the equity market in a country relative to the volatility of the bond market used to estimate the spread.”*

*“We believe that the larger country risk premiums that emerge from the last approach are the most realistic for the immediate future...”*

**13.74.** MIAL further stated that Aswath Damodaran regularly calculates equity risk premium for different countries. MIAL stated that

*“Damodaran’s current estimation of Equity Risk Premium for India is 9.0%, which could have been directly taken by NIPFP as ERP instead of trying to calculate it indirectly by using benchmark of US market which is not relevant in the present case.”*

**13.75.** On the Risk Free Return calculated by NIPFP, MIAL stated that NIPFP in its methodology for calculating of equity risk premium has taken an arithmetic average of daily yield on 10-year Government of India bonds resulting in a risk free return of 7.25%. This risk free return is lower than the 10 year bond yield of at the time of MIAL’s MYTP submission, which was 8.428%.

**13.76.** MIAL further quoted Aswath Damodaran on the issue, which is as under

*“Interest rates generally change over time because of changes in the underlying fundamentals. Using a normal risk free rate, which is different from today’s rate, without also adjusting the fundamentals that caused the current rate will result in inconsistent valuation. For example, assume that the risk free rate is low currently, because inflation has been unusually low and the economy is moribund. If risk free rates bounce back to normal levels, it will be either because inflation reverts back to historical norms or the economy strengthens. Analysts who use normal interest rates will then have to also use higher inflation and/or real growth numbers when valuing companies.”*

**13.77.** MIAL further stated that it has used the latest available (at the time of filing MYTP) 10-year bond yield, which is more appropriate for calculating the risk free rate. MIAL stated that this approach of MIAL is in conformity with the approach of Prof. Aswath Damodaran and should have been considered by Authority.

**13.78.** MIAL also referred to Prof Jayant Varma from IIM Ahmedabad and stated that he is also of the view that the long term rate is the risk free cost of capital today and it is the rate that would have to be paid today to finance a risk free project. 10 year Gol bond yields in

the current financial year (FY13) have been in the region of 8.05% to 8.78% which is much higher than NIPFP's historical estimates.

**13.79.** MIAL also presented comparison between cost of equity estimates of NIPFP, the Authority, KPMG, SBI Capital Markets, CRISIL and Leigh-Fisher, which is reproduced as below

S No.	Entity	Cost of Equity Estimates
1.	NIPFP	11.64% - 13.84%
2.	AERA	16%
3.	KPMG	20% - 23%
4.	SBI Capital Markets	18.5% - 20.5%
5.	CRISIL	18.16% - 20.44% (CAPM) 21.09% - 23.71% (APM)
6.	Leigh-Fisher	25.1%

**13.80.** On benchmarking of returns with other regulated sectors, MIAL stated the key differences with other infrastructure sector as under

*“(a) The volatility of revenue drivers such as units of electricity consumed is lower than the volatility of revenue drivers in airport viz. traffic.*

*(b) In the airport sector return (i.e. WACC) is provided on the Regulatory Asset Base which is depreciated each year as against return provided to equity in case of power sector which is not depreciated i.e. equity is not reduced with depreciation of assets. In effect this means that 16% return proposed by AERA will be decreasing every year as RAB depreciates every year and for a concession period of 30 years 16% return on equity proposed by AERA would translate to a much lower return which is grossly inadequate and will discourage any further investment in the sector by the prospective investors.*

*(c) The terms of concession for highway and port sectors are different from aviation sector with a pre determined tariff/ toll charge. There is no regulation on the revenue or profits earned on a project. More importantly, the return to the equity investors is based on project assumptions which may be significantly different from actual growth of revenue drivers. For*

*example, the equity IRR of 16% in NHAI projects is used to determine the minimum revenue share or maximum viability gap funding for the project for a toll project assuming a traffic growth of 5% or alternatively the maximum annuity payments required to meet the benchmark equity IRR of 18%. The actual traffic growth may be significantly different for a project as is evident from the average return of 20%-23% earned by the investors in road projects.”*

**13.81.** On the NIPFP recommendation on UDF acting as a risk mitigation tool for airport, MIAL stated that

*“UDF is only a substitute for tariffs not realized / realizable for aeronautical services and covers the same range of services as under other aeronautical revenue heads. It does not act as a risk mitigating revenue source for the airport as the levying of UDF would imply reduction in other aeronautical tariffs levied by the airport for specified target revenue. Further, the levying of UDF, which is a passenger traffic related charge, instead of increase in Air Traffic Movement (ATM) related charges such as landing and parking charge increases the volatility in revenues of the airport as the volatility of passenger traffic is higher than volatility in ATMs. Thus during slowdown with the lower passenger traffic the airport will get directly hit as the UDF collection would reduce.*

*Further, additional risks and delays in implementation of UDF, as illustrated above, when compared to other charges levied by the airport operator increases the risk of cash flows to the airport operators and thus increases the risk for the airport operator which can have an impact on cost of equity.”*

**13.82.** MIAL on the issue of WACC of 11.6% based upon cost of equity and debt of 22.8% and 6% respectively for the purpose of bid comparison, stated that

*“Authority has disregarded the above submission mentioning that it was only indicated for comparison purposes and cannot be construed as an assured return by any stretch of imagination. However, it seems, Authority has failed to appreciate the fact that bidders had prepared their bids on the*

*specific cost of equity and debt indicated by AAI and quoted revenue share number accordingly. Now, after having privatized airports on the basis of higher revenue share percentage quoted by bidders and AAI benefiting from higher revenue share throughout the concession period, it is totally unfair to change the critical assumption itself which was certainly one of the most important parameter (change in cost of debt is irrelevant as it is a pass through) and thereby affects viability of airport operators adversely.”*

**13.83.** Referring to the AERA Act and the State Support Agreement (SSA), MIAL stated that

*“Section 13(1)(a) of the AERA Act requires the Authority to determine tariff for the aeronautical services taking into consideration :*

*“economic and viable operations of major airports.”*

*Schedule 1 of SSA provides that “..... in undertaking its role, AERA will observe the following principles:*

*“2. Commercial – In setting the price cap, AERA will have regard to the need for the JVC to generate sufficient revenue to cover efficient operating costs, obtain the return of capital over its economic life and achieve a reasonable return on investment commensurate the risk involved.””*

**13.84.** MIAL further stated that from the above it is evident that the Authority needs to provide reasonable return on the investment so that airport is able to generate sufficient revenues which after meeting cost of operation are able to provide reasonable return to the investors.

**13.85.** MIAL also stated that

*“The Authority has taken a position in the case of tariff determination for Delhi airport that while ensuring viability of the airport, it will not consider Annual Fee (revenue share) payable to AAI since the same is not a pass through cost as per SSA. While it is fact that Annual Fee is not a pass through cost in accordance with SSA and has accordingly not been included by the Authority while calculating Target Revenue, it cannot be ignored while considering viability of the airport, as Annual Fee is a contractual and legal obligation which airport has to meet. Therefore to ensure viability of*



*the airport, Authority should have considered this fact also and provided commensurate return on equity.”*

**13.86.** MIAL further stated the unique factors enhancing the risk at CSI Airport

*“(a) **Second Competing Airport** -CSI Airport is a severely land constrained airport limiting the possibility of capacity increase not just in the long run but also in the very near term. The capacity at CSIA is expected to saturate in the near future requiring a second city airport which has already been planned for. In case of other Indian airports, there exists no threat of a second competing airport to be set-up in the near future. This, without doubt, enhances the business risk. Investors of such a project will expect to recoup investment as early as possible. Naturally, investors expect to have fair rate of return on equity which has to be certainly higher than applicable for other airports, where the threat of a second airport is not there. The Right of First Refusal (RoFR) for a second airport within 150 kms of CSIA is not an adequate measure to mitigate the said risk. The RoFR is not absolute and only gives a small window of comfort.*

*(b) **Land Constraints** – CSIA is severely land constrained as compared to other Indian and international airports*

*(c) **Limited Growth Potential for Non Aeronautical Revenue** – Capacity constraint at CSIA will adversely impact growth in non-aeronautical revenues.*

*There is no possibility of significantly increased capacity within this control period. On the other hand, MIAL business is susceptible to significant downside risk due to its dependency on the airline business which is exposed to significant volatilities and frequent negative shocks. This combination of circumstances makes MIAL quite riskier as compared to other Indian airports.*

*(d) **Construction risk** – Period of project development spans beyond the current control period. Most of the other airports, whose tariffs are determined by Authority, have had a shorter part of the construction period within their respective control periods. This reduces the construction risk*

*significantly for such airports. However, Authority has granted the same RoE of 16% to airports such as Delhi and Kolkata.*

*Most of the comparator airports used by NIPFP to estimate beta have no construction risks as their development is already complete.*

**(e) Financing risk** – *The Authority has acknowledged a gap in the means of finance of Rs 819 crs. which in fact is effectively Rs. 1347.74 crs. and is unable to identify means of finance to cover such gap. In this scenario, unavailability of funds or costly funding may enhance the risk profile of the airport and jeopardize the completion of the project. For no other regulated Indian airport has a gap in funding been left unmet by the Authority.”*

**13.87.** MIAL further submitted that

*“We urge the Authority to ensure that the returns available to investors suitably cover the riskiness of the assets, enable airport operators to have viable operations and provide an incentive for attracting new investments in the sector considering risk reward of the sector. Risk factors unique to CSIA need to be given due credence. We firmly believe that Authority should provide a minimum return on equity of 24.2% for CSIA to remain viable and to be able to provide efficient operations to airlines and passengers.”*

**e Authority’s Examination of Issues pertaining to Cost of Equity**

**13.88.** The Authority has examined the comments from the stakeholders and MIAL’s response on the issues pertaining to cost of equity.

**13.89.** The Authority notes that MIAL has stated that the growth potential is absent and hence it has a high risk. The growth potential is absent owing to capacity constraints at the airport. If there are capacity constraints, it would appear to follow that the downside risk of traffic is also low. MIAL had indicated in its submission that since the airport faces the downside risk, a further term (Lambda) should be added to CAPM model which will increase the cost of equity. MIAL’s submission regarding the Lambda term is not consistent with its comment on the Consultation Paper that the airport is capacity constrained and therefore, has limited growth potential. The Authority has already indicated that it would true up the traffic and hence the airport does not face the downside risk. The Authority, therefore does

not consider that any further consideration of the Gamma term is warranted. The Authority's examination of the Lambda term is given in Para 13.24 and 13.25 above

**13.90.** ACI has stated that the return on equity in case of Greece has been promised at 15% and has compared it to the inflation rate in Greece. However, the comments of ACI do not contain any further details regarding the nature of the alleged promise of return on equity at 15%. The Authority also understands that according to IMF classification (October, 2012), Greece falls into the category of "advanced economy". According to IMF classification, the other countries falling in this category are countries in Europe, USA, New Zealand, etc. The Authority also notes that the return on equity in some of these countries has been estimated at 6.5% to 7.5% by the regulator or Competition authorities. However, the Authority, while determining the Cost of Equity has considered both the Advanced Economies as well as developing countries and hence taken a more broad-based sample of the comparator set. The Authority, while determining the fair rate of return on equity for MIAL, has considered the report of its consultant NIPFP and had arrived at a tentative decision of 16% as being a fair rate of return on equity.

**13.91.** The Authority also notes that while for the purposes of the return on equity, the ACI has considered it appropriate to take the example of Greece (which is an advanced economy as per IMF), while its comments on choosing a comparator set for MIAL, ACI and other commentators (Notably CRISIL, SBI Caps or MIAL) have found it appropriate to compare MIAL only with the emerging and developing economies and not with the developed ones.

**13.92.** The Authority has decided to adopt CAPM model for the purpose of determining fair rate of return on equity. It has given considerable attention to estimating the different components that go into the CAPM model.

**13.93.** The fair rate of return on equity in a country depends on different parameters of CAPM provided this is the framework used for estimating RoE. As can be seen from the report of M/s CRISIL, change of framework used for estimating RoE would yield different estimate of RoE. For example, according to CRISIL, if Arbitrage Pricing Model (APM) is used, RoE would be much higher. ACI has not indicated the model used for determining the RoE for Greece and hence the Authority would not like to comment further on this issue.

**13.94.** With regards to the selection of comparator set, the Authority has also noted the submission of the Sydney airport before the Productivity Commission Australia.<sup>1</sup> Sydney airport was responding to submissions by other stakeholders to the enquiry of the Productivity Commission. It gave response to the submission of IATA that *“Bloomberg estimates that Sydney Airport’s asset beta is close to zero based on the past decade”*. Sydney airport states that *“Bloomberg could not provide a meaningful direct estimate for Sydney Airport’s asset beta, since neither Sydney Airport nor any holding company for Sydney Airport has at any time been listed on any stock exchange. Neither MAp (which has invested in 8 airports groups over the past decade<sup>2</sup>) nor Sydney Airport’s hybrid debt (SKIES) are reasonable proxies for Sydney Airport, and in any case neither have an observed beta close to zero.”* It is clear to the Authority that different stakeholders have quite different estimates on the asset betas. The Authority has relied upon the report of NIPFP to arrive at a fair rate of return on equity at 16%. The Authority notes that Sydney airport has not considered MAp to be a reasonable proxy for Sydney airport. For example, the Authority notes that in Paragraphs 78 of the CC UK report comments on one of the method advocated by BAA to arrive at its beta as under:

*“BAA also provided beta estimates derived from other bottom-up models. One of these models estimated airline betas and converts them into airport betas by multi- plying the estimated airline betas with the ratio of the average of comparator airport betas to that of the airlines’ betas. This method is subject to the same flaw as the use of comparator airport betas discussed in the preceding paragraph. Where the multiplier is the ratio of historical BAA plc’s beta to the average betas of airlines using its regulated airports, the estimate falls substantially. **This again suggests that the use of comparator airport betas and the betas of airlines using these airports may be flawed.**(emphasis supplied)”*

**13.95.** Similarly in Paragraphs 80 and 81 of the Appendix F of the CC UK’s report referred to above, it is mentioned that

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<sup>1</sup> “Economic Regulation of Airport Services, Second Submission to the Productivity Commission Enquiry”, Sydney Airport Corporation Limited, 22 July 2011, response to Submission 9 of IATA, section 2.3

<sup>2</sup> The Authority is informed that MAp investments include Sydney Airport, Brussels Airport, Copenhagen Airports and Grupo Aeroportuario del Sureste (ASUR).

*“..the financial drivers model estimates airport betas by first regressing historical asset betas of 74 peer companies in the utility, transport, property and retail sectors from the UK on a number of financial characteristics that have a reasonable theoretical link to beta (Para 80)..... In many instances in applying these models, BAA estimated betas for comparator airports, airlines, real estate companies, utility, and transport companies from observed historical stock returns (Para 81)”.*

**13.96.** The Authority also notes that BAA had chosen a comparator set that included not only airports but other companies like airlines, utilities, real estate companies and transport companies.

**13.97.** The Authority has also noted the cost of equity calculations made by M/s Jacobs and presented to the Authority by Rajiv Gandhi International Airport, Shamshabad, Hyderabad in its tariff proposal. The comparator set chosen by M/s Jacobs had 11 airports of which 9 were from developed economies (Vienna, Frankfurt, Copenhagen, Paris, Venice, Florence, Auckland, Ljubljana and Zurich) and 2 from the developing economies (Mexico). Mexican airports are also the ones included in the comparable airports by CRISIL in its report for MIAL. The 5 year beta of Mexican airports is lower than that of some of the developed country airports. It is thus clear to the Authority that Hyderabad Airport was thought to be comparable to other airports from developed economies.

**13.98.** The Commerce Commission New Zealand in its Input Methodologies (Airport Services) Reasons paper December 2010, has, inter alia, calculated the leverage as well as asset beta of airports comparable to New Zealand airports<sup>3</sup>. It has taken a sample of 25 overseas airports that comprise both developed and developing countries. Its Appendix E8 identifies the comparative firms sample and the process for choosing the comparative firms sample for Airports. This means that CC NZ properly considered that the airports in its comparator set are comparable to Auckland Airport. Table E2 displays the results of the individual firms’ last five-year average (market value) leverage, which is consistent with the leverage used to estimate the asset beta.<sup>4</sup> This results in an overall average leverage for the

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<sup>3</sup> “Input Methodologies (Airport Services) Reasons paper December 2010”, Commerce Commission (New Zealand) Para E3.45, Appendix E, Page 216-217.

<sup>4</sup> Table E18 of the report on page 303 includes a short description of each of these airports

sample of 17%.<sup>5</sup> Table E19 of the Input Methodologies gives the unadjusted asset betas of the airport companies in the comparator set. The List of Comparable Firms and the Average Market Leverage for 2005-2010 and average unadjusted asset betas is given in the table below:

**Table 48: List of Comparable Firms and the Average Market Leverage for 2005-2010<sup>6</sup> and average unadjusted asset betas<sup>7</sup>**

Name of the Airport	Average Unadjusted Asset beta monthly observations	Average Unadjusted Asset beta Weekly observations	Average leverage for 2005-2010
Aerodrom Ljubljana	1.08	0.88	0%
Aeroporto di Firenze	0.59	0.34	3%
Aeroports de Paris	0.69	0.71	27%
Airport Facilities	0.32	0.37	35%
Airports of Thailand	0.74	0.69	37%
AIAL	0.75	0.79	25%
Australian Infrastructure	0.76	0.65	5%
Beijing Capital International Airport	1.02	1.19	18%
Flughafen Wien	0.78	0.59	25%
Flughafen Zuerich	0.49	0.25	42%
Fraport	0.62	0.6	19%
Gemina	0.49	0.35	56%
Grupo Aeroportuario del Centro Norte	1.04	0.82	1%
Grupo Aeroportuario del Pacifico	0.64	0.74	0%
Grupo Aeroportuario del Sureste	0.85	0.51	0%
Kobenhavns Lufthavne	0.39	0.3	19%
Guangzhou Baiyun International Airport	0.56	0.54	10%
Hainan Meilan International Airport	1.29	0.62	0%
Japan Airport Terminal	0.58	0.72	15%
MAP Group	0.66	0.61	44%
Malta International Airport	0.47	0.39	17%
SAVE	0.82	0.54	15%
Shanghai International Airport	0.7	0.73	5%
Shenzhen Airport	0.82	0.84	0%
Xiamen International Airport	0.75	0.74	0%
Mean (of all observations)	0.72	0.62	17%

**13.99.** The Authority has noted the list of Comparable Firms and the Average Market Leverage for 2005-2010<sup>8</sup> and average unadjusted asset betas<sup>9</sup>. The analysis shows that the

<sup>5</sup> The average leverage estimate is also 17% when using all observations for leverage used in each of the five-year periods used to estimate the asset beta.

<sup>6</sup> Table E2 on page 217 of Input Methodologies

<sup>7</sup> Table E19 on page 308 of Input Methodologies

<sup>8</sup> Table E2 on page 217 of Input Methodologies

<sup>9</sup> Table E19 on page 308 of Input Methodologies

set of comparable airports chosen by Commerce Commission, New Zealand has 15 number of airports from Advanced Economies (as defined by IMF) and 10 number of airports from Emerging and Developing Economies (as defined by IMF) . The Authority also notes that the mean of leverage of airports from developing regions is about 7.1% and that from developed regions is about 23.1%. The mean of the entire set of 25 airports is 16.7%. As has been mentioned by the Authority in its Tariff Determination Order 03/2012-13 dated 24.04.2012 in respect of Delhi Airport, the CC NZ has taken 17% as the leverage in calculation of cost of capital for supply of airports services in NZ.

**13.100.** M/s CRISIL have argued that the Authority should consider airports only from developing regions as comparable airports to MIAL. The analysis of the Tables mentioned above shows that the leverage of MIAL is more aligned to that of airports in developed regions. However purely for sake of arguments if the Authority were to relever asset beta of 0.75 as calculated by CRISIL based on the comparator set of airports only from the developing regions and apply about 10% leverage ratio thereto, the equity beta for MIAL would come to 0.8. Applying the other parameters, calculated by CRISIL, like risk free rate (8.570%) and market return of 15.30% (giving an equity risk premium of 6.73%), the return on equity can be calculated at 13.96% or say 14%. This is also the upper bound of the range of return on equity as calculated by NIPFP.

**13.101.** The reason of CRISIL arriving at a higher value of equity betas between 1.42 to 1.76 is that it has re-levered the asset beta taking by MIAL's debt-equity ratio between 1.33 to 2 under four scenarios. It has taken this range from MIAL and have put a disclaimer "not verified by CRISIL". It has also acknowledged that *"while most of the airports **across the world** (emphasis added) has very low debt-equity ratio with median at around 0.5 times, airports in India are highly leveraged at around 3 to 5 times."*

**13.102.** In this connection, the observations of the Commerce Commission NZ are relevant: *"Using a notional leverage assumption will remove the variation of the cost of capital due to changes in leverage"*. The Authority has also examined the issue of impact of debt-equity ratio on equity beta of the airport extensively in its Order No 03/2012-13 dated 20.04.2012 regards the Aeronautical Tariff Determination for the Delhi airport. Furthermore, as observed by the CAA UK, *"**BAA and its financiers should be held accountable for their decisions to adopt any particular financing arrangements: (emphasis added) users should***

*not be expected to carry these risks". It went on to state that "price caps would be set on the basis of regulatory fundamentals, and not in order to accommodate any particular financing arrangement adopted..... since the choice of financing arrangements was a matter for the airports' management and shareholders, the risks associated with them should be borne by shareholders and lenders, and not by users."*

**13.103.** The Authority has considered the quantum of equity that has financed MIAL's project. As of 31.03.2012, the equity of MIAL is Rs 1,200 crores. According to the certificate of auditor, additionally an amount of Rs 799.89 crores is on account of accumulated profits (as reflected in the Balance Sheet as Reserves & Surpluses). Hence the total shareholder's funds come to Rs 1,999.89 crores (after deducting Rs 153.85 crores as Upfront Fee, MIAL would be getting the return on equity on an amount of Rs 1846.04 crores and not on only Rs 1,046 crores after subtracting Rs 153.85 crores from their equity of Rs 1,200 crores). MIAL in its submission had requested the Authority to consider Rs 799.89 crores as eligible to same return as would be determined by the Authority on the equity part. The decision of financing mix is that of the promoter and the shareholders. The Authority has noted that by and large, higher debt/equity ratio can exacerbate the component of financing risk in terms of relevering of the asset beta to arrive at the equity beta. It is the equity beta which finally goes into the calculation of return on equity.

**13.104.** The Authority notes that the regulatory regimes elsewhere have noted what they have termed as "anomalous" impact of higher and higher debt/equity ratios on WACC and equity beta. These regimes have addressed this issue by instruments like non-zero debt beta or by taking a normative debt/equity ratio. The Commerce Commission, New Zealand for example, has chosen leverage of 17% as a normative leverage for airport services. It has also chosen leverage of 44% for energy and gas distribution services. By and large, stable or less volatile revenues are associated with higher leverage. The debt/equity ratio of MIAL as of 31.03.2012 works out to 1:2.1 (considering debt at Rs 4,231 crores and equity plus Reserves & Surpluses at Rs 1,999.89 crores). This ratio has been around the same since FY 2009-10. It reasonably compares with the debt/equity ratio of DIAL.

**13.105.** Return on equity is based on the risk profile of a particular project or airport. The Authority has carefully considered the arguments that both CRISIL and MIAL have advanced to support higher risk and therefore higher return on equity. Some of the components like



“construction risk” are specific to the project and therefore to be taken into account not as systematic risk but through the project cash flows. In case of MIAL, the cash flows are suitably augmented through determination of UDF. As far as the risk of obtaining finance for the construction is concerned, the Authority, after examination of all relevant material determined DF at Rs 3,400 crores (around 29% of the allowable project cost) to further take care of the alleged “construction risk”. Additionally the Government/AAI has made available land for monetization from which, in the current Control Period, MIAL proposes to raise an amount of Rs 1,000 crores towards the project.

**13.106.** The Authority has given its detailed comments elsewhere. It however notes that in addition to the many derisking measures contained in this Order and presented below, land for monetization (made available by Government / AAI), as discussed above, can also be considered as a measure aimed at reducing the risk associated with raising capital for the project:

13.106.1. Truing-up of traffic,

13.106.2. Truing-up of non-aeronautical revenue,

13.106.3. Review of cost of debt on reasonable evidence, if provided by MIAL,

13.106.4. Review of operational capital expenditure,

13.106.5. Determination of Development Fee for substantially mitigating the financing risk in terms of capital required for completion of the project.

13.106.6. The Authority has also included the interest component on any securitized DF loan in the total permitted DF billing to facilitate securitization of the DF amount determined by the Authority. The proportion of total estimated interest to the DF determined in case of MIAL is around 35%.

13.106.7. Determination of UDF to assure the airport operator a fair rate of return (which includes return on equity consistent with the risk profile)

**13.107.** As mentioned above, land for monetization from which, in the current Control Period, MIAL proposes to raise an amount of Rs 1,000 crores towards the project, can also be considered as a measure aimed at reducing the risk associated with raising capital for the project.

**13.108.** The return on equity is higher than the cost of debt. Higher proportion of equity therefore results in higher WACC and consequently higher revenue to the airport operator. During its examination of review of DF, MIAL had indicated that it would not be in a position to infuse additional equity and hence after considering all the relevant material the Authority had determined the quantum of DF at Rs 3,400 crores. As has been observed also by the CAA above, risks, if any, arising from a particular financing mix should be borne by the promoters.

**13.109.** The Authority has examined available evidence including that obtained in other jurisdictions and has come to the conclusion that taking a broader comparator set comprising airports from both developed and developing regions is appropriate and would yield a more robust estimate of the cost of equity for MIAL. The Authority has also considered its steps for calculation of return on equity as per Para 13.16 as well as WACC in Decision No. XII below.

**13.110.** CRISIL has first listed risk factors in airport operations in general (demand risk, regulatory risk, contemporary risk and Input risk) and then arrived at the conclusion that *“Airports in the emerging markets are exposed to each of these risks differently vis-s-vis developed markets, and that Asset beta of airports in emerging economies is consistently higher than the asset beta of airports in developed countries, reflecting higher risk”*. It would appear to the Authority that the risk factors that CRISIL states as facing the airports in the emerging economies do not apply to MIAL as analysed below:

13.110.1. **Demand Risk:** CRISIL has stated that in developing countries, demand for air travel is also highly elastic. MIAL has stated in its submission that Mumbai airport is capacity constrained in which case the traffic volatility may be considerably dampened for MIAL. That apart, by truing up the traffic volume the Authority has put in mitigating factor for this risk. (In many other regulatory regimes, for example, volume risk is borne by the airport operator.)

13.110.2. **Counterparty Risk:** CRISIL has stated that *“Airports in developing countries typically derive a major part of their revenue from aeronautical services, as against the developed markets where non-aeronautical revenue is higher”*. Apart from the fact that its amplification of the term *“counterparty risk”* in its classification of risks in airport operations is different from when the same term is used in connection

with airports in developing countries, (in its general classification of risks in airport operations CRISIL has stated counterparty risk to mean “poor performance or liquidity/solvency issues of airlines or other counterparties”). The statement by CRISIL appears to mean that an airport with higher proportion of non-aeronautical income has lower risk than the one with lower proportion of non-aeronautical revenue.

13.110.3. Assuming for arguments sake that the observation of CRISIL holds true, CRISIL does not appear to have analysed the percentage of aeronautical revenue in total revenues for MIAL. MIAL has stated that the cargo revenue in its hands (when it was providing the cargo service that the AERA Act defines as an aeronautical service) should be regarded as non-aeronautical revenue (though the Authority’s analysis had indicated that it should be regarded as aeronautical revenue, See Para 20 below for detailed discussion on this point). If revenues from cargo service are taken as non-aeronautical revenues, the proportion of non-aero revenue for MIAL for 2011-12 works out to 67.72%. If, on the other hand, this revenue from cargo service is treated as aero revenue, still this percentage works out to 54.77%. This proportion of Non-aeronautical revenue is quite comparable with the airports in the developed regions and in fact is higher than some of them.

13.110.4. **Regulatory Risk:** According to CRISIL, “Regulations in developing countries are still evolving and are not stable.” While this generalised observation may or may not be true for many of the airports in the developing countries (to wit, South Africa has a formal system of economic regulation for many years, has a Regulating Committee that has passed many regulatory orders etc.) here again, it would appear to the Authority that it does not appear to be true in case of MIAL. CSIAL has a formal and specific State Support Agreement (SSA) as well as OMDA in place. The Government of India has formally passed the AERA Act under which the Authority has been constituted and has laid down its policy and framework. The decisions of the Authority are appealable. The AERA Act provides for a three member Appellate Tribunal presided over by a person who has been a Judge of the Supreme Court of India. There could be a further appeal on the decisions of the Appellate Tribunal to the Supreme Court.

13.110.5. Hence there is a well laid out and transparent airport economic regulatory regime in India to impart regulatory certainty. The airport operator cannot claim regulatory uncertainty on account of appeals filed by him before the various Appellate forums. On its part, the Authority has calculated the aeronautical tariffs for MIAL in accordance with the formulae mentioned in the SSA. Hence in case of MIAL, the Authority is unable to be persuaded that there is regulatory risk, though this may or may not be true for airports in some developing countries.

13.110.6. **Input Risk:** CRISIL has mentioned this risk factor in its classification of general risk factors in airport operations as *“volatility or non-availability or cost of key inputs lie human resources, technology”*. However it has not listed this as a risk factor facing airports in the emerging markets. It would thus appear to the Authority that according to CRISIL, the airports in the developed economies are faced with input risk.

**13.111.** All things considered, it would thus appear to the Authority that CRISIL’s analysis and conclusions of the airports in the developing markets may not be applicable to the case of MIAL.

**13.112.** The assertion of M/s CRISIL (in case of MIAL) as well as M/s SBI Caps (in case of DIAL) that the comparator set only from the airports in developing (emerging) economies should be chosen (and not the set of airports from both developed and developing regions) would imply that according to these two consultants the characteristics of comparator set of airports in the emerging economies somehow more closely represent and are aligned to MIAL (or DIAL) than those obtaining in the airports from developed regions. The Authority has also noted that the comparator set relied upon by M/s CRISIL is of only three countries viz (China-7 airports, Mexico-2 airports and Thailand-1 airport). The sample of countries is small and dominated by one country viz, China. On the other hand, the Authority has also noted that one of the grounds that the Competition Economists Group (CEG) argued that the Australia Energy Regulator’s (AER)<sup>10</sup> adoption of an equity beta (of 0.8) flawed was because *“AER estimate is derived from reliance on just six, highly volatile, Australian observations for regulated energy distributors’ betas”*<sup>11</sup> On balance, the Authority believes

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<sup>10</sup> Australia’s national energy market regulator and an independent statutory authority

<sup>11</sup> "WACC Estimation" A report for Envestra, by Tom Hird (Ph.D), March 2011.

that reliance on a wider comparator set drawn from both the developing and developed countries yields a more robust estimation of the asset beta of the airport sector. It will be seen from the comparable airports indicated in the Table 1 of NIPFP report that some of the airports in the developing countries have beta values below those of some developed market airports.

**13.113.** The issue of using WACC of 11.6% based upon cost of equity and debt of 22.8% and 6% respectively for the purpose of bid comparison has been discussed in details in Para 13.31 and 13.32 above. As has been brought out therein, it is observed that at the time of restructuring of Delhi and Mumbai airports, an indicative WACC of 11.6% was given in the RFP. In the pre-bid clarifications, the significance of the same was stated as under:

*“The post tax cost of equity and debt assumed under the indicative post tax nominal WACC of 11.6% are 22.8% and 6.0 respectively. The purpose of the indicative post tax nominal WACC of 11.6% given in the RFP is to ensure consistency between Business Plans submitted by Bidders as part of their Offer.”*

Thus, it is apparent that WACC of 11.6% mentioned in the RFP document was only indicative and the same was indicated to ensure consistency between the Business Plans submitted by the Bidders as part of their offer. Such consistency would not have been possible if each bidder was to use its own estimate of WACC. In this view of the matter, it is clear that the figure of 11.6% mentioned in RFP cannot in any way be treated to be the return which the bidder could have expected from the transaction. Therefore, there appears to be no substance in the argument that a WACC of 11.6% and RoE of 22.8% was assured to the bidders. As such, treatment of 11.6% as “Bid WACC” is completely misplaced and incorrect. Briefly, the WACC of 11.6% was only indicative for comparison purposes and cannot be construed as assured return by any stretch of imagination. The Authority has gone into the correct estimation of all the parameters of CAPM and after estimating cost of equity (as discussed in para 13.130 below) and cost of debt (as discussed in para 11.39 above) as applicable determined WACC at 11.45%.

**13.114.** Bid Services Division (Mauritius) Limited and ACSA Global Limited have enumerated what they regard as “risk factors” as under:

(i) Revenue Share with the Government: The Authority does not believe that revenue sharing adds to any systematic risks for the operations of the airports. This arrangement has been voluntarily agreed to between JVC and AAI in a transparent bid process.

(ii) As regards UDF the Authority has regarded this is a revenue enhancing measure so that the airport operator is assured of fair return on his assets. UDF is incorporated in the AERA Act (Section 13(1)(b)). The PSF charge (to the extent it pertains to the security component) is quite apart and distinct insofar as it is to be made commensurable with the expenditure on airport security. The Authority has also suggested trueing up of the traffic which means that the total calculation of UDF would also be trueed up in the next control period. Hence, the risk on account of the traffic is eliminated by appropriate revenue through the mechanics of UDF.

(iii) Capacity Constraints: The Capacity constraint is a factor specific to a particular airport. Such risks (also called idiosyncratic specific asset risk or sometimes referred to as unsystematic risk) is the risk unique to a specific asset (or stock), and this component of the risk of an asset (or stock) is uncorrelated with general movements in the overall market. Such risk is therefore not a factor for higher equity return. It needs to be addressed therefore not in higher equity return but in estimation of cash flows. It could also be argued that a capacity constraint may dampen downward volume volatility. At any rate, the Authority has decided to true-up the traffic and adjust aeronautical tariffs so as to give the Airport Operator appropriate and fair rate of return. Hence the Airport operator is assured of his return though the airport may face capacity constraint. The Authority understands that in the UK Regulation the traffic risk is completely borne by the airport operator. This is not the case in CSI Airport.

(iv) Construction Risk: The airport operator, being experienced in construction work, can be said to be aware of the normal construction risks in the project. Before bidding for the project, MIAL would have done a due diligence noting the different components of constructions that it would have to complete to conform to the Master Development Plan. It is also expected to have taken into account likely areas that may delay the construction. Interest During Construction is capitalized in the allowable project cost on which after segregation into aeronautical and non-aeronautical asset base and deducting DF from the aeronautical portion, WACC is given. Also IDC is also eligible for depreciation. The airport

operator is therefore adequately compensated for the construction period. Furthermore as discussed with respect to “capacity constraint”, construction risk is also specific to the project. It is thus not to be regarded as a factor for grant of higher return on equity. The Authority therefore is unable to consider construction risk as an element towards grant of higher return on equity.

(v) Capital Constraints: The revenue share that MIAL has agreed to give to AAI has come about through a mutually agreed contract after a transparent bid process. The airport operator namely MIAL can therefore be accepted to be in knowledge of the implications of revenue sharing on debt service coverage ratio and other financials, more so because not taking the revenue share as a cost pass through was one of the bid conditions. The Authority is therefore unable to accept the argument that on account of revenue share there would be a capital constraint. During its tariff determination exercise the authority has noted that the lenders have made loans available to MIAL at rates between 9.79% to 11.05%, which cannot be said to be debt made available at an excessive premium. At any rate the Authority has determined the total quantum of DF of Rs 3,400 crores which is about 29% of the total allowable project cost. The DF is on NPV basis and according to the submissions of MIAL they would thus be able to securitize and obtain necessary funds. Revenue share thus does not appear as a factor contributing to capital constraint as apprehended by Bid Services Division (Mauritius) Limited and ACSA Global Limited.

(vi) Financing Risk: As regards the gap of Rs. 819 crores that is left unbridged by the Authority, the Authority has given detailed reasoning why the quantum of DF is not fixed at Rs. 4200 Crores but limited to Rs.3400 crores in its MIAL DF Consultation Paper no. 22/2012-13 dated 11.10.2012 as well as its DF Order No. 29/2012-13 dated 21.12.2012. The Authority had also reviewed the possibility of the JVC bringing in additional funds through sources like additional equity, additional debt etc. The Authority also notes the stipulation in OMDA (Para 13.1) that

*“It is expressly understood that the JVC shall arrange for financing and/or meeting all financing requirements through suitable debt and equity contributions in order to comply with its obligations hereunder including development of the Airport pursuant to the Master Plan and the Major Development Plans.”*

**13.115.** The Authority's reasons of granting DF notwithstanding this provision are also dealt with in detail in its DF Consultation Paper as well as DF Order for MIAL. The Authority would take into account the impact on WACC by the specific means of finance JVC chooses to bridge this gap. It therefore does not consider that financing risk owing to gap is in the nature of systematic risk for which higher return is warranted.

**13.116.** As regards the financing policy and financing arrangements, CAA has also stated that:

*"In its February 2003 decision document, the CAA clearly stated its view that BAA and its financiers should be held accountable for their decisions to adopt any particular financing arrangements: users should not be expected to carry these risks. It went on to state that price caps would be set on the basis of regulatory fundamentals, and not in order to accommodate any particular financing arrangement adopted. The CAA added that it would expect this general approach also to apply to any application for an interim review of the price caps.*

*The CAA's attitude towards BAA's financial policy was a matter of considerable interest at the time of the bids for, and subsequent acquisition of BAA plc. In order to address this heightened level of interest, the CAA issued two statements (in February and May 2006). These statements made explicit that the CAA's extant regulatory policy was that it would set caps according to its statutory duties, and not in order to accommodate any particular financial arrangements, and that since the choice of financing arrangements was a matter for the airports' management and shareholders, the risks associated with them should be borne by shareholders and lenders, and not by users."*

**13.117.** The Authority also notes the other view point advocated by the IATA that the cost of equity should be in the range of 11.64 to 13.64%. The Authority has exercised its judgment for reasons mentioned in the Consultation Paper 22/2012-13 dated 11.10.2012 to propose cost of equity at 16%.

**13.118.** The Authority has already commented on each of the above factors highlighted by Bid Services Division (Mauritius) Limited and ACSA Global Limited. The Authority also notes that if as alleged in the comments, these factors substantially contribute to systematic risk



(non-diversifiable risk); the airport operator should not have further exacerbated the systematic risk by having a higher debt-equity ratio which would tend to contribute to financial risk. The Authority also notes that MIAL has contracted debt at different intervals at reasonably competitive rates ranging from 9.79% to 11.05%. This points to the fact that the systematic risk or for that matter financing risk has not been considered as excessive by the lenders. The Authority also notes that the range of cost of debt for MIAL is about the same as that for DIAL, though DIAL's equity and retained earnings are higher than those of MIAL.

**13.119.** The Authority also notes in this regard a similar comment by the Competition Commission, UK with respect to submission by BAA (the airport operator of Heathrow, Gatwick and Stansted in 2007-08). The observation and reasoning of the Competition Commission UK (CC UK) is presented as under,

*“We note that if business risk were as high as BAA has suggested (due to these events) then such a company would be likely to choose a lower level of gearing so that the financial risk would not exacerbate the high business risk. However, we note that BAA increased gearing prior to the Ferrovial takeover, and post takeover has geared up further. We do not believe that this is the action of a company which regards itself as facing high business risk.*

**13.120.** The Authority has also noted the observation by CAA in its 2008 determination of Heathrow and Gatwick airports has stated that:

*“The asset beta represents the underlying measure of systematic risk exposure. The CAA considers that market volatility since the Commission's report would not have any material impact on its assessment of the long-term underlying risk of the assets of Heathrow and Gatwick airports.” It has stated that this was also the position taken by the BAA in its response to the December 2006 proposals as: ‘Any determination of an asset beta should be based on the long-term evidence on the evolution of business risks, not on the short-term market movements or attempts to interpret investors' perceptions.’*

**13.121.** From all the above considerations, the Authority is not persuaded to conclude that the unique features indicated by MIAL / Bid Services Division (Mauritius) Limited and ACSA Global Limited would contribute to enhancing its systematic risk warranting a higher return on equity.

**13.122.** MIAL has indicated which according to it are unique factors enhancing the risk at CSIA.

13.122.1. Second Competing Airport: The Authority notes that the Government of India, AAI, as well as Government of Maharashtra are working on the proposal of a new airport near Mumbai at a distance of about 70 Kms from the existing airport. It also notes that the request for proposal in respect of Navi Mumbai Airport is yet to be issued and in any case the new airport is not likely to be operational in the current control period. Secondly, under the SSA,

*“The “Right of First Refusal (ROFR)” with regard to a second airport within a 150 km (One Hundred and Fifty Kilometer) radius of the Airport will be given to the JVC by following a competitive bidding process, in which the JVC can also participate if it wishes to exercise its ROFR as set forth below. In the event, the JVC is not the successful bidder but its bid is within the range of 10% of the most competitive bid received, the JVC will have the ROFR by matching the first ranked bid in terms of the selection criteria for the second airport, provided the JVC has satisfactory performance without any material default (being a default entitling the counter party to suspend obligations and/ or terminate the agreement) under any Project Agreement at the time of exercising the ROFR.”*

13.122.2. The Authority has noted the comment of MIAL that ‘RoFR for the second airport within 150 kms of CSI Airport, Mumbai is not an adequate measure to mitigate the said risk’. The Authority has however noted the Ministry of Civil Aviation’s response to the C&AG Report on DIAL on this aspect. The C&AG, in its Report No. 5 of 2012-13 commented that “...This provision thwarts competition and provides DIAL with a natural advantage on the second airport.”. MoCA had in

its response<sup>12</sup> stated that *“the provision of RoFR was introduced to give comfort to the airport operator which would be required to put in large sums of capital. At the same time, Government was required to take care that some competition element is introduced and that competition is not thwarted as commented by C&AG.”* The Authority notes that the provision regarding RoFR was known to the bidder. It also notes that MIAL’s comments would seem to indicate that the stipulation of RoFR within 10% of the most competitive bid received, is not adequate comfort. The Authority however feels that MoCA’s response indicate that by this provision “substantial risk exposure has been protected”.

13.122.3. Having noted both the C&AG’s comment and Government’s response thereon the Authority is unable to agree with MIAL that the provision of RoFR is not an adequate measure to mitigate the said risk. It is also unable to agree with MIAL that RoFR gives a small window of comfort. The Authority is also unable to accept the argument of MIAL that right of first refusal for the second airport within 150 Kms of CSIA is not an adequate measure to mitigate the said risk.

**13.123.** One of the submissions of MIAL is to give it the same rate of return on equity as the Authority has given to Hyderabad International Airport Ltd (Shamshabad) in Order No. 06/2010-11 dated 26.10.2010. The Authority was required to make an ad-hoc determination of UDF in respect of HIAL had made the calculations of required revenue by HIAL on the basis of certain ad-hoc return on equity. It had also decided to revisit this issue at the time of final determination of aeronautical tariffs (including UDF) on the basis of the proposal submitted by HIAL taking into account relevant information, government’s concession agreements etc.

**13.124.** MIAL has referred to the work done by M/s KPMG in airport valuation. The Authority has noted various reports commissioned by airport operators or their associations (like APAO) by M/s KPMG. AAI had presented the cost of equity calculation made by M/s KPMG for AAI airports (Kolkata and Chennai airports). The cost of equity indicated by KPMG for these two airports of AAI was 15.64%. M/s Jacob had given its estimates of cost of equity in respect of Hyderabad International Airport at 24%. SBI Capital has worked on the cost of

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<sup>12</sup> Currently available at URL:

<http://www.civilaviation.gov.in/MocaEx/content/conn/MyTutorialContent/path/Contribution%20Folders/NewsUpdates/CAG%20audit%20para%20no.5%20of%202012-13%20-%20Press%20final.pdf>

equity for Indian Airport Sector and had suggested a range between 18% to 20%. MIAL's study by CRISIL has also indicated a similar range of 18% to 20%. The Authority thus notes that various consultants have fairly wide ranging estimates of the cost of equity. It also notes that whereas IATA is supportive of the range between 11.64% to 13.64%, the estimates made by airport operators and their associations through their respective consultants arrive at a much higher figure (going upto 24%).

**13.125.** While reviewing the different estimates of return on equity made by different consultants on behalf of the airport operators, the Authority has noted with considerable interest the comments of Prof Martin Lally in his "COMMENTS ON SUBMISSIONS RELATING TO THE QCA'S<sup>13</sup> PROPOSED WACC FOR THE SEQ ENTITIES<sup>14</sup>", March 31, 2011, Page 14, where he has made an observation on what he regards as a bias of the regulated entities and their advisers in favour of selecting such data set as would yield higher asset betas. Prof Lally comments that:

*Furthermore, Henry's<sup>15</sup> estimates delete the 1998-2002 period on the grounds that utility beta estimates from this period are unusually low; a consistent approach to unusual periods therefore also supports disregarding the 2008-2011 results because this period generates unusually high beta estimates. **Furthermore, regulated firms and their advisers have repeatedly advised against the use of data from the 1998-2002 period (because it yields unusually low results)<sup>16</sup>**; having done so, it would be not now be consistent to favour the exclusive use of data from a subsequent and comparatively short period that yields unusually high results. Similar considerations apply to the US and UK water firms, with the PwC<sup>17</sup> results from 2004-2009 that are reported by Lally (2010c)<sup>18</sup> largely excluding both extreme periods whilst CEG's<sup>19</sup> results from 2006-2011 incorporate the unusually high period but not also the unusually low period*

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<sup>13</sup> Queensland Competition Authority

<sup>14</sup> South East Queensland

<sup>15</sup> Estimating  $\beta$ , Olan T. Henry, Submitted to ACCC 23 April 2009

<http://www.aer.gov.au/sites/default/files/Attachment%20C%20-%20Henry%20-%20Estimating%20beta.pdf>

<sup>16</sup> Emphasis supplied.

<sup>17</sup> PriceWaterhouseCoopers

<sup>18</sup> The Estimated WACC for the SEQ Interim Price Monitoring, Report prepared for QCA,

<sup>19</sup> Competition Economists Group

*from 1998-2002. Consequently, although CEG's results for the water firms use a more recent period than PwC's and the two periods are of equal length, the PwC estimates are likely to be superior to CEG's estimates.*

**13.126.** While Prof Lally has commented on the bias of the regulated entities and their advisers to select a particular data set to suit their arguments, the authority has noted a substantially similar observation by the Civil Aviation Authority with regard to different regulated entities and their advisers and experts to draw different conclusions to suit their respective arguments to suit their arguments from the same data set. In its "Economic Regulation of Heathrow and Gatwick Airports", 2008-2013, CAA decision, 11 March 2008, the CAA observed that:

*In November 2007, the CAA indicated that it would keep developments in capital markets under review in the remaining months before its final determination. In that period it has received a substantial body of data, evidence and analysis, from a variety of sources, including its own advisers, consultation responses, and from third parties acting on behalf of both BAA and other stakeholders. Notwithstanding the breadth and depth of evidence, **different parties have drawn distinctly different interpretations from essentially the same data** (emphasis supplied).*

**13.127.** The Authority had appointed NIPFP as its Financial advisor and after review of its report felt that rate of return on equity at 16% balances reasonable interest of the stakeholder like the passengers, the airlines and the airport investors.

**13.128.** The Authority has also carefully considered the replies of NIPFP to the analysis of CRISIL, as submitted by MIAL. NIPFP has commented on all the elements of the CAPM model, namely the risk free rate, equity risk premium as well as equity beta. It has shown how equity risk premium materially affected by span of data considered for this purpose. It has also stated that it is more reasonable to take large sample set that taken care of the uninformed biases in selecting a subset of airports on factors like stage of the economy (emerging / developed), size of the airport, region (Asia / rest of the world), profile of passenger (business / leisure or domestic and international), etc. It has also felt that too much dependence on beta value of Chinese airports which may not be comparable to Indian airport companies in many ways may also not be appropriate. It has also pointed out that in

its Table 1 of its earlier report (already in public domain), some of the Chinese and Mexican airport companies have beta values lower than some of the developed airport market companies. All in all, according to NIPFP wider sample of airports as a comparator set would be more robust. The Authority agrees with this assessment.

**13.129.** In the current Control Period the Authority has also incorporated risk mitigating measures like trueing up of traffic (many other regulatory regime like the CAA, UK leave the volume risk borne to by airport operator), revenue risk through the statutory mechanism of UDF, a substantially large part of risk associated with national and international economies through trueing up non-aeronautical income (some of the other regulatory regimes do not do so). NIPFP has also commented that *“the kind of de-risking done for the Mumbai airport is rare and that must also be taken into account while estimating the beta values as we have done.”*

**13.130.** The Authority has already outlined its approach and steps towards calculation of fair rate of return on equity in Para 13.16, as well as Weighted Average Cost of Capital in Decision No. XII below. Upon considering all the material placed before it. It does not feel that any change in this approach is warranted. Similarly, after having considered the Stakeholders comments, as well as the risk mitigating factors, the report of its consultant NIPFP and other relevant material placed before it, the Authority feels that its proposal of taking return on equity at 16% does not require any change in either direction. The Authority has also accordingly determined WACC for the current control period at 11.45%. It has also decided to true up WACC in the event of interest rates on contracted debt going up or down with a ceiling of 11.5%. The Authority may review this ceiling upon reasonable evidence that MIAL may present to the Authority in this behalf.

**13.131.** The Authority has made detailed analysis of various steps involved in calculation of fair rate of return on equity consistent with the risk profile of an airport in its discussions above as well as in its Order No 03 / 2012-13 dated 24.04.2012 in respect of determination of aeronautical tariff for IGI Airport, Delhi. The Authority has not found any grounds to alter its approach. Its decision regarding cost of equity in respect of MIAL is given below.

**Decision No. X. Regarding Cost of Equity**

- X.a. The Authority decides to calculate asset beta for MIAL based on the comparable airports as per the report by NIPFP.**
- X.b. The Authority decides that the de-levering of the equity beta of the comparators will be in accordance with the market capitalisation figures to arrive at the asset betas (as is advised by NIPFP) and thus determines asset beta for CSI Airport, Mumbai at 0.54 after taking into account the risk mitigating factors. (If asset beta of MIAL is taken at 0.59 (i.e. without considering risk mitigating factors), the cost of equity comes to around 16% for equity risk premium of 7.5%.)**
- X.c. The Authority also decides to re-lever the asset beta of MIAL at the notional Debt-Equity Ratio of 1.5:1 (as indicated by SBI Caps).**
- X.d. The Authority decides to accept the risk-free rate as 7.25%, as advised by NIPFP.**
- X.e. The Authority decides to accept the equity risk premium at 6.1%, as advised by NIPFP.**
- X.f. Based on the above parameters, the Authority further decides to determine Return on Equity (post tax Cost of Equity) as 16% for the WACC calculation. The Authority's decision takes into account its judgment on allowances made over the upper bound (13.84%) of the range of return on equity estimated by NIPFP.**
- X.g. The Authority clarifies that the same rate of return as of equity, i.e., 16%, would also be applicable for Reserve & Surpluses / Accumulated Profits (Retained Earnings).**

#### **14. Treatment of the Upfront Fee, paid by MIAL to AAI, as part of equity**

##### **a Authority's position on Issues pertaining to Treatment of the Upfront Fee, paid by MIAL to AAI, as part of equity in the Consultation Paper**

**14.1.** The Authority had, in the Consultation Paper No.22/2012-13 dated 11.10.2012, proposed not to consider Upfront fee paid by MIAL to AAI towards equity share capital of MIAL.

**14.2.** MIAL had in their proposal submitted through auditor certificate that the upfront fee to AAI has been paid as below:

**Table 49: Upfront Fee paid to AAI as certified by MIAL's Auditor**

	<i>FY 07</i>	<i>FY 08</i>	<i>FY 09</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>
<i>Upfront Fee paid to AAI – In Rs. Crore</i>	150	-	-	3.85	-	-

**14.3.** The Authority observed that the paid-up capital of Rs 1,200 crs includes Rs 153.85 crs paid to AAI as upfront fee.

**14.4.** The SSA provides for no pass through for Upfront fee payable to AAI. As per Clause 3.1.1 of the SSA

*“...the Upfront Fee and the Annual Fee paid/payable by the JVC to AAI under the OMDA 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.”*

*The SSA further defines the regulatory base on which returns are admissible at the rate of WACC as:*

*“It is further clarified that the Upfront Fee and any pre-operative expenses incurred by the Successful Bidder towards bid preparation will not be allowed to be capitalised in the regulatory base.”*

**14.5.** In view of the above, the Upfront fees incurred by MIAL appeared to be inadmissible as equity and therefore should not be included as a part of Equity for the purpose of WACC determination.

**14.6. The Authority had proposed not to consider Upfront fee paid by MIAL to AAI towards equity share capital of MIAL.**



14.7. The Authority had analysed the impact of not considering the AAI Upfront fee as part of Equity on the 'X' factor as under:

**Table 50: Sensitivity – Impact on X factor from not considering AAI Upfront fee as part of Equity**

Parameter	X Factor as per the Base Model	X Factor after change in assumptions
Not considering AAI Upfront fee as part of Equity	-873.36%	-854.37%

**b Stakeholder Comments on Issues pertaining to Treatment of the Upfront Fee, paid by MIAL to AAI, as part of equity**

14.8. The Authority has received comments from the Stakeholders (IATA and APAO) regarding its position on consideration of AAI Upfront fee towards equity share capital of MIAL, as expressed in the Consultation Paper – 22/2012-13 dated 11.10.2012. While IATA has supported the Authority's position, APAO has argued against the same.

14.9. Supporting the Authority's decision not to consider AAI Upfront Fee towards equity share capital of MIAL, IATA stated as under,

*"IATA agrees that AERA has rightly disallowed consideration of the upfront fee towards MIAL's equity share capital. The SSA is unambiguous in its position that there should be no pass through of cost for the upfront fee. Treating it as equity would run contrary to this condition."*

14.10. APAO in its submission has stated that the SSA precludes Upfront Fee from forming part of the project cost or regulatory asset base or being treated as a pass-through to the airport users. APAO also stated that there is no provision in the SSA or OMDA which provides for exclusion of equivalent amount from means of finance for the purpose of WACC calculation. APAO further stated that equity contribution by shareholders in MIAL remains unchanged even after Rs. 153.85 crores is excluded from project cost. APAO further stated that there was no such obligation cast upon shareholders under SSA/OMDA that Upfront Fee has to be provided from Equity alone.

14.11. APAO further stated that

*"MIAL is free to use any or all means of finance available at its disposal to meet the payment of Upfront Fee to AAI. Expenditure on account of*

*Upfront Fee cannot be linked to a particular means of finance viz. Equity only because of the reason that when it was paid no other funds were available. As Authority would agree, funds are fungible and therefore it would be wrong to link any specific payment to specific asset / expenditure unless there are such stated restrictions.*

*Hence, calculating WACC without recognizing total Equity contribution will be erroneous.*

*APAO would request the Authority to not exclude the Upfront Fee of Rs. 153.85 cr. paid to AAI towards Equity. The Authority's proposed methodology results in an unfair reduction in the true cost of capital for the project."*

**14.12.** Suggesting a reconsideration of exclusion of AAI Upfront Fee from the equity of MIAL, Assocham commented as under,

*"It is noted from the consultation paper that upfront fee of Rs 153.85 Cr paid to AAI is excluded from RAB which is in accordance with the provision of SSA. However, AERA has again reduced this amount from the equity brought in by the shareholders while calculating WACC which in effect is double counting and needs reconsideration."*

**c MIAL Response to Stakeholder Comments on Issues pertaining to Treatment of the Upfront Fee, paid by MIAL to AAI, as part of equity**

**14.13.** MIAL responded to IATA comments on the matter as under,

*"There is no provision in the SSA or OMDA which provides for exclusion of amount equivalent to upfront fee from Equity Share Capital for the purpose of WACC calculation. Equity contribution by shareholders in MIAL remains unchanged even after Rs. 153.85 crs. is excluded from the project cost."*

**d MIAL's own comments on Issues pertaining to Treatment of the Upfront Fee, paid by MIAL to AAI, as part of equity**

**14.14.** MIAL, in its own comments on the Consultation Paper – 22/2012-13 dated 11.10.2012, stated that

*“There is no provision in the SSA or OMDA which provides for exclusion of amount equivalent to upfront fee from Equity Share Capital for the purpose of WACC calculation. Equity contribution by shareholders in MIAL remains unchanged even after Rs. 153.85 crs. is excluded from the project cost.”*

**14.15.** MIAL requested the Authority to consider total equity (without any reduction towards upfront fee to AAI) for the purpose of calculation of WACC.

**e Authority’s Examination of Issues pertaining to Treatment of the Upfront Fee, paid by MIAL to AAI, as part of equity**

**14.16.** As regards the issues pertaining to AAI Upfront fee not being considered as part of Equity share capital of MIAL, the Authority has examined the comments made by the Stakeholders and the response by MIAL to these comments. The Authority has provided detailed reasoning for not considering the AAI Upfront Fee as part of equity of MIAL. Having considered the comments and responses, the Authority does not find any reason to review its earlier position and decides not to consider Upfront fee paid by MIAL to AAI towards equity share capital of MIAL.

**Decision No. XI. Regarding Treatment of the Upfront Fee, paid by MIAL to AAI, as part of equity**

**XI.a. The Authority decides not to consider Upfront Fee paid by MIAL to AAI towards equity share capital of MIAL.**

## 15. Weighted Average Cost of Capital (WACC)

### a Authority's position on Issues pertaining to Weighted Average Cost of Capital (WACC) in the Consultation Paper

15.1. The Authority had in the Consultation Paper No.22/2012-13 dated 11.10.2012, after considering the submissions made by MIAL, proposed that WACC for the purposes of calculating Target Revenue will be calculated based on proportion of different components of the means of finance (excluding Internal Resource Generation and DF). It had accordingly calculated WACC at 10.77% (based on 16% cost of equity) for the purpose of tariff determination during the current control period.

15.2. In this regard, the Authority had considered the submission made by MIAL dated 11.10.2011, on the means of finance for the project:

*"The means of finance for the project cost of Rs 12,380 Crores are considered as follows:*

<i>Components</i>	<i>Contributions (In Rs. Cr.)</i>
<i>Equity</i>	
<i>Paid Up Capital</i>	<i>1,200</i>
<i>Internal Accruals (Reserves)</i>	<i>1,999</i>
<i>Real Estate deposits (refundable)</i>	<i>1,000</i>
<i>DF*</i>	<i>3,950</i>
<i>Debt</i>	<i>4,231</i>
<i>Total</i>	<i>12,380</i>

*\*Note:*

*1) The DF amount is the funding gap after using all other sources of Finance given above.*

*2) Includes Rs. 637 Crore collected so far. Amount collected is net of collection charges. DF is excluding service tax, if any.*

*The Operational Capital Expenditure and Retirement Compensation are considered to be funded through Internal Accruals."*

15.3. MIAL had further submitted their approach for determination of WACC for the MYTP as under:

*“A fair rate of return would be allowed on the Regulatory Base defined under SSA. This would be a combination of Cost of Equity (Paid up Capital + Reserves + Real Estate Deposits) and Cost of Debt.*

$$WACC = g * R_d + (1 - g) * R_e$$

*Where: g = Weighted Average Gearing for the control period*

*R<sub>d</sub> = Weighted Average Pre-Tax Cost of Debt for the control period*

*T = Corporate Tax Rate*

*R<sub>e</sub> = Post-Tax Cost of Equity.”*

**15.4.** MIAL also presented its estimation of cost of debt and cost of equity as follows:

*“The weighted average cost of debt (R<sub>d</sub>) for the current control period is 10.65%, computed from the outstanding debt and yearly average cost of debt.”*

**15.5.** The outstanding debt and yearly average cost of debt as submitted by MIAL, vide their initial submission dated 11.10.2011, is reproduced as under:

Table 51: Cost of debt as submitted by MIAL in its initial submission

Particulars	FY 10	FY 11	FY 12	FY 13	FY 14
Outstanding debt – In Rs Cr	2,021	2,947	4,101	4,231	4,231
Cost of Debt - %	9.99%	10.09%	10.23%	10.83%	11.56%

*“The Cost of Equity for CSIA has been taken on the basis of Report prepared by KPMG ..... wherein Cost of Equity has been computed based on CAPM formula as given below :*

$$R_e = R_f + \beta * (R_m - R_f)$$

*Where : R<sub>f</sub> = the current return on risk-free rate*

*R<sub>m</sub> = the expected average return of the market*

*(R<sub>m</sub> – R<sub>f</sub>) = the average risk premium above the risk-free rate that a “market” portfolio of assets is earning.*

*β = the beta factor, being the measure of the systematic risk of a particular asset relative to the risk of a portfolio of all risky assets.*

MIAL submits that it is relying on the analysis done by KPMG for Cost of Equity. KPMG has arrived at Cost of Equity of 24.17% for CSIA, which has been considered as 24.2% for WACC calculation.....The cost of Equity for CSIA has been worked out by MIAL as follows:

*Cost of Equity (Re)*

Parameter	Value
Risk free rate- 10 year benchmark government bond yield	8.428%
Beta for Infrastructure companies	1.596
Market risk premium	9.863%
Cost of Equity (Re)	24.2%

”

15.6. MIAL had, in their submission dated 11.10.2011, submitted their calculation of WACC as presented below:

*“The weighted average Cost of Capital has been computed based on the following formula:*

$$WACC = \%D * R_d + \%E * R_e$$

In Rs crs & %	FY 10	FY 11	FY 12	FY 13	FY 14
	<i>Actual</i>		<i>Projections</i>		
Total Capital employed (Net of DF)	3,040	4,363	6,774	8,204	8,640
Outstanding debt	2,021	2,947	4,101	4,231	4,231
Equity	1,019	1,416	2,673	3,973	4,409
Paid up capital	600	800	1,000	1,200	1,200
Internal Accruals	419	616	973	1,773	2,209
Real Estate Deposit (Refundable)	-	-	700	1,000	1,000
% Debt	66.48%	67.54%	60.53%	51.57%	48.97%
% Equity	33.52%	32.46%	39.47%	48.43%	51.03%
WACC	14.75%	14.67%	15.74%	17.31%	18.01%
Weighted Average Gearing	56.51%				
Weighted Average Equity	43.49%				
Cost of Debt	9.99%	10.09%	10.23%	10.83%	11.56%
Weighted Average Cost of Debt	10.65%				
Cost of Equity	24.20%				
Weighted Average Cost of Capital	16.54%				

”

**15.7.** Further, vide their submission dated 23.11.2011, MIAL proposed a revised projection of the means of finance for the Project cost of Rs. 12,380 crore on account of certain revision in some of their earlier assumptions including revision in the tariff applicability date from 01.12.2011 to 01.03.2012 and the levy of DF from 01.12.2011. In this regard, MIAL submitted as under:

*“.....the computations given below are based on the changes discussed above. However, in case Hon’ble Authority does not accept any of the above changes, it will have a corresponding impact on tariff increase, internal accruals and DF requirement etc. For example, as the project cost of Rs. 12380 Crore and funding from other sources (Rs. 6431 Crore) is fixed, the balance funding of Rs. 5949 Crore has to come from internal accrual and DF. In case, internal accruals given here are reduced, DF has to be increased by corresponding amount so that both add up to Rs. 5949 Crore for meeting the funding requirement. As such, the computations and amounts given herein are required to be considered together and not in isolation or selective basis. Hon’ble Authority is, therefore, requested to consider the above submissions in entirety.”*

**Table 52: Revised means of finance (MIAL’s submission dated 23.11.2011)**

Components	Contributions (In Rs. Cr.)
Equity	
a. Paid Up Capital	1,200
b. Internal Accruals (Reserves)	2,473
c. Real Estate deposits (refundable)	1,000
Development Fee	3,476
Debt	4,231
Total	12,380

**15.8.** On account of the change in debt and equity percentages, MIAL had revised the calculation of WACC. The revised value of WACC, as submitted by MIAL in the submission dated 23.11.2011, was 16.66%.

**15.9.** Further, vide their submission dated 26.06.2012, MIAL revised their calculation of WACC on account of incorporation of auditor certified numbers for FY 2012 and updation of traffic forecast. MIAL submitted the WACC of 15.94% in this submission.

**15.10.** MIAL had submitted that since the internal accrual will depend upon the tariff hike being approved by the Authority and the date of levy of such hike, this means of finance will continue to be dynamic and accordingly the requirement of DF would need to be modified.

**15.11.** The Authority had proposed views on the cost of each component of WACC namely debt (refer Decision No. VIII), equity (Refer Decision No. X) and RSD (Refer Decision No. IX).

**15.12.** It may also be noted that the Authority had defined Internal Resource Generation in a particular manner in the Consultation paper. In estimation of Internal Resource Generation, the Authority had taken into account the cash balance as of 31.03.2012 and the estimated depreciation for 2012-13 and 2013-14. Since the actual depreciation for these two years may possibly be different from the estimates, the Authority had separately proposed the truing-up of the same for the purposes of calculation of Internal Resource Generation. The method of the Authority of calculation of Internal Resource Generation was to enable clarity in calculation of its different components and keeping the contribution therefrom tractable.

**15.13.** It was also noted that retained earnings, which are nothing but profit after tax after adjustments as generally reflected in the appropriation accounts, is not taken into consideration while calculating the Internal Resource Generation. This is because entire retained earnings may or may not be deployed for the project and hence could not be taken as Internal Resource Generation for the means of finance for the project.

**15.14.** The Authority had in the Consultation Paper proposed to determine WACC for MIAL as under:

Table 53: Determination of WACC for the current control period by the Authority

<i>In Rs crs &amp; %</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>			<i>Projections</i>	
<i>Outstanding debt</i>	2,021	2,947	4,548	4,231	4,231
<i>Paid up capital</i>	446	646	1,046	1,046	1,046
<i>Real Estate Deposit (Refundable)</i>	-	-	-	221	656
<i>% Debt</i>	81.91%	82.02%	81.30%	76.96%	71.31%
<i>% Equity</i>	18.09%	17.98%	18.70%	19.03%	17.63%
<i>% RSD</i>	-	-	-	4.02%	11.05%
<i>Weighted Average Debt</i>	77.88%				
<i>Weighted Average Equity</i>	18.33%				
<i>Weighted Average RSD</i>	3.80%				
<i>Cost of Debt</i>	10.20%	9.79%	10.13%	10.09%	10.09%
<i>Weighted Average Cost of Debt</i>	10.06%				
<i>Cost of Equity</i>	16.00%				



<i>In Rs crs &amp; %</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>			<i>Projections</i>	
<i>Cost of RSD</i>					<i>0.00%</i>
<i>Weighted Average Cost of Capital</i>					<i>10.77%</i>

15.15. The Internal Resource Generation figures considered year-on-year are as shown in the table below:

**Table 54: Internal Resource Generation in respect of which WACC return is proposed**

<i>In Rs crs &amp; %</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>			<i>Projections</i>	
<i>Cash Balance</i>			<i>645.26</i>		
<i>Projected Depreciation on Aeronautical RAB</i>				<i>183.97</i>	<i>322.03</i>
<i>Cumulative Internal Resource Generation amount at the end of the year</i>			<i>645.26</i>	<i>829.23</i>	<i>1,151.26</i>

15.16. Based on the Table 53 above, the Authority proposed to consider WACC of 10.77% for MIAL for the current control period.

15.17. In view of the Authority's proposed view to provide for WACC as return on Internal Resource Generation (Refer Tentative decision No.3 of the Consultation Paper No.22/2012-13 dated 11.10.2012), the Authority proposed to consider 10.77% as return on the Internal Resource Generation for the current control period.

15.18. The Authority noted that the project is likely to be completed by August 2014, which is beyond the current control period and accordingly, means of finance towards the entire project cost have not been required to be drawn / called upon as yet. Further, as discussed in Tentative Decision No.6 of the Consultation Paper No.22/2012-13 dated 11.10.2012 on the Project Funding, the Authority had proposed not to address a certain gap in the means of finance. Accordingly, the cost of such means of finance, which have not been drawn / called upon as yet, is not known to the Authority. Such means of finance include (a) the term loan, which has not been drawn yet, (b) Refundable Security Deposits, which have not been contracted yet and (c) the debt, which may need to be arranged in order to meet the gap in the means of finance. The Authority has considered true-up cost of such means of finance in respective sections (true-up of cost of debt in Truing Up: 3, true-up of cost of RSD in Decision no. IX.b). The Authority noted that since the components of WACC are being trued-up, the WACC would also merit truing-up to that extent.

**15.19. The Authority had proposed that WACC for the purposes of calculating Target Revenue will be calculated based on proportion of different components of the means of finance (excluding Internal Resource Generation and DF) and accordingly calculated WACC at 10.77% (based on 16% cost of equity) for the purpose of tariff determination during the current control period.**

**15.20. The Authority further proposed that WACC would be trued up on account of:**

**15.20.1. Adjustments to cost of debt, if any, subject to 11.25 above and 11.26 above**

**15.20.2. Cost of funds for bridging the gap in the means of finance of Rs 819.05 crores, after review by the Authority**

**b Stakeholder Comments on Issues pertaining to Weighted Average Cost of Capital (WACC)**

**15.21.** The Authority has received comments from Stakeholders (IATA, FIA and British Airways) on issues pertaining to determination of WACC for MIAL. Some of these comments had reference to the respective stakeholder's comments on cost of debt and cost of equity with these being the components for determination of WACC. The comments regarding return to be considered for Internal Resource Generation (IRG) have also been presented hereunder.

**15.22.** Referring to its submission on consideration of cost of equity at 12%, IATA proposed that WACC be re-calculated using cost of equity of 12% and further stated that based on cost of equity of 12%, WACC would work out to 10.03%.

**15.23.** Referring to Schedule 1 of SSA, FIA stated that WACC is to be calculated post adjustment of taxes. FIA has referred to its comments regarding cost of debt for MIAL stating that the cost of debt has not been adjusted for any tax savings and stated that post adjustment of such tax savings (assuming tax rate at 30%) in cost of debt, WACC will reduce from 10.77% to 8.42% and reduction in WACC from 10.77% to 8.42% will reduce target revenue by 10%. FIA further submitted that the Authority should factor such tax saving for computing WACC of MIAL.

**15.24.** Highlighting the importance of WACC in determination of charges, British Airways stated as under,

*“Obviously a key factor in determining the charges that you allow is the figure set for the Weighted Average Cost of Capital (WACC). Whilst you, as a regulator, maybe tempted to consider this as an academic exercise, the impacts on airlines and their customers is very real. You need to consider the airport’s position in the supply chain for the aviation market. Setting this figure too high simply squeezes the already beleaguered airlines and their already extremely poor, or non-existent margin, as the price elasticity in the Indian market is such that airlines will be unable to simply pass on these increased costs to our passengers. Airlines cannot afford to absorb such a substantial and damaging increase in costs. Airlines will therefore be forced to critically re-evaluate their capacity and frequency into Chhatrapati Shivaji International Airport, Mumbai.”*

**15.25.** Commenting upon the Authority’s position on considering WACC as a return for Internal Resource Generation, ACI proposed an equity return and stated as under,

*“AERA has identified Internal Resource Generation (IRG) as a means of finance consisting of Cash Balances as on March 2012 and the projected Depreciation for FY13 and FY14. AERA has proposed a return of WACC on IRG.*

*It is noted that IRG consists largely of accumulated profits accrued to the shareholders and retained profits of Rs. 800 Crores up to March 2012 have been fully ploughed back into project funding. Similarly depreciation is shareholders’ funds, typically used towards repayment of debts and assets’ & replenishment etc. Therefore, reinvestment of such funds into business merits a return that is available to equity holders.”*

**15.26.** On the issue of return on IRG, DIAL stated as under,

*“Internal Accruals (Internal Resource Generation) is pertaining to shareholders the company and the same should attract return equivalent to that of equity.”*

**15.27.** CII has provided its comments on return to be considered for IRG, which are similar to the views expressed by ACI. The comments are as under,

*“The Regulator has identified Internal Resource Generation (IRG) as a means of finance consisting of Cash Balances as on March 2012 and the projected Depreciation for FY13 and FY14. The Regulator has proposed a return of WACC on IRG.*

*IRG consists largely of accumulated profits which belong to shareholders. Similarly depreciation is shareholders' funds, typically used towards repayment of debts and assets' replenishment, etc. Therefore, reinvestment of such funds merits a return that is available to equity.”*

**15.28.** Bid Services Division (Mauritius) Limited and ACSA Global Limited (ACSA) have provided their comments on the return on IRG and stated as under,

*“4.1 The Authority has identified Internal Resource Generation (IRG) as a means of finance consisting of Cash Balances as on March 2012 and the projected Depreciation for FY13 and FY14. The Regulator has proposed a return of WACC on IRG.*

*4.2 IRG consists largely of accumulated profits of Rs. 799 cr. as on 31st March 2012 that belongs to shareholders. Hence a return of equity should be provided on the profits ploughed back towards project funding. We note that in case of Delhi Airport, AERA had considered the internal accruals as part of equity and had provided equity return on the same.”*

**15.29.** Requesting the Authority to provide equity return on Internal Resource Generation, Assocham stated as under,

*“a. AERA has proposed return on IRG @ WACC i.e. 10.77% which is much below the cost of debt itself.*

*b. These funds mostly represent accrued profits to the shareholders which have been ploughed back into project funding.*

*c. Accrued profits are always considered as part of equity by all the investors / lenders and there is no restriction for distribution of profits as dividends to the shareholders and bring these funds back as equity on which AERA would have given equity return.*

*d. AERA is requested to provide equity return on the IRG.”*

**c MIAL Response to Stakeholder Comments on Issues pertaining to Weighted Average Cost of Capital (WACC)**

**15.30.** Responding to FIA's comment regarding tax savings in cost of debt to be factored for the purpose of reducing Weighted Average Capital Cost, MIAL stated as under,

*“Authority has already analyzed this aspect thoroughly in the Tariff order for IGI Airport, New Delhi’ and decided to use pre-tax cost of debt. Since it has decided to consider the actual tax as part of building block after considering impact of savings in tax expense due to interest expense on debt, it has, rightly, decided to use pre-tax cost of debt for WACC calculation. Alternatively, if Authority was to consider post-tax cost of debt it will have to consider tax expense before considering interest cost as an expense and therefore net impact would remain same in both the approaches.”*

**15.31.** MIAL has also countered the suggestion from British Airways that WACC should be recalculated using a much lower and more equitable cost of equity

**d MIAL's own comments on Issues pertaining to Weighted Average Cost of Capital (WACC)**

**15.32.** On the issue of Internal Resource Generation, MIAL stated that

*“Authority has decided to use the term Internal Resource Generation (IRG) instead of Internal Accruals since no specific definition is available for Internal Accruals. Authority has considered Profit after Tax, Depreciation and Deferred Tax liabilities as components of IRG (reference Para 3.17 of CP). Authority has calculated IRG by considering available Cash and Bank balance and Short Term Loan and Advances as on 31<sup>st</sup> March 2012 and projected depreciation for FY 13 and FY 14 i.e. monies that could be considered to be available to MIAL from its regular course of business operations.*

*It is to be noted that, MIAL has committed to deploy the entire profits generated from commencement of operations (i.e. from 3 May 06) till project completion for funding of the project. Accumulated profits of Rs 799.89 crs. till 31 March 2012 have already been utilized for the purpose of*

*project funding. Profits generated in any business belong to its shareholders and has no encumbrances attached to it. In the normal course of business, these funds are available for distribution as dividend. Such profits are invariably considered as equity for all practical purposes by all agencies.”*

**15.33.** MIAL further requested the Authority to consider providing return equivalent to equity on the quantum of Profit after Tax being deployed by the company for Project funding.

**e Authority’s Examination of Issues pertaining to Weighted Average Cost of Capital (WACC)**

**15.34.** The Authority has carefully considered the comments made by stakeholders and MIAL’s response to these comments. While considering the means of finance, the Authority had taken into account the different components like paid up equity, debt, RSD as well as internal resource generation. Details of its consideration of each one of the components has been given in the Authority’s Order No. 29/2012-13 dated 21.12.2012 regarding determination of DF in respect of CSI Airport, Mumbai. Accordingly, it had arrived at the following composition of means of finance to equal the allowable project cost of Rs. 11,647.46 crores.

Means of Finance		Rs in crores
Total Project Cost		11,647.46
Equity		1,046.15
Debt		4,231.00
Real Estate deposits allocated for the project		1,000.00
Internal Resource Generation		
Audited Cash Balance up to 31 March 2012		645.26
Projected Depreciation on Aeronautical Assets for FY13 and FY14		506.00
Total Internal Resource Generation		1,151.26
Gap in Means of Finance and funding thereof		4219.05
Gap met by		
	Development Fee	3400
	Other Means (additional Debt, Equity, RSD, Accumulated Profits utilized for project)	819.05

**15.35.** In this Order, the Authority had also taken note of the letter of MIAL dated 10.12.2012 indicating that accumulated profits of Rs. 799.89 Crores as on 31st March 2012 have been utilized for funding of the Project. MIAL, vide this letter, further stated that,

*“Authority is requested to consider the accumulated profits of Rs. 799.89 Crores already deployed for the project funding and estimated profits that would be generated and deployed during FY13 and FY14 for project funding and give returns equivalent to that of equity on the same while determining aeronautical tariffs for CS IA, Mumbai, for 1st Control Period.”*

**15.36.** The Authority had also noted this was certified by the statutory auditors of MIAL (M/s Brahmayya) in which the statutory auditors stated as under,

*“We have reviewed the books of account of the Company in connection with certification of accumulated profits of the company up to 31 March 2012 and deployment of the same for funding the project and based on our review we hereby certify that Accumulated profits up to 31 March 2012 which have been utilized for funding project cost of Rs 799.89 Crores and Estimated profits for FY2012- 13 and FY 2013-14 cannot be quantified.”*

**15.37.** The Authority noted that the same figure namely, Rs. 799.80 crores appears in the Balance Sheet of MIAL for 2011-12 as Reserves & Surpluses. Finally, the Authority had stated in its Order No. 29/2012-13 dated 21.12.2012 that the issue of admissible return on such Reserves and Surplus as reflected in the Balance Sheet would be considered by the Authority at the time of final determination of the aeronautical tariffs.

**15.38.** The Authority had estimated Internal Resource Generation for the purposes of means of finance from the cash balances with the company as of 31.03.2012, adding to it the estimated depreciation for 2012-13 and 2013-14. The Authority had considered towards means of finance cash balance as of 31.03.2012 of Rs. 645.26 crores and not the accumulated profits of Rs. 799.89 crores. This was because what the company, after deploying whatever amounts it had in the first three years had cash balance of Rs. 645.26 crores that can be said to be available to it to complete the project. In addition, it would also had with it, the amount of depreciation for the next two years namely 2012-13 and 2013-14. After considering, these two streams towards internal resource generation as well as other sources of funds like debt, equity, RSD, the Authority calculated the shortfall of Rs. 4219.05

crores, of which, Rs. 3400 crores was determined to be the quantum of DF. The reasoning for taking this figure as DF has already been explained in the Order No. 29/2012-13 dated 21.12.2012 in the matter of Determination of Development Fee in respect of Chhatrapati Shivaji International Airport, Mumbai.

**15.39.** The Authority also took note of the Auditor Certificate wherein it has been stated that *“...we hereby certify that Accumulated profits up to 31 March 2012 which have been utilized for funding project cost of Rs 799.89 Crores and Estimated profits for FY2012- 13 and FY 2013-14 cannot be quantified.”* In this regard, the Authority noted that estimated profits for FY12-13 and FY13-14 depend upon the tariffs as well as other variables like traffic etc. Hence, for the years 2012-13 and 2013-14, the Authority estimated the depreciation (non-cash expenditure) which can reasonably be said to be available to the airport operator for funding the project. Apart from that, the Authority had kept a gap of Rs. 819.05 crores, which it expected MIAL to meet from additional sources like equity, debt, etc. The Authority would also review the availability of additional sources of fund in its periodical reviews of DF. It has also noted that no return or depreciation is allowed on the quantum of DF which is also subtracted from the aeronautical project cost to arrive at the aeronautical RAB. The Balance Sheet of MIAL reflects the DF funded assets which are reduced from Gross Block and Capital Works-in-Progress. Calculation of WACC and Depreciation therefore pertain to such reduced aeronautical RAB (after deduction of DF) and that no unjust enrichment is caused to airport operator.

**15.40.** The Authority has considered the issue of calculation of WACC. It is cognizant of the fact that this should reflect the audited figures of the company as appearing in the financial statements as well as, to the extent feasible, have regard to Generally Accepted Accounting Principles. The Authority is informed that WACC is regarded as weighted average of the application of funds for fixed assets as are reflected in the balance sheet. As has been noted by the Authority, the balance sheet properly reflects reduction of DF funded assets from the gross block. The Authority has therefore decided to take into account each year the proportion of various sources of funds comprising of the assets as reflected in the balance sheet.

**15.41.** As far as the Reserves & Surpluses are concerned, the Authority recognizes that this entry represents shareholders' funds and has, therefore, decided to consider the return on



equity on this portion. The Authority had deliberated extensively on the issue of the means of finance for the project cost and different sources of funds going into the balance sheet (net fixed assets). In Authority's view, this approach calculates WACC consistently.

**15.42.** The Authority asserts that it has not regarded calculation of RoE or for that matter WACC as an academic exercise (as stated by British Airways) but has attempted to estimate the RoE to fairly balance the interest both of the airport operator (in terms of the investment) as well as those of the stakeholders (that includes passengers and the airlines).

**15.43.** With regards to the comment that tax shield has not been considered in determination of cost of debt, the Authority has highlighted its approach for determination of WACC in its Consultation Paper No. 3/2009-10, where the approach was referred to as the 'Vanilla' Cost of Capital approach. This approach models the tax shield on interest payments in the analysis of company profits itself. Using the Vanilla approach therefore, tax as a building block can be calculated as per prevailing accounting practices and laws and the calculation does not need to be adjusted for aspects like interest tax shield.

**15.44.** Further the Authority in its "Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariff for Airport Operators) Guidelines, 2011" has adopted this approach by stating that the WACC for an Airport Operator will be estimated as

$$WACC = FRoR = R_d \times g + R_e \times (1 - g)$$

Where *FRoR* is the Fair Rate of Return

$R_d$  is the pre-tax cost of debt

$R_e$  is the post-tax cost of equity

$g$  is gearing

**15.45.** The Authority noted that this is also the approach used by MIAL in their tariff filing.

**15.46.** Based on the above, the Authority is of the view that WACC is calculated based on the audited balance sheet item like debt, equity, Reserve & Surplus as well any other means of finance like RSD, etc. and accordingly calculates WACC at 11.45% (based on 16% cost of equity) for the purpose of tariff determination during the current control period. The calculation of WACC for the current Control Period for MIAL would be as follows:

**Table 55: Determination of WACC for the current control period by the Authority**

<i>In Rs crs &amp; %</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>			<i>Projections</i>	
<i>Outstanding debt</i>	2,021	2,947	4,548	4,231	4,231
<i>Paid up capital</i>	446	646	1,046	1,046	1,046
<i>Accumulated profits (Reserves &amp; Surplus)</i>	419	616	800	800	800
<i>Real Estate Deposit (Refundable)</i>	-	-	-	221	656
<i>% Debt</i>	70.02%	70.01%	71.13%	67.18%	62.84%
<i>% Equity</i>	29.98%	29.99%	28.87%	29.31%	27.42%
<i>% RSD</i>	0.00%	0.00%	0.00%	3.51%	9.74%
<i>Weighted Average Debt</i>	67.79%				
<i>Weighted Average Equity</i>	28.91%				
<i>Weighted Average RSD</i>	3.31%				
<i>Cost of Debt</i>	10.20%	9.79%	10.13%	10.09%	10.09%
<i>Weighted Average Cost of Debt</i>	10.06%				
<i>Cost of Equity</i>	16.00%				
<i>Cost of RSD</i>	0.00%				
<i>Weighted Average Cost of Capital</i>	11.45%				

**15.47.** The Authority decides that WACC for the purposes of calculating Target Revenue will be calculated based on the audited balance sheet item like debt, equity, Reserve & Surplus as well any other means of finance like RSD, etc. and accordingly calculates WACC at 11.45% (based on 16% cost of equity) for the purpose of tariff determination during the current control period.

**Decision No. XII. Regarding Weighted Average Cost of Capital (WACC)**

**XII.a.** The Authority decides that WACC for the purposes of calculating Target Revenue will be calculated based on the audited balance sheet items like debt, equity, Reserve & Surplus as well any other means of finance like RSD, etc. and accordingly calculates WACC at 11.45% (based on 16% cost of equity) for the purpose of determination of aeronautical tariffs during the current control period. The Authority has already given its decision regarding the ceiling on cost of debt at 11.5% in its Truing-up decision 3.a

**Truing Up: 4. Correction / Truing up for Weighted Average Cost of Capital (WACC)**

**4.a.** The Authority further decides that WACC would be trued up on account of:

- i) Changes in equity and Reserves & Surpluses (accumulated profits or retained earnings)**

- ii) Adjustments to cost of debt, if any, subject to Decision No. VIII above and Truing Up: 3 above**
- iii) Additional means of finance: for example, Cost of RSD, if any, and upon review by the Authority (as of now no RSD is raised and hence does not enter in the balance sheet)**
- iv) Cost of funds for bridging the gap of Rs 819.05 crores in the means of finance, after review by the Authority**

## **16. Depreciation**

### **a Authority's position on Issues pertaining to Depreciation in the Consultation Paper**

**16.1.** MIAL had submitted that as per SSA, rates applicable under Schedule XIV of the Companies Act are to be applied on the value of the Assets.

**16.2.** In the current filing, MIAL had calculated depreciation of assets to be commissioned or disposed off during a Regulatory Period, pro-rata considering that such assets have been commissioned or disposed of half way through the Tariff Year i.e. on average RAB values

### **Observations on Depreciation**

**16.3.** According to Schedule 1 of the SSA:

*"D = depreciation calculated in the manner as prescribed in Schedule XIV of the Indian Companies Act, 1956. In the event, the depreciation rates for certain assets are not available in the aforesaid Act, then the depreciation rates as provided in the Income Tax Act for such asset as converted to straight line method from the written down value method will be considered. In the event, such rates are not available in either of the Acts then depreciation rates as per generally accepted Indian accounting standards may be considered."*

**16.4.** According to Schedule XIV of the Indian Companies Act, 1956:

*"Where, during any financial year, any addition has been made to any asset, or where any asset has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be calculated on a pro rata basis from the date of such addition or, as the case may be, up to the date on which such asset has been sold, discarded, demolished or destroyed."*

**16.5.** The Authority, vide its Airport Order and Airport Guidelines, envisaged that:

*"For projecting depreciation on forecast of assets to be commissioned or disposed off during a Control Period, it shall be assumed that such assets have been commissioned or disposed of half way through the Tariff Year and depreciation related to such assets shall be calculated pro-rata."*

**16.6.** The Authority had taken a view that depreciation of assets to be commissioned or disposed off during a Regulatory Period should be calculated pro-rata considering that such assets have been commissioned or disposed of half way through the Tariff Year.

**16.7.** During the course of the discussions, MIAL explained that as per MIAL's accounting procedure, DF is considered in the nature of "Grants". Hence DF-funded assets are removed from the total assets in a year and depreciation for the purpose of Books of MIAL is calculated on this Net Assets.

**16.8.** It was observed that the depreciation values that have been plugged into the financial model were hard-coded numbers. MIAL clarified that for calculating the depreciation on aero assets for historic years in the Tariff Model, total depreciation in a year is reduced by the value of amortisation of AAI Equity in that year and then this net value is multiplied by the aero/ non-aero-asset-segregation-ratio. MIAL further explained that this aero/ non-aero-asset-segregation-ratio was derived by KPMG in their report considering a base of total assets, which included DF-funded assets.

**16.9.** The Authority observed that this ratio has been calculated for a base, which includes DF-funded assets, therefore it is not appropriate to apply this ratio on a depreciation number, which excludes depreciation on DF-funded assets.

**16.10.** In this regard, MIAL was asked to submit a clarification. MIAL, vide their submission dated 16.08.2012, clarified that in the current filing, while calculating Depreciation on Aero Assets, Aero assets ratio calculated by dividing aero assets (including assets funded through DF) to total assets (including assets funded through DF) has been applied to total depreciation (excluding Upfront Fee amortisation). MIAL further stated that since total depreciation to which Aero assets ratio is applied (excluding upfront fee amortisation) does not include depreciation on DF funded assets, therefore the Aero asset ratio should be applied on total depreciation (excluding Upfront Fee amortisation) including Depreciation on DF funded assets.

**16.11.** The Authority observed that Depreciation for any year for Operational Capex assets was calculated by adding depreciation upto previous year to the depreciation over additions for the year. It was highlighted to the MIAL that Depreciation should be calculated based on closing balance of operational capex of previous year and additions in operational capex

during the year. MIAL, vide their submission dated 16.08.2012, agreed to this methodology of calculating depreciation.

***Depreciation of Hypothetical RAB***

**16.12.** MIAL had, in their submission dated 23.11.2011, submitted that *“the HRB once becomes part of the overall regulatory base, the same needs to be depreciated like any other physical fixed assets.”* Accordingly depreciation for Hypothetical RAB was considered at the weighted average rate of other assets.

**16.13.** However, the issue that arises in depreciation of Hypothetical RAB is the rate of depreciation which should be applied to Hypothetical RAB. In this respect following options appear to be available:

16.13.1. The Authority observed that Hypothetical Regulatory Base becomes part of Regulatory Base and as per SSA, Regulatory Base pertains to Aeronautical Assets. A tariff yearwise average depreciation rate for aeronautical assets may be applied as proposed by MIAL which works out to the hypothetical RAB getting fully depreciated in about 25 years; or

16.13.2. Hypothetical RAB is being determined at the commencement of fourth year leaving a remainder of 27 years of the “Term”, as specified in OMDA. Therefore, it could be depreciated based on straight line method for a period of 27 years.

**16.14.** The Authority found that the option of depreciating the hypothetical RAB at the tariff year-wise average depreciation rate for aeronautical assets may be most appropriate for the reason that hypothetical RAB having got subsumed in Regulatory Base should be depreciated at the rate at which other components of Regulatory Base depreciate. Accordingly, the Authority proposes to depreciate the hypothetical RAB at the tariff year-wise average depreciation rate for aeronautical assets.

**16.15.** This aspect of rate of depreciation for hypothetical RAB was discussed with MIAL, wherein MIAL agreed to the methodology proposed by the Authority and the tariff model was changed to incorporate the same, that is, to calculate depreciation of Hypothetical RAB at the tariff year-wise average depreciation rate of aeronautical assets.

**16.16.** If the Hypothetical RAB were to be depreciated (based on straight line method) over the period of 27 years, the impact on X factor would be as under:

**Table 56: Sensitivity - Impact on X Factor from Depreciation of Hypothetical RAB based on straight line method for a period of 27 years**

Parameter	X Factor as per the Base Model	X Factor after change in assumptions
Depreciation based on straight line method for a period of 27 years	-873.36%	-866.10%

**b Stakeholder Comments on Issues pertaining to Depreciation**

16.17. The Authority has received comments from FIA on the position taken by the Authority in respect of depreciation to be considered for determination of aeronautical tariff in respect of CSI Airport, Mumbai

16.18. FIA in its submission stated that in the CP No.22/2012-13, the Authority by accepting MIAL's proposal for computation of depreciation has allowed it to highly inflate the RAB for its recovery over a much shorter period of approximately 18 years whereas the concession period is of 30 years.

16.19. FIA further stated that

“

*MIAL has adopted depreciation rates as per Schedule XIV of the Companies Act, 1956, as per the provisions of the Concession Agreement (OMDA and SSA), which is not representative of the economic life of the asset.*

*Reduced accounting life of assets compared to their economic life would result in an artificial increase in the depreciation charge and thereby have an unjust inflationary impact on passengers/airlines by front loading of tariff especially when MIAL would also be incurring CAPEX for maintaining the assets.”*

**c MIAL Response to Stakeholder Comments on Issues pertaining to Depreciation**

16.20. MIAL responded to the stakeholder comments on the matter as under,

*“The SSA requires the calculation of depreciation as per Schedule XIV of The Companies Act, 1956 and MIAL has complied with the same.”*

**d MIAL’s own comments on Issues pertaining to Depreciation**

16.21. MIAL has not provided its own comments on the issue.

## **e Authority's Examination of Issues pertaining to Depreciation**

**16.22.** The Authority has examined the comments made by the Stakeholders and the response by MIAL to Stakeholder comments. It appears to the Authority that FIA is indicating the consideration of the concession period of 30 years as a representative of economic life of assets. The Authority is not in agreement with such a consideration as different class of assets have different economic life, determination of which is a function of factors including the use of asset, repairs & maintenance and technological progress (not rendering the asset obsolete). The economic life for all the assets in an airport can not be considered the same as concession period, which is 30 years in case of MIAL. The Authority also feels that if such a representation is to be followed, there could be a situation of concessioning of an airport where the concession period is 10 years, then an economic life for all assets under the airport would need to be considered at 10 years, which may result in much higher tariffs. Hence the Authority is of the view that reference to depreciation rates prescribed under an Act of the Government would be more appropriate than a simple indexation with concession period.

**16.23.** The Authority, therefore, does not find any reason to reconsider its calculation of depreciation for the purpose of determination of tariff in respect of CSI Airport, Mumbai and hence decides to continue with earlier calculation of depreciation except for the issues being considered in adjustment on account of DF.

### **Decision No. XIII. Regarding Depreciation**

**XIII.a. The Authority has already decided on the issue of depreciating Hypothetical RAB vide its Decision No VI.c above.**



## 17. Operating Expenses

### a Authority's position on Issues pertaining to Operating Expenses in the Consultation Paper

17.1. MIAL had vide their submission dated 11.10.2011, submitted that the operation and maintenance costs (O&M) for the years 2009-10 and 2010-11 have been taken on actual basis and have been projected based on cost drivers such as inflation, increase in asset base, increase in manpower etc. considering FY 2010-11 as the base year. The inflationary increases have been linked to past 5 years CAGR of Consumer Price Index for Industrial Workers (CPI-IW) as specified in Schedule 1 of SSA, which is 8.94%.

17.2. MIAL had further stated that CSIA is providing both Aeronautical and Non-Aeronautical services and the segregation of O&M cost is done based on the study carried out by KPMG for FY 2009-10 and FY 2010-11.

17.3. The proportion of Aeronautical cost under various heads of O&M Cost to the total O&M cost for the control period, as submitted by MIAL in their submission dated 11.10.2011, is reproduced below:

**Table 57: Proportion of Aeronautical cost under various heads of O&M Cost to the total O&M cost**

Cost Item/FY	FY10	FY11	FY12	FY13	FY14
	Actuals			Projections	
Employee Cost	86%	82%	82%	82%	82%
Operation Support Cost to AAI	100%	0%	0%	0%	0%
Electricity, Water and Fuel Costs (net of recoveries)	100%	99%	99%	99%	99%
Repair & Maintenance Cost	94%	94%	94%	94%	94%
Rents, Rates & Taxes (net of recoveries)	100%	100%	100%	100%	100%
Advertising Cost	99%	99%	99%	99%	99%
Administrative Costs	90%	85%	85%	85%	85%
Airport Operator's Fees	100%	100%	100%	100%	100%
Insurance Cost	91%	91%	91%	91%	91%
Consumables	100%	100%	100%	100%	100%
Other operating Cost	70%	66%	66%	76%	89%
Working Capital Loan Interest	NA	NA	85%	85%	85%
Financing Charges	90%	85%	85%	85%	85%
Overall % of O&M cost as Aeronautical	87%	80%	87%	88%	91%

17.4. The summary of O&M Costs (Aeronautical) actual/projected by MIAL as indicated in the Consultation Paper is as under:

**Table 58: Summary of Aeronautical O&M Costs submitted by MIAL**

Cost Item/FY (in Rs crores)	FY10	FY11	FY12	FY13	FY14
Employee Cost	69.0	69.1	79.6	114.1	137.8
Operation Support Cost to AAI	13.1	-	-	-	-
Electricity, Water and Fuel Costs (net of recoveries)	59.8	21.8	51.9	84.1	160.9
Repair & Maintenance Cost	27.7	25.7	37.1	79.5	135.6
Rents, Rates & Taxes (net of recoveries)	6.6	12.4	74.1	23.3	23.6
Advertising Cost	4.4	5.9	6.4	10.0	14.5
Administrative Costs	28.6	28.6	46.4	67.0	81.2
Airport Operator's Fees	5.3	5.4	5.5	5.7	5.8
Insurance Cost	2.6	2.4	3.1	4.0	6.2
Consumables	5.3	5.9	6.9	7.9	9.1
Other operating Cost	30.7	32.8	39.3	43.3	88.9
Working Capital Loan Interest	-	-	5.3	10.6	10.6
Financing Charges	2.4	2.6	1.1	1.2	1.3
<b>Total</b>	<b>255.6</b>	<b>212.6</b>	<b>356.7</b>	<b>450.5</b>	<b>675.6</b>

17.5. MIAL had, vide their further submission dated 23.11.2011, submitted benchmarking of their O&M and Employee Costs with some other airports in India, which is reproduced below:

**Table 59: Benchmarking of O&M and Employee costs submitted by MIAL**

Name of Airport / Company	Period	Operating Cost (in Rs. Million)	Pax in Million	Operating Costs/Pax
Mumbai International Airport Private Limited*	FY11	2,559.00	29.07	88.03
Delhi International Airport Private Limited*	FY11	5,474.60	29.94	182.85
Airports Authority of India*	FY10	26,173.88	123.76	211.50
Trivandrum Airport#	FY11	881.00	2.53	348.65
Ahmedabad Airport#	FY11	779.00	4.04	192.66

\*- Taken from Annual Accounts of the respective companies.

#-Taken from Order No. 01/2010-11 for Trivandrum Airport and 02/2010-11 for Ahmedabad Airport issued by the Authority

17.6. MIAL, had further submitted that

*".....It can be seen from the data presented above that MIAL currently operates at a lowest operating cost per passenger amongst the comparators, in spite of the fact that there are quite a few cost which are significantly higher in Mumbai such as minimum wages payable to workers, salaries payable to staff and per unit electricity cost etc. Further, few costs which are unique to CSIA / airports in Maharashtra which may not be applicable to other airports such as Property Tax/ Municipal Tax and Non Agriculture Tax etc."*

**17.7.** The Authority had while reviewing the submissions made in respect of O&M Costs, requested MIAL to submit Auditor Certificates for head-wise O&M Costs for FY10, FY11 and FY12, which were accordingly submitted by MIAL.

### **Employee's Cost**

**17.8.** MIAL had, vide submission dated 11.10.2011, stated that the key drivers for employee cost are the number of employees employed for the Aeronautical and Non-Aeronautical Services. The junior and middle level management employees can be clearly identified for providing the Aeronautical and Non-Aeronautical Services. However, the senior management employee cost cannot be directly attributed to either Aeronautical or Non-Aeronautical Services, therefore it has been allocated based on the proportion of identified Aeronautical and Non-Aeronautical costs.

**17.9.** MIAL further submitted regarding the headcount and annual increase in employee cost as under,

*"The cost incurred towards employees in a year is determined by the headcount and the applicable compensation. The headcount has been projected in line with the expansion of the airport and increased needs arising out of increasing activities. In addition, the compensation for existing employees is expected to increase by 15% on an average every year. This is based on average annual increment of 6% along with inflationary increase of 8.94% p.a. based on CPI. The annual increase, works out to 15.48%, which has been taken as 15% p.a. To account for increase in existing employee compensation, the Employees cost incurred in the base year is increased by 15% each year for employees in that year to arrive at the Employees Cost of existing employees for that year."*

*"Average employee cost for FY 2011-12 is considered as the average hiring cost for new employees in FY 2011-12, FY 2012-13 and FY 2013-14, which is then multiplied by number of new employees in each year to arrive at employee cost of new employees. Total employee cost for these three years is then calculated by adding the cost of existing and new employees."*

**17.10.** The Head Count and Employee Cost for Aeronautical Services submitted by MIAL vide their submission dated 11.10.2011 is as under:

**Table 60: Head Count and Employee Cost for Aeronautical Services submitted by MIAL**

	FY 10	FY 11	FY 12	FY 13	FY 14
	Actual		Projections		
Head Count (Nos.)	772	836	960	1,173	1,261
Employee Cost (in Rs. Cr.)	80	84	97	138	167

**17.11.** MIAL had, vide submission dated 23.11.2011, submitted that the main reason for increase in employee cost during the control period is the increase in head counts for readiness and operationalisation of New Common user terminal which is scheduled to be operational from September 2013.

**17.12.** MIAL had also submitted that the employee cost increases on account of the following reasons:

17.12.1. Annual Increments – Annual increments in salary have been assumed to be 15% p.a. which are also close to the average increase in past 4 years. Further, net increase after accounting for inflation of 8.94% is only 6.06%, which is normal considering normal increments and increments due to promotion.

17.12.2. Head Count: The Head Count has been determined for each department separately depending upon operational requirements for each year separately. MIAL have further revisited its assumption for increase in manpower requirements as suggested by the Authority and has reduced projected requirements.

**17.13.** MIAL had also submitted a table with the reasons for increase in headcount, which is reproduced below:

**Table 61: Estimation of headcount submitted by MIAL**

Department	FY11 Actual	FY12 Projected	FY13 Projected	FY14 Projected	Reasons for Increase in Headcount
Director's Office	11	12	12	12	-
Quality and Safety	16	19	40	45	Additional Survey, Inspection team to be included to make operational activities more effective and efficient
Airside Operation	2	4	5	5	To support increase ATMs
Airside Safety	34	35	35	35	To support increase ATMs
AOS	40	49	50	50	To support increase ATMs
Emergency Services	156	177	205	205	Head Count increase as per CAT 10 operations requirement
Airside & Ground Maintenance	12	13	15	15	To support effectively increase in airside operations
Engg & Maint	106	113	140	150	Operation Area to be

<i>Department</i>	<i>FY11 Actual</i>	<i>FY12 Projected</i>	<i>FY13 Projected</i>	<i>FY14 Projected</i>	<i>Reasons for Increase in Headcount</i>
					<i>increased to approx. double in FY '13 and then by another 20% in FY '14. Hence proportional increase in manpower is envisaged.</i>
<i>Terminal Operations</i>	91	91	125	145	<i>Operation Area to be increased to approx. double in FY '13 and then by another 20% in FY '14. Hence proportional increase in manpower is envisaged.</i>
<i>Operations Procurement</i>	13	13	16	16	-
<i>Landside Operations</i>	11	15	20	20	<i>Operation Area to be increased to approx. double in FY '13 and then by another 20% in FY '14. Hence proportional increase in manpower is envisaged.</i>
<i>GA Terminal</i>	22	32	33	33	-
<i>Customer Care</i>	3	3	20	35	<i>Currently team only managing ASQ. Additional team to be built to carry out surveys and research. Design and implement customer service program.</i>
<i>Cargo</i>	114	137	8	8	-
<i>Security</i>	20	22	40	40	<i>Operation Area to be increased to approx. double in FY '13 and then by another 20% in FY '14. Hence proportional increase in manpower is envisaged.</i>
<i>MD's Office</i>	4	4	4	4	-
<i>President's Office</i>	3	3	4	4	-
<i>Strategy Division</i>	2	3	3	3	-
<i>Regulatory*</i>	2	3	4	4	-
<i>Legal*</i>	6	8	9	10	-
<i>Finance &amp; Accounts*</i>	26	34	37	41	-
<i>Human Resources*</i>	27	29	32	35	-
<i>Information Technology</i>	23	34	37	41	<i>Additional Manpower will be required to support new technologies in T2. Also, the IT support will have to be increased to manage the new terminal</i>
<i>Land Management</i>	2	2	2	2	-
<i>Corporate Relation*</i>	22	25	28	31	-
<i>Environment</i>	4	4	4	4	-
<i>Corporate Communication*</i>	5	5	6	7	-
<i>Commercial*</i>	16	19	21	23	-
<i>ATS*</i>	5	5	6	7	-

<i>Department</i>	<i>FY11 Actual</i>	<i>FY12 Projected</i>	<i>FY13 Projected</i>	<i>FY14 Projected</i>	<i>Reasons for Increase in Headcount</i>
<i>Horticulture</i>	4	4	4	4	<i>Staff addition due to addition in operational area</i>
<i>Airport Marketing &amp; Aero Business*</i>	13	22	24	26	-
<i>Total</i>	836	960	1010	1081	

*\* A 10% increase in Head Count has been taken for Support functions due to increased activities for new terminal.*

**17.14.** The revised manpower cost, submitted by MIAL vide their submission dated 23.11.2011 and subsequently certified by their auditors for FY 10 and FY 11, is as under:

**Table 62: Revised manpower cost submitted by MIAL**

	<i>FY 10 Actual</i>	<i>FY 11 Actual</i>	<i>FY 12 Projected</i>	<i>FY 13 Projected</i>	<i>FY 14 Projected</i>
Head Count (Nos.)	772	836	960	1010	1081
Cost (in Rs. Crs.)	79.8	83.8	96.5	129.3	148.7

**17.15.** MIAL, vide their submission dated 26.06.2012, furnished the manpower count and cost, certified by their auditor for the year 2011-12. The revised manpower count and cost with actuals for FY12 is as under:

**Table 63: Revised manpower cost with actuals for FY 2012**

	<i>FY 10 Actual</i>	<i>FY 11 Actual</i>	<i>FY 12 Actual</i>	<i>FY 13 Projected</i>	<i>FY 14 Projected</i>
Head Count (Nos.)	772	836	902	1010	1081
Cost (in Rs. Crs.)	79.8	83.8	109.44	129.3	148.7

## **Electricity Costs**

**17.16.** MIAL had, vide submission dated 11.10.2011, submitted that the electricity cost per unit is projected to grow in line with CPI. The consumption is computed based upon additional load factor in future. The recoveries from concessionaires (towards Non-Aeronautical costs) have been deducted from total electricity cost to arrive at net electricity cost for Aeronautical Services.

**17.17.** MIAL had also submitted that the impact of previous year's regulatory asset recovery ordered by the Hon'ble Maharashtra Electricity Regulatory Commission ('MERC') is considered in three years beginning December 2011. MIAL also stated that in addition, MERC had ordered levy of cross-subsidy surcharge (CSS) of Rs. 0.26/unit on electricity consumed via Reliance Infrastructure's (Distribution) network on changeover consumers like

MIAL. MIAL had submitted that exact implications of these orders are not known at this stage, therefore, MIAL requested the Authority to consider true-up of these costs and electricity rates as and when they are determined by MERC.

**17.18.** The summary of electricity cost, submitted by MIAL vide their submission dated 11.10.2011, is as under:

**Table 64: Summary of electricity cost submitted by MIAL**

In Rs. Cr.	FY 10	FY 11	FY 12	FY 13	FY 14
	Actual		Projections		
Electricity Cost	54	19	46	78	153

**17.19.** MIAL had, vide submission dated 23.11.2011, stated that increase in the Electricity Cost is on account of the following factors:

*“a) Annual increase in electricity tariff: - MIAL stated that the increase in electricity tariff is beyond the control of MIAL as the same is set by Electricity Regulatory. MIAL further submitted that they have represented before the regulator for considering lower than existing tariff for MIAL. MIAL submitted that for the present filling, MIAL have considered an annual increase in electricity tariff equivalent to inflation (i.e. 5 year CAGR of CPI). MIAL further submitted that the previous increase have also been more than inflation.*

*b) Increase in load due to launch of New Common User Terminal – MIAL submitted that there is one time, non-recurring increase in electricity load at two occasions due to New Common User Terminal (a) 6.5 MVA of load would be required in December 2012 for testing of Chillers and Other equipment and (b) 31.51 MVA of load would be added and 7 MVA de-commissioned (removed) on start of New Common User Terminal in September 2013.*

*c) Increase in Load factor with passenger growth - MIAL submitted that they have assumed that the utilisation of load factor and consumption would increase with a growth rate equal to 50% of passenger growth rate. This is because some part of the airport load (like lighting) has constant load factor (fixed load) that does not depend on passengers numbers,*

*whereas some portion of the load has variable load factor and hence, consumption increases/decreases depending upon the number of passengers using these facilities. However consumption due to these facilities is not purely variable but comprises of some fixed portion and some variable portion which is purely dependent on the usage. With increase in number of passengers, the usage of the equipment and hence variable consumption increase. MIAL submitted that CSIA has about 26% lighting load, 58% HVAC load and 16% mechanical load while 26% lighting load has fixed load factor, balance 74% load is assumed to have 24% fixed load factor component and 50% variable load factor component making total fixed and variable load factor component 50% each. Accordingly, the increase in load factor by 50% of growth rate of passenger has been used for tariff filling. MIAL submitted that this is also validated by the fact that CSIA has made about 5% savings in electricity in previous year by various energy conservation measures, which otherwise would have resulted in 5% increase in electricity consumption that has not happened as electricity consumption has almost remained same. 5% increase in electricity consumption is almost 50% of 3 year CAGR of 11% p.a. increase in passenger numbers and hence, the assumption of increase in load factor by 50% growth rate of passengers is reasonable.*

*d) Regulatory Asset Recovery ordered by MERC – MIAL submitted that MERC has in principle decided to levy recovery of Regulatory Asset in its recent tariff order of R-Infra-D (erstwhile Electricity supplier to MIAL), which is to be recovered in the coming years. MIAL submitted that they have estimated their liability based on the said order to be paid in a period of 3 years.*

**17.20.** MIAL had, vide submission dated 23.11.2011, submitted that they have revised their electricity cost downwards for FY 12 from the initial submission by dropping the inflationary increase for FY 12 as Electricity Company is yet to file its ARR after previous tariff revision in September 2010, which is not likely to be approved before March 2012. However, as the



revenue gap for two years is likely to be passed on in FY 13, they have considered increase in FY 13 as twice the inflation rate.

**17.21.** MIAL had, vide submission dated 26.06.2012, furnished the electricity cost certified by their auditor for the year 2011-12. The revised electricity cost after considering actuals for FY12 is as under:

**Table 65: Revised electricity cost after considering actuals for FY 2012**

<i>In Rs. Cr.</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>			<i>Projections</i>	
<i>Electricity Costs</i>	54	19	31	56	108

**17.22.** MIAL had, vide submission dated 26.06.2012, stated that MERC has in principle decided to levy recovery of Regulatory Asset in its recent tariff order of R-Infra-D (erstwhile Electricity supplier to MIAL), which is to be recovered in the coming years. MIAL submitted that they have estimated their liability based on the said order to be paid in a period of 3 years starting from January 2012. MIAL further submitted that R-Infra has not commenced collection of the same, therefore they have shifted the recovery to commence from April 2012.

**17.23.** Further, vide submission dated 16.08.2012, MIAL submitted that they have envisaged that International Cargo operations would be outsourced from October 2012 and MIAL would be recovering the cost towards electricity charges from the Concessionaire.

**17.24.** MIAL submitted that actual Electricity units consumed by MIAL for cargo from April 2012 to June 2012 is 9.58 Lakhs unit. Therefore after outsourcing of International Cargo Operations, consumption of electricity for FY 13 (from October 2012 to March 2013) and FY 14 that would be recovered from the concessionaire will be 19.16 lakhs units and 38.71 Lakhs units respectively.

**17.25.** In their additional clarification dated 29.08.2012, MIAL submitted that the electricity cost per unit for year 2011-12 should be considered Rs. 7.10 instead of Rs. 7.20 as per their initial submission and also submitted the auditor certificate, certifying the electricity cost per unit of Rs 7.1 for FY 2011-12.

**Water & Fuel Cost**

**17.26.** MIAL had, vide submission dated 11.10.2011, submitted that Water and Fuel costs per unit are projected to grow in line with CPI considering FY11 as the base Year, however,

the consumption is considered constant till New Common User Terminal becomes operational where after increase is based on assessed level of usage. MIAL submitted that the total cost in a year is estimated by multiplying the projected cost per unit with the projected consumption in that year and that the recoveries from concessionaires (towards Non-Aeronautical costs) have been deducted from total water cost to arrive at net water cost for Aeronautical services.

17.27. The summary of water and fuel cost submitted by MIAL and reflected in the consultation paper is as under:

**Table 66: Summary of water and fuel cost submitted by MIAL**

In Rs. Cr.	FY 10	FY 11	FY 12	FY 13	FY 14
	Actual		Projections		
Water & Fuel Costs	6	3	6	7	9

17.28. Further MIAL had also provided workings of L&T for water requirements of New T2 as under :

*“Total water requirements for new T2 as per the working done by L&T for MIAL is 3,038,625 KL per year for 40 million passengers per annum. Since in FY 14 new T2 would be operational only for 7 months and projected passengers are 34.4 million and therefore proportionate consumption is envisaged to be 1,640,155 KL for FY 14.*

Particulars	KL
Water Consumption upto August 13, net of recovery (977,000 x 5/12) KL	407,083
From September 13 to March 14 as above for 34.4 million passengers per annum (8,325 x 365 x 34.4/40 x 7/12)	1,524,377
Less: Recovery from September 13 to March 14 (41,615 x 7)	(291,305)
Total	1,640,155

”

17.29. MIAL had also submitted the water & fuel cost, certified by their auditor for the years 2009-10, 2010-11 and 2011-12. The revised water & fuel cost after considering actuals for FY 10 to FY12 is as under:

**Table 67: Revised water & fuel cost after considering actual for FY10 to FY12**

In Rs. Cr.	FY 10	FY 11	FY 12	FY 13	FY 14
	Actual			Projections	
Water & Fuel Costs	7	5	6	6	10

## Repair and Maintenance Cost

**17.30.** MIAL had submitted that the Repair and Maintenance Cost (R&M) is estimated to be 1.25% of the Gross Fixed Assets (GFA) (including DF funded assets) in line with practices in other infrastructure sectors. MIAL submitted that average R & M costs as percentage of GFA for FY 2009-10 and FY 2010-11 is 1.33%. MIAL submitted that in the future years they have assumed a lower percentage at 1.25% as the GFA would increase rapidly. In addition, a major repair cost of the taxiway amounting to Rs. 26 Cr. is also included in FY 2012-13.

**17.31.** The summary of Repair and Maintenance cost submitted by MIAL is as under:

**Table 68: Summary of R&M Costs submitted by MIAL**

<i>In Rs. Cr.</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>		<i>Projections</i>		
<i>R &amp; M Costs</i>	29	27	40	85	144

**17.32.** MIAL had, vide submission dated 23.11.2011, submitted the basis for projection of R&M costs as under:

*“MIAL has considered 1.25% of the opening value of Gross Fixed Assets (GFA) for projecting the R&M expenses. This ratio for last 5 years has been 6.1%, 7.2%, 2.5%, 1.56% and 1.1% respectively. Although R&M cost has been increasing in absolute terms, this ratio has first increased and then have shown a declining trend. R&M cost, other than that on comprehensive operations and maintenance contract, is mostly contingent upon the unplanned repairs and maintenance activities required for various civil, mechanical and electrical works in a particular year. For example, an old machinery may require huge maintenance cost in particular year, but may not need it for next few years. Hence, R&M cost cannot be correctly estimated based on past trend. The closest estimate for projecting R&M cost can be computed by linking it to the driving factor for various R&M activities. As R&M activities are directly dependent upon the quantum of assets required to be maintained, the R&M cost is usually estimated on the basis of value of assets maintained. For example, Delhi Electricity Regulatory Commission (DERC) has specified R&M expenses to be fixed as proportion of GFA in its Multi Year Tariff Regulations (MYT). While determining the R&M expenses in case of North Delhi Power Limited*

(NDPL), DERC observed that there was large variation in the proportion of R&M expenses as a percentage of GFA over last five years and hence, has taken average 2.82% for projecting the R&M expenses..... Hence, R&M cost as 1.25% of opening GFA, which is much less than average of 3.69% for preceding 5 years is justified considering that new assets would require lesser maintenance. It may also be noted that R&M cost as a proportion of GFA is increasing substantially due to substantial additional of assets in this control period. R&M expenses are expected to be more stable after commissioning of new Common User Terminal. The example of NDPL as an electricity distribution utility is also from a business that has regular addition of assets for meeting the increasing demand of electricity as is the case with MIAL. Additionally Rs. 26 Crores is the planned expenditure for repair of taxiway N1 in FY 13.”

**17.33.** Further, vide submission dated 26.06.2012, MIAL had submitted the R&M Cost certified by their auditor for the year 2011-12. The revised R&M cost after considering actuals for FY12 considered in the consultation paper is as under:

**Table 69: Revised R&M cost after considering actuals for FY 2012**

In Rs. Cr.	FY 10	FY 11	FY 12	FY 13	FY 14
	Actual			Projections	
R & M Costs	29	27	39	80	139

## Rents, Rates and Taxes

### Property Tax

**17.34.** In respect of property tax, MIAL had submitted that Property Tax in the city of Mumbai is to be computed based on the new capital value system(submission dated 11.10.2011). MIAL also stated that as the draft rules for computation of property tax have not yet been finalised by Government of Maharashtra, Property Tax had been considered based upon old system and rates.

**17.35.** MIAL also stated that the Property tax as per new capital value system has been proposed to be levied from 1st April 2010 onwards and the estimated tax liability as per the draft rules is likely to increase substantially which will lead to higher aeronautical tariffs at CSIA. However, in view of lack of clarity, no effect of increased property tax (consequent to

change over to new capital value system) had been considered in present application. MIAL had requested the Authority that Property Tax being a statutory cost, should be trued up in subsequent years as and when the same is finalised.

### Non Agricultural Tax (NA Tax)

**17.36.** As regards Non Agricultural Tax (NA Tax), MIAL had vide submission dated 11.10.2011, stated that for FY 12 the tax has been considered based upon demand notice of Rs. 61.38 crores received and for the subsequent years, the NA tax has been considered as Rs. 10.23 crores per annum. MIAL submitted that increase in Non Agriculture Tax Rate for the period 01.08.2006 to 31.07.2011 is under consideration by Government of Maharashtra (which may increase the liability of NA Tax) and it is again due for revision from 01.08.2011. MIAL further submitted that the impact of the same has not been factored due to non-availability of final rates. MIAL requested the Authority that NA Tax being a statutory cost, should be trued up in subsequent years as and when the same is finalised.

**17.37.** The summary of Rents, Rates and Taxes submitted by MIAL that were put up for stakeholder consultation is as under:

**Table 70: Rents, Rates and Taxes submitted by MIAL**

<i>In Rs. Cr.</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>		<i>Projections</i>		
<i>Rents, Rates and Taxes</i>	7	12	74	23	24

**17.38.** Further MIAL had vide submission date 24.07.2012 stated that that in the matter of NA tax, appeal is still pending before Revenue Minister for disposal, therefore, the amount provided earlier in FY 12 has been carried forward to FY13. MIAL submitted that appeal has been finally heard on June 07, 2011 and reserved for orders. Till date, no order has been passed by the Hon'ble Revenue Minister, Government of Maharashtra.

**17.39.** MIAL submitted the revised Rents, Rates and Taxes certified by their auditor for the year 2011-12 as under:

**Table 71: Revised Rents, Rates and Taxes after considering actuals for FY12**

<i>In Rs. Cr.</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>			<i>Projections</i>	
<i>Rents, Rates and Taxes</i>	7	12	12	84	23

### Advertising Costs

**17.40.** MIAL had vide submission dated 11.10.2011, submitted that the advertising costs have been considered to increase in line with the CPI and that the cost for the launch of the New Common User Terminal is included in FY 13 and FY 14 as Rs. 3 Cr. and Rs. 7 Crs. respectively.

**17.41.** The summary of Advertising costs submitted by MIAL vide their submission dated 11.10.2011 is as under:

**Table 72: Summary of Advertising Costs submitted by MIAL**

<i>In Rs. Cr.</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>		<i>Projections</i>		
<i>Advertising Costs</i>	5	6	7	10	15

**17.42.** Further, vide submission dated 26.06.2012, MIAL submitted the revised Advertising costs after considering actuals for FY12, certified by their auditor for the year 2011-12 as under:

**Table 73: Revised Advertising Costs after considering actuals for FY12**

<i>In Rs. Cr.</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>		<i>Projections</i>		
<i>Advertising costs</i>	4	6	4	7	12

### **Administrative Costs**

**17.43.** MIAL had also submitted that the administrative costs such as travelling and conveyance, legal and professional charge, communication etc. have been considered to increase in line with the CPI (submission dated 11.10.2011).

**17.44.** MIAL also submitted that the following specific costs have been taken into consideration.

- a. Consultancy cost for Airport Operation Readiness (AOR) amounting to Rs. 15 Crs in FY 12, Rs. 35 Cr. In FY 13 and Rs. 20 Cr. In FY 14.

**17.45.** The summary of Administrative costs submitted by MIAL vide their submission dated 11.10.2011 is as under:

**Table 74: Summary of Administrative costs submitted by MIAL**

<i>In Rs. Cr.</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>		<i>Projections</i>		
<i>Administrative costs</i>	32	34	55	79	96

**17.46.** MIAL had, vide submission dated 23.11.2011, clarified that routine Administrative Costs have been projected based on inflationary increases of 8.94% p.a. Additionally specific planned expenditure such as consultancy cost of Airport Operations Readiness and Business Development, IT services outsourcing cost have been added wherever required. During the discussions, MIAL explained that Airport Operations Readiness cost includes the expenditure to be incurred by MIAL to make the new domestic and international terminals operationally ready including tests runs.

**17.47.** MIAL had submitted that consultancy for Business Development for FY 13 is revised to Rs.16 crores considering likely expenditure on the same. Further Rs. 5.77 crores short spent on Airport operations. Readiness (AOR) in FY 12 is expected to be incurred in FY14 and projection revised accordingly (submission dated 26.06.2012).

**17.48.** Further, vide their submission dated 26.06.2012, MIAL furnished the revised Administrative costs, after considering actuals for FY12, certified by their auditor as under:

**Table 75: Revised Administrative costs after considering actuals for FY12**

<i>In Rs. Cr.</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>			<i>Projections</i>	
<i>Administrative costs</i>	32	34	54	94	104

### **Airport Operator Fee**

**17.49.** MIAL had submitted that the airport operator fee payable to the airport operator is projected to increase annually at the rate equal to US CPI Inflation (which is assumed at 2.5% p.a.) as per Airport Operator Agreement dated 28.04.2006 between MIAL and ACSA Global Limited and this expenditure is projected to continue in FY14 on the same basis (submission dated 11.10.2011).

**17.50.** Further, vide submission dated 26.06.2012, MIAL submitted the Airport Operator Fee certified by their auditor for the year 2011-12. The revised Airport Operator Fee payable to the airport operator after considering actuals for FY12 is as under:

**Table 76: Airport Operator Fee after considering actuals for FY12**

<i>In Rs. Cr.</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>			<i>Projections</i>	
<i>Airport Operator Fee</i>	5	5	6	6	6

### **Insurance Costs**

**17.51.** MIAL had submitted that the insurance costs are projected as per the projected value of insurance for various policies. MIAL submitted that they have two major insurance policies. One is Industrial All Risk Policy covering all fixed assets of MIAL, value of which is expected to increase in line with increase in fixed assets. Another policy is Airport Operator's Liability Policy for third party claims, premium of which is expected to increase in line with CPI (submission dated 11.10.2011).

**17.52.** MIAL, vide submission dated 26.06.2012, furnished the Insurance costs certified by their auditor for the year 2011-12. The revised Insurance costs after considering actuals for FY12 is as under:

**Table 77: Insurance Costs after considering actuals for FY12**

<i>In Rs. Cr.</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>			<i>Projections</i>	
<i>Insurance Costs</i>	3	3	3	4	6

#### **Interest on Working Capital and Financial Charges**

**17.53.** MIAL had submitted that the interest on working capital has been considered for FY 2011-12 on an amount of Rs. 50 crores and Rs. 100 crores for subsequent two years, considering the level of use of Working Capital facilities. MIAL submitted that financial charges have been taken on actual basis for FY 2009-10 and 2010-11 and at projected levels based on increased requirements for subsequent years (submission dated 11.10.2011).

**17.54.** Further, MIAL had considered rate of interest of 12.5% per annum for the working capital. MIAL submitted the interest costs in their initial submission as under:

**Table 78: Estimates of Working capital and Interest Costs submitted by MIAL**

<i>In Rs. Cr.</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>			<i>Projections</i>	
<i>Working capital</i>	-	-	50	50	-
<i>Interest costs</i>	-	-	6	12	12

**17.55.** Further MIAL had submitted that the requirement of working capital loan is projected to be around 100 crs in FY13 due to increase in working capital requirements of the company (submission dated 24.07.2012). MIAL also submitted that there is increase in outstanding amount from Air India and Kingfisher Airlines resulting from non-payment of dues by them, consequently increasing the working capital requirement. MIAL submitted that as on 30.06.2012 Rs. 197.34 crs (excluding Rs. 76.14 crs for interest) and Rs. 29.86 crs



(excluding Rs. 28.31 crs for interest) is outstanding from Air India and Kingfisher Airlines respectively and an amount of Rs. 141.39 crs is outstanding from other airlines and concessionaires.

**17.56.** MIAL, in their submission, had also stated that the bankers were not prepared to fund beyond 365 days for NACIL and beyond 90 days for other debtors. Further due to change in Service Tax rules, MIAL submitted that they have to pay the Service Tax to the Government in advance thereby increasing the working capital requirement though amounts are realised from its customers much later. MIAL further submitted that higher Annual Fee is also required to be paid in advance to AAI due to increase in revenues irrespective of whether the same is collected or not.

**17.57.** In view of the same, MIAL submitted the revised estimation of working capital loan and also the interest costs based on actual interest cost for working capital for FY 2012, as certified by their auditor, as under:

**Table 79: Revised estimates of Working capital and Interest Costs submitted by MIAL**

<i>In Rs. Cr.</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>			<i>Projections</i>	
<i>Working capital</i>	-	-	-	100	-
<i>Interest costs</i>	-	-	2	12	12

### **Other Operating Costs**

**17.58.** MIAL had projected the other operating costs taking into consideration the actual of FY 2010-11 as base (submission dated 11.10.2011):

17.58.1. Cleaning Contract - MIAL had submitted that these contracts are labour oriented and for the purpose of projection, it had been assumed that the headcount would increase by 10% in FY 2011-12. For the increase in the wages, 4 years CAGR of National Floor Level of minimum wages had been considered. MIAL further submitted that the cost doubles in FY 2013-14 due to new Common User Terminal.

17.58.2. Trolley Contract - MIAL had submitted that cost related to trolley contract is increased based on passenger growth and 4 years CAGR of National Floor Level of minimum wages.

17.58.3. Security Contract - MIAL had submitted that 15% increase in head count considered in FY 12 over FY 11 due to additional requirements. MIAL submitted

that head count doubled in FY 14 due to launch of New Common User Terminal from 1st September 2013. MIAL further submitted that wages are projected to increased based on 4 years CAGR of National Floor Level of minimum wages

17.58.4. Inter-Terminal coaches Contract - MIAL submitted that cost related to Inter-Terminal coaches Contracts are increased based on 4 additional buses to be included from FY 12 and thereafter increase based on CPI.

17.58.5. Other Contracts - MIAL submitted that cost related to Other Contracts are increased based on 4 years CAGR of National Floor Level of minimum wages

17.58.6. Further, vide their submission dated 23.11.2011, MIAL submitted that the costs of operating contract for cleaning services had been increased annually with rate of increase in Minimum Wages (CAGR of 9.49% for last four years). Additional 10% increase in manpower had been considered for FY 12. MIAL submitted that on commencement of operation from New Common User Terminal, cost had been increased in proportion to increase in area and additional 100% increase due to requirement of specialised cleaning manpower and equipment for the State-of-the-Art New Common User Terminal and considering significant glasswork and intricate roof and jail work.

17.59. The summary of Other Operating Expenses submitted by MIAL, vide their submission dated 11.10.2011, is as under:

**Table 80: Summary of Other Operating Expenses submitted by MIAL**

<i>In Rs Cr.</i>	<i>FY 10</i>	<i>FY11</i>	<i>FY12</i>	<i>FY13</i>	<i>FY14</i>
	<i>Actual</i>		<i>Projections</i>		
<i>Cleaning Contract</i>	12	13	15	17	56
<i>Trolley Contract</i>	5	5	6	7	8
<i>Security Contract</i>	7	8	10	11	18
<i>Inter-terminal coaches Contract</i>	4	4	6	6	7
<i>Other Contract</i>	16	20	23	16	11
<i>Other Operating costs (Total)</i>	44	50	60	57	100

17.60. The Authority had while reviewing the MYTP requested MIAL to submit the audited account and auditor certificates for FY12. MIAL, vide their submission dated 26.06.2012,

furnished the Other Operating costs certified by their auditor for the year 2011-12. The revised Other Operating costs after considering actuals for FY12 is as under:

**Table 81: Revised Other Operating costs after considering actuals for FY12**

<i>In Rs Cr.</i>	<i>FY 10</i>	<i>FY11</i>	<i>FY12</i>	<i>FY13</i>	<i>FY14</i>
	<i>Actual</i>			<i>Projections</i>	
<i>Cleaning Contract</i>	12	13	16	17	32
<i>Trolley Contract</i>	5	5	4	5	6
<i>Security Contract</i>	7	8	10	10	18
<i>Inter- terminal coaches Contract</i>	4	4	5	6	6
<i>Other Contract</i>	16	20	25	24	12
<i>Other Operating costs (Total)</i>	44	50	60	62	74

### **Observations on Electricity Cost**

**17.61.** The Authority had observed that Electricity Charges are fixed by regulatory authorities/agencies and may not necessarily be linked to (CPI-IW) inflation. The Authority had, therefore, proposed not to consider inflationary increase in the unit rate of electricity and instead follow the most recent unit rate approved by the regulator for the remaining years in the control period subject to true-up based on actuals.

**17.62.** The electricity cost, without considering inflationary increase in the unit rate of electricity, is as under:

**Table 82: Summary of Electricity Cost without considering inflationary increase in the unit rate**

<i>In Rs. Cr.</i>	<i>FY 10</i>	<i>FY 11</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
	<i>Actual</i>			<i>Projections</i>	
<i>Electricity Costs (net of recovery)</i>	54	19	31	56	108

### **Observations on Administrative Costs**

**17.63.** MIAL had submitted that the cost pertaining to Airport Operations Readiness and Consultancy for Business Development included the employee payroll cost for the employees involved in these activities (submission dated 08.08.2012). The Authority sought from MIAL the details of costs considered under Airport Operations Readiness and Consultancy for Business Development. MIAL submitted the same as under:

*"Details of expenses to be incurred for Airport Operations Readiness (AOR) for FY 13 and FY 14 are as under:*

Rs. In Crs.	FY13	FY 14
Staff Costs -Payroll	17.53	9.25
Consultants	16.04	16.06
IT Consumables/ Hardware/ Training	0,41	0.28
eFast & Software	0,45	0.00
Training Costs	0.12	0.12
Printing Costs	0.04	0.04
Other Expenses	0,41	0.01
Total	35.00	25.76

”

**17.64.** MIAL further submitted as under:

*“Expenditure for Business Development consultancy for FY 13 is Rs. 16 Crs. considering need of engaging specialized consultants to optimize business development for new T2. Details of Rs. 16 cr and Rs. 3 Crs. envisaged for FY 13 and FY 14 respectively including Payroll cost is as below.*

Consultant Name	Country	FY13 (Rs. Crs)	FY 14 (Rs. Crs)
Mc Kinsey	India	3.56	-
Pragma	UK	2.52	-
Compass	UK	1.98	-
Brain & Poulter	Australia	1.94	-
Legal Consultant		1.25	-
Marketing Consultant		0.24	-
Other experts – Salary		4.00	2.90
Miscellaneous Expenses		0.50	0.10
Total		16.00	3.00

”

**17.65.** During the discussions, MIAL explained that “Staff costs – Payroll in the table presented under para 17.63 and “Other experts – Salary” presented in the table under para 17.64 pertains to the cost of employees under MIAL’s payroll. MIAL, vide their submission dated 29.08.2012 clarified that the employee cost being considered under these two heads have not been considered in the Employee Costs discussed in paras 17.8 to 17.15.

**17.66.** The Authority noted that employee costs, included in the above tables, should be considered along with Employee costs discussed in para 17.8 above. As regards the other expenses, it appeared to be of the nature of administrative costs and hence were retained under Administrative costs. Accordingly, the Authority had in the consultation paper proposed the following expenses to be considered as part of Administrative costs:

**Table 83: Expenses considered to be part of Administrative costs**

Rs. In Crs.	FY13	FY 14
Airport Operations Readiness	17.47	16.51

Consultancy for Business Development		12.00	0.01
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### Interest on DF Loan

**17.67.** MIAL had submitted that they are in the process of obtaining a loan against securitisation of approved DF of Rs. 876 Crs, (submission dated 26.06.2012). MIAL had also submitted that the Loan against DF is expected to be received in July 2012 and would be repaid over the remaining collection period of 21 months. MIAL submitted that rate of interest for this loan is expected to be around 11.25% p.a. (excluding 0.75% as Upfront Fee) of the loan amount and interest payable on the loan is charged to the Profit and Loss account. Further, vide their submission dated 24.07.2012, MIAL submitted a correction in their earlier submission dated 26.06.2012 as under,

*“MIAL is in the process of obtaining a loan against securitization of approved Development Fee (DF) of Rs. 876 Crs. The Loan against DF is expected to be received in July 2012 and would be repaid over the remaining collection period of 21 months. Rate of interest for this loan is expected to be around 11.25% p.a. (excluding 0.50% as Upfront Fee) of the loan amount. Interest payable on the loan is charged to the Profit and Loss account. In our earlier submission Upfront fee was wrongly stated as 0.75% (typo error). However the calculations for tariff were done correctly in MYTP model and Upfront fee was taken correctly as 0.5%.”*

An indicative Term-sheet for underwriting of securitization of DF of Rs. 780 crore was also submitted by MIAL. The summary of Interest on DF Loan is as under:

**Table 84: Summary of Interest on DF Loan as submitted by MIAL**

In Rs. Cr.	FY 10	FY 11	FY 12	FY 13	FY 14
	Actual			Projections	
Interest on DF Loan	-	-	-	59	34

**17.68.** The Authority observed that the assets funded out of DF have not been included in the RAB. Further, the debt raised by MIAL through securitization of DF is proposed not to be considered as an element in the means of finance. Therefore, the cost of this debt may not be allowed to be recovered through WACC in the current exercise for determination of

tariff. Hence, the Authority had in the consultation paper tentatively decided to consider expensing out the interest thereon.

**17.69. The Authority had proposed to expense out the interest on loans taken for securitization of DF, falling in the current control period, as operating expenditure.**

**17.70. The Authority had proposed to true-up the interest cost, incurred by MIAL in respect of DF Loan, on actuals subject to the ceiling of 11.5%.**

**17.71. US Dollar Exchange Rate** – The Authority had observed that MIAL had considered forex USD exchange rate of Rs.45.00 per USD in their tariff application. The Authority noted that this rate is being used in the tariff model submitted by MIAL for conversion of dollar-denominated share of Minimum Annual Guarantee to be received by MIAL from the concessionaire of Duty Free and for conversion of revenue to be received by MIAL from the concessionaire of CUTE services. The Authority referred to RBI published rates for exchange rate of USD to INR for latest 6 months, available till 30.08.2012, which worked out to Rs 54.03. The sensitivity on the same is as under:

**Table 85: Sensitivity – Impact on X factor from US Dollar Exchange Rate**

Parameter	X Factor as per the Base Model	X Factor after change in assumptions
Considering US Dollar Exchange Rate of Rs 54.03 per USD instead of Rs 45 per USD as proposed by MIAL	-873.36%	-872.65%

**17.72.** In view of recent trend of sharp movements in the exchange rate, the Authority had in the consultation proposed that it may review this aspect further and would use the latest rates (trends) as may be available to it at the stage of final determination.

**17.73. The Authority tentatively decided to use the RBI Reference rate for exchange of USD into INR for latest 6 month period available till 30.08.2012 at Rs 54.03 for conversion of earnings for MIAL.**

**17.74.** Further, the Authority had in the Airport Order stated that it will follow a bottom-up approach for assessment of operation and maintenance expenditure, which will include a review of the operation and maintenance expenditure forecast submitted by the Airport

Operator. The Authority found that a review based on the following principles would be appropriate:

17.74.1. Assessment of baseline operation and maintenance expenditure based on review of actual expenditure indicated in last audited accounts, and prudency check, inter-alia, with respect to underlying factors impacting variance over the preceding year(s) including treatment for one-time costs or atypical costs;

17.74.2. Assessment of efficiency improvement with respect to such costs based on review of factors such as trends in operating costs, productivity improvements, cost drivers as may be identified, and other factors as may be considered appropriate; and

17.74.3. Assessment of other mandated operating costs or statutory operating costs, where (i) other mandated operating costs are costs incurred in compliance to directions received from other regulatory agencies including Director General Civil Aviation; and (ii) statutory operating costs are costs incurred on account of fees, levies, taxes or other charges, directly imposed on and paid for by the Service Provider.

**17.75.** The Authority had considered the submissions made by the stakeholders, and decided to specify that only “other mandated operating costs” and “statutory operating costs” should be considered as uncontrollable costs. Other mandated operating costs shall cover costs incurred in compliance to directions received from other regulatory agencies including Director General Civil Aviation. Statutory operating costs shall cover costs incurred on account of statutory fees, levies, taxes or other charges, directly imposed on and paid for by the Airport Operator. For the avoidance of doubts, it was clarified that the Authority would not consider: expenses that are required for meeting the required subjective and objective quality standards, exchange risks and cost to overcome under performance by allied parties, as uncontrollable costs. In effect, these costs would be considered as controllable in the Authority’s assessment of operating costs. As part of the Airport Operators Multi-year Tariff Framework Application, the Authority expected Airport Operators to detail any uncontrollable cost consistent with this position, with supporting evidence and forecast these costs as part of the building blocks approach. As part of the Compliance Statement the Airport Operator would be required to present details of its

audited uncontrollable cost compared to the forecast at the time of the tariff review. The Authority would reserve the right to undertake a detailed review of the uncontrollable costs and require the Airport Operator to provide detailed justification. The Authority would then adjust tariffs to reflect any adjustments in uncontrollable costs. The O&M expenditure related to mandated security expenditure as laid down by the Government/Bureau of Civil Aviation Security (BCAS) shall be considered in determination of the PSF charge for which the draft guidelines for determination of Passenger Service Fee (PSF) have been issued separately. The Authority also did not support the position of the Airport Operators that allowances should be included for bad debts in operating costs and is of the opinion that any allowance provided for working capital should be net of allocations for bad debts.

**17.76.** The Authority had in the consultation paper considered the issue of operating expenses and their projections in detail. It is conscious of the fact that the issue of efficient operating and maintenance costs only is salient in a price cap determination. Further, the allocation of these costs into aeronautical and non-aeronautical categories is especially important under a shared till regulation as in the case of CSIA. In this light, the Authority would have ideally liked to have commissioned an independent study to help it assess the aspects of “efficient operating and maintenance costs” and their allocation between aeronautical and non-aeronautical heads. However, the Authority is conscious that in the current determination, only 2 years of the regulatory period are left. In this light, the Authority had in the consultation paper, presently, proposed to accept the forecasts made by MIAL, subject to the modification indicated above.

**17.77.** The summary of total operating expenses (Aeronautical) considered by the Authority, presently, for the tariff determination is as under:

**Table 86: Summary of Aeronautical O&M Costs considered by the Authority**

Cost Item (In Rs. million)	FY10	FY11	FY12	FY13	FY14
Employee Cost	69.0	69.1	85.3	124.7	131.6
Operation Support Cost to AAI	13.1	-	-	-	-
Electricity, Water and Fuel Costs (net of recoveries)	60.9	23.1	36.5	62.0	116.5
Repair & Maintenance Cost	27.7	25.7	37.0	75.1	131.0
Rents, Rates & Taxes (net of recoveries)	6.6	12.4	12.1	84.2	23.2
Advertising Cost	4.4	5.9	3.9	7.3	11.6
Administrative Costs	28.6	28.6	46.1	61.3	78.0
Airport Operator’s Fees	5.3	5.4	6.1	6.3	6.4
Insurance Cost	2.6	2.4	2.5	3.5	5.9



Consumables	4.2	4.6	4.4	5.1	5.8
Other operating Cost	30.7	32.8	39.4	47.1	65.8
Working Capital Loan Interest	-	-	0.2	10.6	10.6
Financing Charges	2.4	2.6	1.0	1.0	1.1
ADF Loan Interest	-	-	-	59.2	34.5
Collection charges over DF*	-	-	-	-	-
Total	255.6	212.6	274.4	547.3	621.7

\* - Refer discussion on collection charges from para 34.1 to para 34.9.

**17.78. The Authority had proposed to accept the forecasts for 2012-13 and 2013-14 made by MIAL for the present. It had also proposed to commission an independent study to assess the efficient operating costs of CSI Airport, Mumbai for the entire control period.**

**17.79. The Authority had also proposed that, if the costs of efficient operation and maintenance, assessed in the independent study are lower than the values used by the Authority, then it will claw back this difference in the next control period commencing from 01.04.2014.**

**17.80. The Authority further proposed that the following factors be reviewed for the purpose of corrections (adjustments) to tariffs on a Tariff year basis**

**17.80.1. Mandated costs incurred due to directions issued by regulatory agencies like DGCA;**

**17.80.2. Change in per unit rate of costs related to electricity and water charges as determined by the respective regulatory agencies;**

**17.80.3. All statutory levies in the nature of fees, levies, taxes and other such charges by Central or State Government or local bodies, local taxes/levies, directly imposed on and paid for by MIAL on final product/ service provided by MIAL, may be reviewed by the Authority for the purpose of corrections (adjustments) to tariffs on a Tariff year basis. Furthermore, any additional payment by way of interest payments, penalty, fines and other such penal levies associated with such statutory levies, which MIAL has to pay for either any delay or non-compliance, the same would not be trued up. On the input side if MIAL has to pay higher input costs even on account of change in levies/ taxes on any procurement of goods and services, the same would not be trued up.**

**b Stakeholder Comments on Issues pertaining to Operating Expenses**

**17.81.** The Authority has received comments from Stakeholders (IATA, Cathay Pacific, FIA, British Airways and DIAL) on its position in respect of operating expenses, as presented in the Consultation Paper-22/2012-13 dated 11.10.2012.

**17.82.** IATA agreed with the Authority on the need for an independent study to determine efficient operation and maintenance costs and how these are to be allocated between aeronautical and non-aeronautical heads.

**17.83.** Cathay Pacific in its submission stated that

*“The basis to determine the annual increase in Employee Cost, Repairs and Maintenance Cost, Utility Expenditure, Administrative and Other General Expenditure is not mentioned and disclosed in the consultation paper, this makes the justification difficult. With the lack of transparency of these operation and maintenance expenditures, it is hard for the airlines to comment whether the proposed % is justified or not.”*

**17.84.** Referring to the Authority’s approach towards review of operating expenses of MIAL, FIA, in its submission, stated that

*“Review of Consultation Paper indicates that Authority has accepted the basis and rationing for all the expenses forecasted by MIAL and has not made any self estimation.”*

**17.85.** Suggesting that operating expenditure is a major component of Target Revenue in respect of MIAL and that there should be an independent study for assessment of efficient operating expenses, FIA stated that

*“It is noteworthy that Operating expenditure is one of the major components for determining Target Revenue (approximately 57% of Target Revenue). Thus, it is imperative that Authority should evaluate these expenses in detail rather than relying on projections and basis provided by MIAL. However, considering that only 15 months of the regulatory period is left, Authority has proposed to accept the forecasts made by MIAL, subject to certain modifications.*

*The Authority should ideally commission an independent study to assess the aspects of "efficient operating and maintenance costs" and their allocation between aeronautical and non-aeronautical heads."*

**17.86.** On the issue of additional headcount in FY13 and FY14, FIA stated that

*"It is pertinent to note that MIAL has included additional headcount expense for FY13 and FY14 projections. The Authority should evaluate the efficient utilization of current headcount in order to justify the additional need for the head count."*

**17.87.** FIA further stated that

*"Further, review of Consultation Paper also indicates that the operation and maintenance cost considered for the purpose of determining target revenue is not matching with actual and forecasted expenses presented in Table 94 of CP 22/2012-13. CP No.22/2012-13 does not provide any reasoning for additional expenses considered for computation of target revenue."*

**17.88.** FIA also computed operating expenses per passenger for all the five years in the Control Period and stated that reason for higher Cost per passenger during FY10 cannot be established. The computation by FIA of operating expenses per passenger is reproduced below:

Table to compute O&M cost per passenger						
Extract from Table 125 on CP22/2012-13						
Particulars	FY10	FY11	FY12	FY13	FY14	Total
OM-Efficient Operation & Maintenance cost (Rs in crores)	394.5	186.2	320.5	565.3	639.4	2,105.9
Total Passenger Forecast (actual) (units in crores)	2.6	2.9	3.074	3.271	3.437	15.2
Cost per passenger forecast (Rs)	154.1	64.0	104.3	172.8	186.0	
% increase in cost per passenger			63%	66%	8%	
Total ATM Forecast (actual) (units in crores)	23.0	24.3	25.1	26.3	26.9	125.5
Cost per ATM forecast (Rs)	17.2	7.7	12.8	21.5	23.8	
% increase in ATM			66%	68%	11%	

**17.89.** Based on its calculation, FIA stated that passenger and Air Traffic Movement ("ATM") has not increased in the same proportion as O&M expenditure ensuing increase in cost per passenger and ATM. FIA further stated that

*"The Consultation Paper<sup>15</sup> indicates that MIAL is facing the constraint in growth of air traffic primarily on account of runway capacity. CSI Airport is*

*a single runway configuration with cross intersecting runway as a standby alternative. However, this configuration is not as efficient as a two parallel runway airport.*

*63. Further, as of today, CSI Airport has only one taxiway. Thus, constraint of having a single runway and configuration with a single taxiway is therefore permanent and would continue to be so even after the completion of the integrated terminal building in August, 2014.*

*64. In the view foregoing, it appears that terminal building is not adding any extra capacity and only increasing the operational expenditure, hence, Authority should evaluate whether additional operational expenditure due to new terminal building can be construed as an efficient cost.”*

**17.90.** British Airways in their submission stated that a major determinant of aeronautical charges is the operational costs of the airport. British Airways further stated that

*“British Airways feels it is the role of the economic regulator to critically evaluate these costs. Without such critical review the tendency of for airports to become inefficient and protected from normal market pressures for continual improvement in efficiency.”*

**17.91.** British Airways stated that it supports AERA’s on commissioning an independent study to determine efficient operation and maintenance costs and how these are to be allocated between aeronautical and non-aeronautical activity. British Airways further stated that the airport also needs to be set hard, and stretching, targets for improvements in this area on an ongoing basis.

**17.92.** On the issue of Interest on DF Loan, DIAL submitted that Development Fee is a capital receipt and is not routed through profit and loss account. DIAL proposed that interest on loan securitized against DF should not be allowed in operating cost rather the tenure of levy of DF should be extended to cover total amount of loan taken in present value term

**c MIAL Response to Stakeholder Comments on Issues pertaining to Operating Expenses**

**17.93.** MIAL responded to FIA’s question on allowing inflated operation expenditure and stated that,

*“We take strong objection to the term ‘inflated’ used by the stakeholder, which is without any basis and devoid of any substance.*

*Enough evidence and comparison has been provided to demonstrate that O&M costs at CSIA are among the lowest as compared to other similar airports in India.”*

**17.94.** MIAL further stated that

*“The increase in the O&M costs in Table No. 125 (compared to Table 94) is on account of AERA’s decision (Tentative Decision No. 15.a) to expense out Retirement Compensation (instead of capitalizing the same).*

*(a) FIA has expressed an apprehension about constraints imposed by the configuration of the runways on ATM. MIAL recognizes the importance of increasing airside capacity. We have already embarked upon implementation of findings and suggestions of NATS, UK to enhance airside capacity.”*

**d MIAL’s own comments on Issues pertaining to Operating Expenses**

**17.95.** MIAL has not provided its own comments on the Authority’s position on the issues pertaining to operating expense, as expressed in the Consultation Paper 22/2012-13 dated 11.10.2012.

**17.96.** However the Authority has received submissions from MIAL dated 10.12.2012 and 09.10.2013, wherein MIAL has talked about disallowances from certain expenses being made from Passenger Service Fee (Security Components) (PSF(SC)). MIAL’s submission, as per the letter dated 10.12.2012 on the matter, is as follows:

*“MIAL had incurred certain expenses out of PSF (SC), to the best of knowledge and belief of MIAL these expenses pertained to security requirements at the airport and accordingly were eligible to be incurred from PSF (SC).*

*In the past, no objection had been raised against these expenses. However, recently during Audit conducted by Comptroller and Auditor General of India (CAG), certain objections were raised about allowability of certain expenditure out of PSF (SC).*

*Ministry of Civil Aviation (MoCA) had Issued Standard Operating Procedures (SOP) for expenditure to be incurred Out of PSF(SC) vide its letter No AV.13024/047/2003-SS/AD dated 19 Jan 2009. MoCA decided that certain expenses like expenses on Private security for landside security and other expenses were not allowable, accordingly It directed MIAL to reverse these expenses as per details below:*

*a) Consultancy Charges of Rs 1.86 Crs (2007-08 Rs 0.05 Cr and 2008-09 Rs 1.81 Crs)*

*b) Deployment of private security agencies - Rs 12.34 Crs (2007-08 Rs 4.53 Crs and 2008-09 Rs 7.81 Crs)*

*While making application for tariff determination these expenditure were not considered as part of operating expenditure but in view of recent developments these expenditure have to be included in the O&M cost of MIAL while finalising MYTP of CSIA.*

*Since it is not possible to exactly quantify all the expenditure at this stage, we request the Authority to kindly consider these expenses for the purpose of truing up as and when informed by MIAL on finalization by MoCA.*

*However, for following expenditure, directions of MoCA have already been received vide letter no. AV.13024/65/2011-AS (pt.II) dated 22 May 2012 (copy enclosed),*

*a) Rs 1.86 Crs being Consultancy Charges (2007-08 Rs 0.05 Cr and 2008-09 Rs 1.81 Crs)*

*b) Rs 12.34 Crs being cost of deployment of private security agencies (2007-08 Rs 4.53 Crs and 2008-09 Rs 7.81 Crs)*

*Though MIAL has filed a writ petition before Honorable High Court of Delhi<sup>1</sup> but above expenditure amounting to Rs. 14.20 Crs need to be considered while finalising tariff for the first control period, as outcome of writ is uncertain and MOCA is insistent to disallow such expenditure out of PSF (SC).*

*By marking copy of this letter to Secretary, MoCA, we request MoCA to confirm that such expenditure are to borne by MIAL, therefore need to be considered by the Authority while finalising Tariff for the first control period for CSIA.”*

**17.97.** Subsequently the Authority has received another submission from MIAL dated 09.01.2013, wherein MIAL has attached a letter no. AV.13024/65/2011-AS from MoCA to MIAL. The letter from MoCA communicates to MIAL, the objections raised by C&AG with regard to expenses incurred towards Cargo X-Ray Screening Machine of Rs 1.0089 crores in FY 2008-09 and expense of Rs 23.14 crores for purchase of X-Ray machines for which hiring charges are taken from various airlines and seeks explanation for the same from MIAL. MIAL’s letter dated 09.01.2013 states as follows:

*“.....MIAL is in the process of submitting detailed explanation to MoCA on the same. Authority is requested to take note of the above letter and include the same in RAB, if and when this capital expenditure is finally disallowed by MoCA.”*

**e Authority’s Examination of Issues pertaining to Operating Expenses**

**17.98.** The Authority has carefully examined the comments from the Stakeholders and MIAL’s response to these comments. The Authority notes that stakeholders (IATA, FIA, and British Airways) have agreed with AERA on the need for an independent study to determine efficient operation and maintenance costs and how these are to be allocated between aeronautical and non-aeronautical heads.

**17.99.** In respect of the issues raised by Cathay Pacific, it is observed that the historical figures considered by the Authority have been duly verified/ certified by auditors. Hence it is found appropriate to rely on the same for the purposes of the current tariff determination exercise. However, the Authority in the Consultation Paper No. 22/2012-13 had decided to commission an independent study to assess the efficient operating costs of CSI Airport, Mumbai for the entire control period and further proposed that, if the costs of efficient operation and maintenance, assessed in the independent study are lower than the values used by the Authority, then it will claw back this difference in the next control period commencing from 01.04.2014.

**17.100.** In respect of the issue raised by FIA on operation and maintenance cost considered for the purpose of determining target revenue not matching with actual and forecasted expenses (as per Table 94 of Consultation Paper No. 22/2012-13), the Authority observes that the Table 94 of Consultation Paper No. 22/2012-13 does not have operating expenses relating to Retirement Compensation to AAI, while Table 125 of Consultation Paper No. 22/2012-13 includes operating expenses relating to Retirement Compensation to AAI. Hence the difference in the numbers appearing in these two tables.

**17.101.** The Authority, in its determination of aeronautical tariff in respect of CSI Airport, Mumbai in the Consultation Paper 22/2012-13 dated 11.10.2012, had proposed to expense out the interest on the DF Loan raised by MIAL. However the Authority, in its Order No. 29/2012-13 dated 21.12.2012, has decided to include the interest component in the allowable DF billing, if DF is securitized. Therefore, the expense on account of interest on the DF Loan, would not now be considered towards operating expenses and would be included in the DF to be collected. In view of this, the Authority decides not to expense out the interest on loans taken on account of securitization of DF, falling in the current Control Period, as operating expenditure.

**17.102.** In respect of US Dollar Exchange Rate, the Authority has noted that the RBI Reference Rate for INR-USD exchange for latest 6 months, available till 11.01.2013 has moved up to Rs. 54.67 per USD as compared to Rs.54.03 per USD which was used at the consultation stage. The Authority decides to use the latest reference rates i.e., Rs. 54.67 per USD.

**17.103.** The Authority has taken note of the submissions made by MIAL, dated 10.12.2012 and 09.01.2013. The Authority notes that MIAL has referred to four expenditure items in its letters, which are as follows:

- Rs 1.86 Crs being Consultancy Charges
- Rs 12.34 Crs being cost of deployment of private security agencies
- Rs 1.0089 crores expenses incurred towards Cargo X-Ray Screening Machine in FY 2008-09
- Rs 23.14 crores expense for purchase of X-Ray machines for which hiring charges are taken from various airlines



**17.104.** The Authority notes from MIAL submission dated 10.12.2012 that MIAL has filed a writ petition before Honorable High Court of Delhi with regard to the disallowances (referred in Para 17.103) asked by MoCA and thus the matter is sub-judice. The Authority further notes from MIAL submission dated 09.01.2013 that MIAL is in the process of submitting its explanation as sought by MoCA. The Authority is of the view that as and when finality is reached it would be able to consider the matter appropriately.

**Decision No. XIV. Regarding Operating Expenses**

**XIV.a.** The Authority decides to accept the forecasts for 2012-13 and 2013-14 made by MIAL for the present. It decides to commission an independent study to assess the efficient operating expenses of CSI Airport, Mumbai for the entire control period.

**XIV.b.** The Authority further decides that, if the costs of efficient operation and maintenance, assessed in the independent study are lower than the values used by the Authority, then it will claw back this difference in the next control period commencing from 01.04.2014.

**XIV.c.** The Authority decides not to expense out the interest on loans taken on account of securitization of DF as operating expenses.

**XIV.d.** The Authority decides to use the RBI Reference rate for exchange of USD into INR for latest 6 month period, available till 11.01.2013, at Rs 54.67 per USD for conversion of earnings in foreign exchange for MIAL.

**Truing Up: 5. Correction / Truing up for items under Operating Expenses**

**5.a.** The Authority decides that the following factors will be reviewed for the purpose of corrections (adjustments) to tariffs on a Tariff year basis

- i.** Mandated costs incurred due to directions issued by regulatory agencies like DGCA;
- ii.** Change in per unit rate of costs related to electricity and water charges as determined by the respective regulatory agencies;

**iii. All statutory levies in the nature of fees, levies, taxes and other such charges by Central or State Government or local bodies, local taxes/levies, directly imposed on and paid for by MIAL on final product/ service provided by MIAL, may be reviewed by the Authority for the purpose of corrections (adjustments) to tariffs on a Tariff year basis. Furthermore, any additional payment by way of interest payments, penalty, fines and other such penal levies associated with such statutory levies, which MIAL has to pay for either any delay or non-compliance, the same would not be trued up. On the input side if MIAL has to pay higher input costs even on account of change in levies/ taxes on any procurement of goods and services, the same would not be trued up.**

**5.b. The Authority decides not to include the expense disallowed by MoCA from PSF (SC) account towards determination of aeronautical tariff for the present. As and when the finality on the matter is reached, the Authority would take such expenses into account appropriately.**

## 18. Taxation

### a Authority's position on Issues pertaining to Taxation in the Consultation Paper

18.1. MIAL had vide their submission dated 11.10.2011, submitted that

*"The corporate tax for MIAL is the composite tax for all the services provided by MIAL. As per the methodology given in the Schedule I of SSA, the tax for Aeronautical services has been computed by grossing up the post tax return after adjusting the difference in depreciation as per Companies Act and Income Tax Act based on the formula given below:*

$$PAT = RB * WACC * Interest Cost$$

$$Taxable Income = (PAT + Depreciation as per Companies Act - Depreciation as per Income Tax Act) / (1 - Tax rate)$$

$$Tax = Taxable Income * Tax Rate"$$

18.2. Accordingly, the corporate tax for Aeronautical Services for each year of the control period had been calculated by MIAL as follows:

**Table 87: Summary of Corporate Tax as submitted by MIAL vide their initial submission dated 11.10.2011**

In Rs crs	FY 10	FY 11	FY 12	FY 13	FY 14
Income Tax	179	202	224	283	325

18.3. Based on the subsequent revisions proposed by MIAL, the corporate tax for Aeronautical Services for each year of the control period had been calculated by MIAL in their tariff model as follows:

**Table 88: Summary of revised Corporate Tax as submitted by MIAL in their tariff model for the determination of Target Revenue**

In Rs crs	FY 10	FY 11	FY 12	FY 13	FY 14
Income Tax	201	214	223	258	300

### Observations on Taxes

18.4. The Authority had observed that in the approach adopted by MIAL, tax is being determined by grossing up the post tax return, which in turn is derived from Regulatory Asset Base. The Authority noted that tax calculated by the methodology adopted by MIAL is

not based on the actual revenue earned in the respective years. Further as per Schedule 1 of SSA, taxes to be considered in the determination of Target Revenue are “Corporate Taxes on earnings pertaining to Aeronautical Services”. It is observed that the Income Tax Act, 1961 does not define the term “corporate tax”. As per FAQ available on the website of the Income Tax Department ([www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)) in reply to Q.6 it is stated that “when companies pay taxes under the Income Tax Act it is called corporate tax”. In a further reply under Q.34, the department has clarified that “The tax to be paid by the companies on their income is called corporate tax”.

**18.5.** As regards the tax calculation initially submitted by MIAL (presented in para 18.1 above), the Authority noted that MIAL’s formulation for calculation of tax considers ‘profit after tax’ as one of the input factors. The Authority observed that ‘profit after tax’ is not a defined term in the SSA. The Authority further noted that the approach used by MIAL considers the target revenue for determination of corporate tax. This target revenue has not accrued to MIAL even in the historical three years of FY 10, FY 11 and FY 12. However the tax being an actual liability is to be based on the actual revenue earned or projected to be earned by MIAL. The Authority further observed that as defined in SSA, Corporate Taxes on earnings pertaining to Aeronautical Services implies that tax should be derived in straight forward manner starting from projected aeronautical revenue and considering applicable tax rates instead of using the ‘gross-up’ approach as adopted by MIAL.

**18.6.** In view of the above, the Authority had in the consultation paper no.22/2012-13 dated 11.10.2012, proposed that tax, to be considered in the determination of ARR, should be based on the actual earnings pertaining to aeronautical services in respective years. Accordingly, the Authority had sought from MIAL the value of income tax in case it is calculated on actual earnings pertaining to aeronautical services in respective years. In response, MIAL submitted the calculations for income tax pertaining to aeronautical services in the revised tariff model. The Authority noted that in this tax calculation, MIAL had considered actual / projected aeronautical revenue, operating expenses pertaining to aeronautical services, depreciation pertaining to aeronautical assets and interest expense and had considered the applicable tax rate. The Authority observed that the depreciation, considered by MIAL, had included depreciation on account of both aeronautical assets and Hypothetical Regulatory Base. The Authority is of the view that since Hypothetical

Regulatory Base, to be determined in line with SSA, is of hypothetical nature and does not correspond to physical assets in the books of accounts of MIAL, depreciation on such assets should not be considered towards calculation of tax pertaining to aeronautical services. Accordingly the Authority made necessary adjustment in the calculation of tax pertaining to aeronautical services submitted by MIAL.

**18.7. The Authority had proposed to consider the actual corporate tax paid by MIAL (apportioned on operations from aeronautical services as estimated from regulatory accounts) for the year 2009-10, 2010-11 and 2011-12. For the balance period i.e., 2012-13 and 2013-14 the Authority proposed to use the forecast of Corporate Tax payable on aeronautical services for tariff determination.**

**18.8. The Authority further proposed to review the actual corporate taxes on aeronautical services paid by MIAL, based on the audited figures as would need to be made available (separating for aero and non-aero assets / activities).**

**18.9. The Authority had also proposed to true up the difference between the actual corporate tax paid (separating for aero and non-aero assets / activities) and that used by the Authority for determination of tariff the current Control Period. The Authority also proposed that this truing up will be done in the next control period commencing 01.04.2014.**

**18.10.** The impact of calculating tax based on actual earnings pertaining to aeronautical services on X factor is as under:

**Table 89: Sensitivity – Impact on X factor from calculating tax based on actual earnings pertaining to aeronautical services**

Parameter	X Factor as per the Base Model	X Factor after change in assumptions
Calculating Tax based on actual earnings pertaining to aeronautical services	-873.36%	-806.68%

**b Stakeholder Comments on Issues pertaining to Taxation**

**18.11.** The Authority has received comments from As regards the issue of taxation and, DIAL in their submission stated that

*"In terms of Schedule 1 of the SSA, the corporate tax on earnings pertaining to Aeronautical Services should be separately calculated and added as a building block to compute the final target revenue. This approach is consistent with the accepted worldwide standards and practices. This approach contemplates an artificial division of airports overall income and independent consideration of, the earnings pertaining to Aeronautical Services to compute the tax component for the aeronautical side. The Authorities approach, to the extent that it contemplates a true up, falls foul of this methodology.*

*Further, under the Schedule 1 of the SSA, tax is a building block towards the target revenue; the notional tax on aeronautical services (without considering revenue share as a deduction). The reason for not considering the revenue share for notional tax calculation is that since the revenue share is not taken as O&M cost while computing the overall target' revenue, so therefore the same should not be deducted for tax purposes.*

*The Authority's proposal to consider the actual corporate tax paid by the airport is inconsistent to the provisions of the concession agreement. Using the actual tax numbers will mean that revenue share is treated as a operating cost and thus will lower the notional tax value in the overall building block. This runs contrary to the provisions of the SSA. This will amount to be a double blow for airport as revenue share is not allowed as part of building block and the resultant tax saving also is taken away."*

**18.12.** With regards to the Corporate Tax to be considered towards determination of aeronautical tariff, Assocham commented as under,

*"While calculating Target Revenue AERA has not considered applicable income tax on the Target Revenue and instead has considered Income tax on actual / proposed revenues which is not in accordance with the provisions of SSA."*

**c MIAL Response to Stakeholder Comments on Issues pertaining to Taxation**

**18.13.** MIAL has not responded to the stakeholder comments on this issue

**d MIAL’s own comments on Issues pertaining to Taxation**

**18.14.** MIAL in their submission stated that the methodology for determining corporate tax pertaining to aeronautical revenue is not in accordance with the methodology illustrated in the SSA.

**18.15.** MIAL further stated that

*“In the illustration provided in Schedule 1 of SSA, corporate tax is calculated after grossing up [(RAB x WACC) – Interest expense]. Specifically, [(RAB x WACC) – Interest expense] is considered as the profit after tax (PAT). Using the corporate tax rate, the tax expense can be back-solved using the following formula.*

$$\text{Tax expense} = \frac{\text{PAT} \times \text{Tax Rate}}{(1 - \text{Tax Rate})} \text{ „}$$

**18.16.** MIAL requested the Authority to use the above methodology for the purpose of calculation of corporate tax which is in accordance with the SSA.

**18.17.** MIAL further stated that

*“Tax to be computed under Schedule 1 of SSA is based on aeronautical charges without any reduction towards cross subsidisation which is quite evident from the illustration provided in schedule 1. Hence allowing tax considering profit after cross subsidisation will not reflect true intention of SSA. We request the authority to consider the above and allow the tax as computed in SSA.”*

**e Authority’s Examination of Issues pertaining to Taxation**

**18.18.** The Authority has carefully examined the comments made by the stakeholders (DIAL and MIAL) in respect of calculation of tax for the purpose of determination of aeronautical tariffs.

**18.19.** The Authority notes that MIAL, as per its Tariff Model submitted to the Authority (in August 2012 with a CPI-X value of 882%), had taken into account the Corporate Tax component at Rs. 1,186 Crores for the purpose of determination of aeronautical tariff for the current Control Period (5 year duration). If the first three year namely 2009-10, 2010-11

and 2011-12 are considered, MIAL's tariff model gave a figure of Rs. 633 crores as Corporate Tax for this period.

**18.20.** The Authority has examined the financial statement of MIAL for the past 3 years (2009-10, 2010-11 and 2011-12). It observed that according to the financial statements the actual tax paid by MIAL in respective years as a company (not segregating into its aeronautical and non-aeronautical businesses) is at Rs 34.76 crores (2009-10), Rs 47.08 crores (2010-11) and Rs 55.14 crores (2011-12) totalling to Rs 136.98 crores. This can not straight away be compared with Rs. 633 crores that MIAL's model shows as Corporate Tax for aeronautical business. One of the reasons for the difference is that the financial statements take into account the revenue share paid by MIAL to the AAI. Furthermore, the financial statements of the company as a whole also take into account the business segment other than the aeronautical.

**18.21.** By following its approach, as explained in the Consultation Paper – 22/2012-13 dated 11.10.2012, the Authority had estimated a Corporate Tax amount of Rs. 87 Crores for the purpose of determination of aeronautical tariff for the current Control Period (5 year period). The Corporate Tax for the past 3 years (2009-10, 2010-11 and 2011-12), as reckoned by the Authority in the Consultation Paper – 22/2012-13 dated 11.10.2012 was Rs 36 crores.

**18.22.** The Authority notes that the total tax paid by MIAL as a whole consists of the operations of the company as a whole, including the total cost associated with these operations. For example, in the company account, it has taken the revenue share of 38.7% as a cost that it paid to AAI. The Authority has not found separation of the total cost into different segments of the company's operations like aeronautical, non-aeronautical, etc. When the Authority calculated the tax amount of Rs. 85 crores for the purposes of calculation of X-factor, it considered only the aeronautical part and based its computation on regulatory account in which the revenue share was not regarded as a cost. The Authority is aware that this treatment has the effect of increasing the tax component and to that extent also the X-factor.

**18.23.** The Authority regards that the tax paid by the company should be taken on the actuals and that the company should not have the benefit of the difference between tax calculated on regulatory account and that actually paid by it. The Authority notes that its



method of calculating actual tax liability ascribable to aeronautical services yields a lower value of tax, which lowers the Target Revenue, the X-factor and consequently the aeronautical charges would correspondingly decrease.

**18.24.** The entry regarding corporate tax as a building block for determination of X-factor according to Schedule I of SSA reads as *“Corporate taxes on earnings pertaining to aeronautical services”*. The Authority therefore is of the view that in view of this entry, the Airport Operator should prepare separate account for its aeronautical revenues for the purpose of calculation of tax liability that can be ascribed to aeronautical revenue. For such calculation, the expenses as MIAL would normally take into account to prepare its financial statements as a company may be taken as such. (e.g. the Authority understands that MIAL would consider revenue share (Annual Fee) as deductible expense and calculate its total tax liability accordingly). The Authority will take the Auditor certificate in this regard and will true up in the next Control Period.

**18.25.** For the present, the Authority has calculated the X-factor according to Para 18.24 above based however on the figures as were available with it. Any changes in the tax liability calculations as certified by the auditor would be considered and trued-up accordingly in the next Control Period.

#### **Decision No. XV. Regarding Taxation**

**XV.a.** The Authority decides to consider the corporate tax pertaining to earnings from aeronautical services as calculated using revenue share (Annual Fee) on these earnings as element of cost for the years 2009-10, 2010-11 and 2011-12. For the balance period i.e., 2012-13 and 2013-14 the Authority decides to make similar calculations.

**XV.b.** The Authority decides to review the above calculations based on the audited figures.

#### **Truing Up: 6. Correction / Truing up for Taxation**

**6.a.** The Authority also decides to true up the difference between its calculations of aeronautical corporate tax and that based on certifications by the auditor during the next Control Period, commencing from 01.04.2014.

## 19. Revenue from Revenue Share Assets

### a Authority's position on Issues pertaining to Revenue from Revenue Share Assets in the Consultation Paper

19.1. MIAL had in their initial submission dated 11.10.2011, submitted that

*“As given in the Schedule I of the SSA, 30% of the revenues from Revenue Share Assets (RSA) would go towards reducing the aeronautical charges while computing Target Revenue. Further the costs in relation to such revenue shall not be included while calculating Aeronautical Charges. Thus, this Multi-Year Tariff Proposal has been prepared based on the Shared Till as per SSA. Revenue Share Assets (RSA) have been defined in SSA as under:*

*“Revenue Share Assets” shall mean (a) Non-Aeronautical Assets; and (b) assets required for provision of Aeronautical related Services arising at the Airport and not considered in revenue from Non-Aeronautical Assets (e.g. Public admission fee etc.).”*

19.2. MIAL had submitted the forecasts of non-aeronautical revenues, together with explanations to support them. An overview of non-aeronautical revenue forecast made by MIAL (submission dated 11.10.2011) is as under:

**Table 90: Summary of Revenue from Revenue Share Assets submitted by MIAL**

(in Rs Crores)	FY10	FY11	FY12	FY13	FY14
<b>Retail Licences Revenue</b>					
F&B	22.0	25.7	30.0	34.5	39.5
Flight Kitchen	10.5	16.2	17.4	18.3	19.3
Retail concession	11.0	24.6	29.4	33.7	61.9
Foreign exchange	23.4	26.9	28.3	29.5	30.7
Communication	20.5	37.8	34.8	35.8	24.2
Car Rentals & Taxi Service	5.3	6.8	7.9	9.1	15.7
Duty Free Shops	60.5	45.7	36.8	40.7	68.7
Hotel in T1C	-	-	-	-	-
Advertising Income	35.7	46.0	50.6	55.6	65.5
Car Parking	13.3	12.1	12.9	13.8	7.8
Ground Handling	26.9	39.4	49.4	43.7	45.1
Fuel Concession	73.2	80.0	89.9	97.4	104.8
Others	8.2	7.4	8.7	10.0	11.4
Total Retail Licences Revenue	310.5	368.5	396.0	422.3	494.5
<b>Rent &amp; Services Revenue</b>					
Land Rent & Lease	7.0	28.6	24.8	30.1	31.5
Hanger Rent	3.6	3.6	3.9	4.1	4.5
Terminal Bld Rent	27.1	19.3	24.5	25.4	31.1
Lounges	20.5	20.1	23.8	29.3	32.6
Other Rental Incomes	80.3	138.1	142.2	76.7	22.6

(Demurrage)					
Cargo Bld Rent	16.9	36.4	18.8	20.2	21.6
Total Rent & Services	155.4	246.0	237.9	185.7	143.8
<b>Cargo Revenue</b>					
Domestic cargo	0.1	6.0	6.3	6.8	7.4
Terminal charges	76.9	94.9	101.9	68.6	28.9
Destuffing	12.8	16.3	17.7	11.9	5.0
Palatization	3.3	5.1	5.1	3.4	1.4
X-ray	11.9	15.2	15.2	10.2	4.3
Carting, packing and others	7.0	8.5	8.9	6.0	2.5
Perishable Cargo	-	-	2.1	2.8	3.0
Courier Revenue	8.5	7.9	8.2	5.6	2.3
Total Cargo & Courier Revenues	120.6	154.0	165.4	115.4	54.9
Total Revenue from Revenue Share Assets	586.5	768.5	799.3	723.5	693.2
Less: Revenue from Other than Revenue Share Assets (i.e. Non Transfer Assets)	4.8	5.1	5.6	6.1	6.4
Total Revenue from Revenue Share Assets for the purpose of Determination of 'X'	581.7	763.4	793.7	717.4	686.8

**19.3.** MIAL had further submitted that the revenue from Revenue Share Assets has been estimated and projected as under:

*“The revenues from Revenue Share Assets (RSA) include the revenue from lease rentals, license fees, space rents, various concessions and cargo handling services. Revenues from Fuel Concessions, Ground Handling Concessions and Cargo Handling have been considered as Revenues from Revenue Share Assets. Based on underlying revenue drivers / agreements / contracts, as applicable, the Revenue from Revenue Share Assets has been projected for the control period.”*

19.3.1. Lease Rentals, License Fee and Space Rent: MIAL had in its initial submission, stated that

*“Lease Rentals, License Fee and Space Rent from land and space is expected to increase at a rate of 7.5% p.a. or as per existing agreement / MoUs.”*

19.3.2. Lounge Concessions: MIAL had in its initial submission, stated that

*“The usage of lounges depends directly in proportion to the passenger traffic. The revenue per passenger in case of both the*

*international passengers and domestic passengers is expected to grow in line with inflation.”*

19.3.3. Smoking Lounges Concessions: MIAL had stated that a

*“Revenue of Rs 5 lakhs /month/lounge is considered.”* for concessions from smoking lounges concessions.

19.3.4. Demurrage: MIAL had in their initial submission, stated that

*“Demurrage projected to reduce gradually expecting importers to clear consignments expeditiously.”*

19.3.5. CUTE Concession: MIAL had in their initial submission, stated that

*“This revenue is projected based on the contracts and estimated passengers.”*

19.4. MIAL had submitted the following on the rent and demurrage revenue, discussed in para 19.3.1 to 19.3.5 (submission dated 11.10.2011):

**Table 91: Summary of Rent and Demurrage Revenue submitted by MIAL**

Particulars (Rs in crs)	2009-10	2010-11	2011-12	2012-13	2013-14
Lease Rentals, License fee and Space Rent	50	83	66	74	82
Lounges	20	20	24	29	32
Demurrage	80	138	142	77	23
Total	150	241	232	180	137

19.5. The Authority had sought auditor certificates for historic values till FY 2011 and the bases of projections for remaining years of the control period. Accordingly, MIAL had furnished the auditor certificate for year-wise income from rent and services as under:

**Table 92: Auditor certificate for year-wise income from rent and services**

Particulars (Rs in millions)	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Land Rent & Lease	178	223	186	181	277	371
Hanger Rent	8	9	20	44	44	43
Terminal Building Rent	182	210	248	151	193	276
Lounges	-	124	219	205	201	224
Cargo Building Rent	125	132	166	172	365	175
Other Rental Income (Demurrage)	557	833	834	803	1381	1684
Total	1050	1531	1673	1556	2461	2773

19.6. MIAL had further submitted that the values certified in the auditor certificate are to be considered in the tariff model. Accordingly the tariff model was updated to reflect the values in the auditor certificate.

19.7. Further, the Authority had also sought from MIAL the basis for projection of non-aeronautical revenue for FY 13 and FY 14. In response MIAL had submitted the following:

19.7.1. Revenue from Land and Hangar: MIAL, vide their submission dated 31.07.2012, submitted that

*“Revenue from Land is bifurcated between two categories:*

*(a) Revenue from Private Parties having contractual escalations @ 7.5% pa*

*(b) Revenue from NACIL having no contractual escalations”*

19.7.2. MIAL also submitted the details of Revenue for FY 13 from various parties as under:-

**Table 93: Details of projected revenue from land submitted by MIAL**

Sl. No.	Description	FY 13		
		Total Area (sq.m.)	Annual License Fee amount (Rs in crs)	Avg Rent Rs per sq. m. per month
	Land lease			
1	NACIL and Cheffair	831,081	10.21	10.24
	Land lease – private			
1	Oil Companies	93,226	4.77	43
2	GSD Land, Flight Kitchen etc...	93,249	12.56	112
3	Porta Cabin	2,583	2.68	865
4	Access Road	3,738	0.57	126
5	Licensees who pay to AAI#	34,989	1.59	38
6	Licensees (legal cases)	320	-	-
7	Government	17,260	-	-

19.7.3. MIAL submitted a note for point no 5 in the table above along with the above details saying that

*“# It may be noted that AAI is disputing these amounts and not paying to MIAL since these leases are not transferred to MIAL. If it is finally decided that MIAL is not entitle to receive these rentals, we would request the Authority to true up the charges to this extent.”*

19.7.4. In respect of revenue from Hangar, MIAL submitted the details of various institutions being the source of such revenue (provided in the table below) and stated that revenue from Hangar for FY 13 is projected to increase @ 7.5% pa.

**Table 94: Summary of projected revenue from Hangar for FY13 submitted by MIAL**

Sl. No.	Name of the Party	Area in sq. m.	Rate per sq. m. p.m. (projected)	Amount per annum (in Rs crs)
1	Taj Air	3,172	207	0.79
2	Essar	2,646	207	0.66
3	Reliance Industries	2,701	207	0.67
4	Raymond Ltd	1,660	207	0.41
5	Air Works	3,102	317	1.18
6	Indamar	2,291	316	0.87
7	Jet Airways	11,850	207	2.94
8	Air India	4,389	44	0.23
9	Naval logistics	2,393	92	0.27
	Total	34,203	195	8.01

19.7.5. Revenue from NACIL: MIAL, vide their submission dated 31.07.2012, submitted that

*“Revenue per Sq mtr per month from Terminal building rent for NACIL has been calculated based on expected area to be given to NACIL and rate as per the contract. Details of area given to NACIL and its corresponding rates per sq mtr per month are as per the Annexure 6. It is expected that in case of new T2, NACIL would be given half of the existing area which it currently occupies in existing T2.”*

**19.8.** Revenue from Terminal Building Rent and Cargo Building Rent – MIAL had vide submission dated 31.07.2012, stated as under:

*“it has projected the revenue from Terminal building rent to be increased by 7.5% p.a. A sample agreement has been attached as Annexure 7. As per the agreement Common Area Maintenance (CAM) charges for FY 12 and FY 13 are as under:*

	License Fee per sq. m. per month	CAM per sq. m. per month
F Y12	75.00	1574.00
FY 13	80.63	1692.05

% increase in rate	7.5%	7.5%
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”

19.8.1. Similarly MIAL had envisaged that revenue from Cargo building rent to be increased by 7.5% p.a. and had submitted a sample agreement in support of the same. MIAL also submitted the details of space allocated for rent at the cargo building to various agencies. As per the agreement, Common Area Maintenance (CAM) charges for FY 12 and FY 13 are as under:

**Table 95: Basis for CAM charges submitted by MIAL for FY 12 and FY 13**

	<i>License Fee per sq. m. per month</i>	<i>CAM per sq. m. per month</i>
<i>F Y12</i>	<i>75.00</i>	<i>470.00</i>
<i>FY 13</i>	<i>80.63</i>	<i>505.68</i>
<i>% increase in rate</i>	<i>7.5%</i>	<i>7.5%</i>

**19.9.** Revenue from Other Rental Income (Demurrage) - MIAL had considered a reduction in the dwell time for clearance of cargo from their cargo terminals. The Authority had sought the basis for such a reduction. MIAL had vide letter dated July 31, 2012, stated as under:

*“MIAL has envisaged that dwell time for clearance of Cargo would decrease by 20% and 30% in FY 13 and FY 14 respectively due to increased efficiency in Cargo operations and faster clearance of Cargo by Customs. Further Customs has also introduced RMS (Risk Management System) under which goods of major importers are cleared in around 6-7 hours. In the month of June 2012, 68% of the cargo has been cleared under the RMS scheme. This has led to considerable reduction in dwell time.”*

**19.10.** MIAL had also submitted the basis for projection of concession revenues (letter dated 11.10.2011), which accrue to MIAL on account of concessions awarded for services including retail, food & beverage, catering, forex, ATM, IT & Communication, Car rental & hotel reservation, Duty free, Car parking as follows:

19.10.1. Retail Concessions -MIAL, in their submission dated 11.10.2011, stated that

*“The revenue from retail stalls in the airport is influenced by the locations under retail shops. The retail area is divided between*

*domestic and international terminals. The revenue per square meter is then calculated in the case of both domestic and international terminals separately for FY 11. This is expected to grow in line with inflation. Revenue per square meter so arrived at is multiplied with the projected retail area for each year of the control period, to arrive at the revenue projections for retail concessions.”*

19.10.2. Food and Beverage (F&B) Concessions – MIAL had in its initial submission, stated that

*“F&B caters primarily to the embarking passengers. Therefore, for the purpose of this projection, the revenue per embarking passenger is expected to grow in line with inflation. The revenue per embarking passenger is then multiplied with the total number of projected embarking passengers for that year to arrive at the revenue projections.”*

19.10.3. Catering Concessions – MIAL had, in its initial submission, stated that

*“This is dependent on the embarking passengers. No increase is expected in the revenue per embarking passenger under this head due to intense competition and fall in catering rates. Therefore, the total revenue from catering concessions is expected to increase in line with the growth in embarking passengers.”*

19.10.4. Forex Concessions: MIAL had, in its initial submission, stated that

*“The revenue from foreign exchange concession is directly related to international passenger traffic and projected to grow accordingly.”*

19.10.5. Automated Teller Machines (ATM) Concessions: MIAL had, in its initial submission, stated that

*“The revenue per ATM is expected to grow in line with contracts @ 12%. This along with the expected number of ATMs is used to arrive at the projection for revenue from ATMs. MIAL also submitted a sample agreement entered into by MIAL with the concessionaire.”*



19.10.6. IT and Communication Revenues: MIAL had, in its initial submission, stated that

*“This is projected based upon existing contracts. The revenue from communication is reduced in FY 12 based on renegotiated contract. After this, the revenue is expected to remain constant.”*

19.10.7. Car Rental and Hotel Reservation Concessions: MIAL had, in its initial submission, stated that

*“Only the disembarking passengers avail the car rental and hotel reservation facilities. The revenue per disembarking passenger is expected to grow in line with inflation, For the New Common User Terminal, the revenue from the 25 counters is expected to be Rs 3 lakhs per counter per month initially.”*

19.10.8. Duty Free Concession: MIAL had, in its initial submission, have submitted as under:

*“Duty free revenue is projected as per existing agreement. Additionally, the increase in revenue from new contracts to be entered into for New Common User Terminal is also considered once it is operational.”*

19.10.9. Advertising Concession – MIAL had, in its initial submission, stated that

*“The revenue per site is projected to increase 10% YoY. Additionally, the revenue from promotional spaces is based on the current revenue generation.”*

19.10.10. Car Parking Concession – MIAL had, in its initial submission, stated that the Monthly Minimum Guarantee (MMG) of Rs. 1.15 Crs is expected to continue till FY 2012-13. MIAL had submitted during discussions that after the development and operationalisation of multi-level car park, revenue from car parking will be in the form of revenue share from the selected concessionaire. Tentative date for commencement of operations of multi-level car park, as presented by MIAL, is September 2013.

19.10.11. **Ground Handling Concessions** – In respect of Ground Handling Concessions, MIAL had submitted that the Revenues from the Ground Handling Concessions have been considered as per existing agreements with the concessionaires subject to Minimum Annual Guarantee (MAO) or based on revenue share derived from revenue per ATM in FY 11 as the case may be, which is expected to grow annually at the rate of inflation i.e. 8.94% p.a.

19.10.12. **Fuel Concession** - In respect of Fuel Concession MIAL had submitted that:

*“The revenue from Fuel Concession has been projected based upon growth in ATM alongwith FY 11 rate/KI assumed to increase with WPI as per agreement with the Oil Companies (i.e. 7% for FY 12 and 5% p.a. thereafter). An application dated 28/09/2011 has already been filed before Honorable authority in terms of the order dated 17/08/2011 issued by Honorable AERA Appellate Tribunal for 7% increase in the rate of fuel concession fee loosely worded as Fuel Throughput Charge (FTC) w.e.f. 01/04/2011. Honorable Authority is requested to approve the revision in FTC for FY 12 as per the submissions made in the above letter at the earliest possible without linking the same to approval of MYTP.”*

19.10.13. MIAL had, in its initial submission dated 11.10.2011, submitted details of the following Concession revenues:

**Table 96: Summary of Concession revenues submitted by MIAL**

In Rs crs	FY10	FY11	FY12	FY13	FY14
Retail Licenses					
Food & Beverages	22	26	30	34	39
Catering	11	16	17	18	19
Retail Concession	11	25	29	34	62
Foreign Exchange & ATMs	23	27	28	29	31
Communication	21	38	35	36	24
Car rentals and Taxi service	5	7	8	9	16
Duty Free	61	46	37	41	69
Advertisement	36	46	51	56	66
Aircraft Refueling	73	80	90	97	105
Car parking	13	12	13	14	8
Ground Handling	27	39	49	44	45
Others	8	7	9	10	11
Total	311	369	396	422	495

19.11. Further, MIAL had also submitted the auditor certificate for year-wise income from rent and services as under:

**Table 97: Auditor certificate for year-wise income from rent and services**

In Rs Millions	FY07	FY08	FY09	FY10	FY11	FY12
Retail Licenses						
Food & Beverages	229	169	132	220	257	301
Flight Kitchen	-	7	33	105	162	228
Retail Concession	42	93	100	110	246	394
Foreign Exchange	106	132	177	213	243	345
Banking / ATM	18	10	15	22	26	46
Communication	43	78	116	205	378	365
Car rentals and Taxi service	23	24	34	53	68	88
Duty Free	185	235	746	605	457	458
Advertisement	180	390	518	357	460	564
Aircraft Refueling	69	936	699	732	800	829
Car parking	105	116	141	133	121	128
Ground Handling	124	166	256	269	394	528
Others	68	77	66	79	72	86
Total	1192	2433	3033	3103	3684	
Revenue from Non-transfer assets	30	39	54	48	51	57

19.12. MIAL had further submitted that the values certified by the auditor are different from the values submitted by MIAL in their earlier submission and that the values as per the auditor certificate are to be considered in the tariff model. The tariff model was updated to reflect the values in the auditor certificate.

19.13. Further, the Authority had sought from MIAL the basis for projection of non-aeronautical revenue for FY 13 and FY 14. In response, MIAL had vide submission dated 31.07.2012, provided revenue item wise bases of projections for FY 13 and FY 14, as presented below:

19.13.1. Growth in revenue of banks and ATMs - MIAL, submitted that *“The revenue per ATM is expected to grow in line with contracts @ 12%.”* MIAL also submitted a sample agreement entered into by MIAL with the concessionaire.

19.13.2. Revenue from Ground Handling Concession - MIAL submitted that

*“Major revenue from Ground Handling concession are received from Cambata and Celebi details of which are as follows:*

Name of the concessionaire	MAG amount	Annual Guaranteed Fee (Additional)	Total
Cambata	15	1	16

<i>Celebi</i>	15	1	16
	30	2	32

MIAL also submitted that relevant extract of the contract entered into with Cambata and Celebi.

19.13.3. Revenue from Fuel Throughput Charges: MIAL, vide their submission dated 24.07.2012, stated as under,

*“MIAL had taken 7%, 6.54% and 6.54% increase in FY 12, FY 13 and FY 14 respectively for FTC, based on ceiling and floor level of agreed escalations with oil companies as per contract based upon WPI forecast. Since FY 12 has already elapsed without any increase in FTC rates, pending approval of AERA, MIAL has updated FY 12 FTC revenue based on actuals and taken arrears upto FY 12 to FY 13 (amounting to Rs. 5.81 crs.). MIAL has included the increased charges retrospectively from FY 12 in the MYTP since the increase is as per signed agreement with the oil companies and increase is pending only for the approval of the Authority.*

*MIAL had taken escalations in rate of 7%, 6.54% and 6.54% in FY 12, FY 13 and FY 14 respectively for FTC. There is ceiling of 7% and floor level of 5% agreed escalations with oil companies. Since the actual WPI for FY 12 is above these limits i.e. 8.96%, we request the Authority that the same should be considered for escalations for FY 13 and FY 14 as per agreement. MIAL has carried out this correction.”*

*“In addition, MIAL have planned to concession out the proposed New Integrated Fuel Farm Facility and Into-Plane Services to a Joint Venture Company with three PSU oil companies, in which MIAL would have 25% stake. As all these future concessions are presently being planned with related financials and concession terms are being worked out, it shall not be possible to give the relevant cost and revenue details at this stage. However, since Hon'ble Authority has sent a format for providing information on various concessions*

*vide its letter dated 03.11.2011, the details to the extent applicable/ available shall be forwarded to Hon'ble Authority soon."*

**19.14.** As per MIAL's submission, there are some revenue items, which are currently under Minimum Annual Guarantee provisions of the respective contracts. The Authority sought from MIAL reasons for considering that the provisions related to MAG will continue to apply for these revenue items and not the provisions on revenue share based on concession fee.

**19.15.** In response to the same, MIAL had responded with revenue item wise details of projected revenue share and projected MAG amounts. MIAL submitted that

*"A comparison has been made for earnings from MAG and revenue share for Revenue from Duty free, Ground Handling, Perishable Cargo and Domestic cargo. Revenue from MAG is envisaged to be higher as compared to Revenue share."*

**Observations in respect of treatment of revenues from Revenue Share Assets (Non-Aeronautical Revenue)**

**19.16.** The Authority observed that MIAL had considered the following revenue items under the non-aeronautical revenues in its MYTP submission:

**Table 98: Treatment of revenues from Revenue Share Assets proposed by MIAL**

Revenue head	Treatment
Retail Licenses Revenue	
F&B	Non – Aero
Flight Kitchen	Non – Aero
Retail concession	Non – Aero
Foreign exchange, Banks & ATM	
Bank/ATM	Non – Aero
Forex Revenue	Non – Aero
Communication	
DAS & IT Related	Non – Aero
CUTE Concession (SITA)	Non – Aero
Car Rentals & Taxi Service	Non – Aero
Duty Free Shops	Non – Aero
Hotel in T1C	Non – Aero
Advertising Income	Non – Aero
Car Parking	Non – Aero
Ground Handling	Non - Aero
Aircraft refueling	Non - Aero
Others	Non - Aero
Rent & Services Revenue	
Land Rent & Lease	Non - Aero
Hanger Rent	Non - Aero

Terminal Bld Rent	Non - Aero
Lounges	Non - Aero
Other Rental Incomes (Demurrage)	Non - Aero
Cargo Building Rent	Non - Aero
CUTE Counter Charges	Non - Aero
Cargo Revenue	
Domestic cargo	Non - Aero
Terminal charges	Non - Aero
Destuffing	Non - Aero
Palatization	Non - Aero
X-ray	Non - Aero
Carting, packing and others	Non - Aero
Perishable Cargo	Non - Aero
Courier Revenue	Non - Aero

**19.17.** The Authority had examined MIAL's submissions on the revenue heads in the table above in terms of the nature of revenue accruing to MIAL in respect of these revenue heads. Authority's observations on the treatment of revenue from Cargo, Ground Handling, Fuel Throughput Charges and CUTE Counter Charges have been discussed respectively in para 20, 21, 22 and 23. Other than these revenue heads, all other revenue heads have been considered as non-aeronautical revenue.

**Observations on revenue from Demurrage**

**19.18.** The Authority observed that MIAL had filed an appeal challenging the jurisdiction of the Authority in respect of determination of demurrage charges. This appeal has since been disposed of as withdrawn by the Hon'ble Tribunal vide Order dated 05.10.2012, wherein it has been stated:

*"After the two senior advocates had argued the matter extensively, the learned counsel for the appellant seeks to withdraw the matter, in view of the stand taken by Shri Nanda appearing for AERA (on instructions from AERA). The stand is that AERA is going to pass a final tariff determination order shortly by the end of November, 2012. Under the circumstances, he feels that there would be no point in our considering the ad-hoc increase in tariff. He also says that all the questions now raised would be kept open while considering the final determination of tariff.*

*Accordingly, the appeal is allowed to be withdrawn with the liberty that all the questions herein could be agitated at the stage of final determination*

*of tariff. In the meanwhile, the order dated 05.01.2011 on the issue of demurrage shall remain in force.*

*In view of this, the appeal stands disposed of as withdrawn.”*

**19.19.** The Authority had noted the above and further observed that the income classified by MIAL in their submission as Other Rental Incomes (Demurrage) is on account of demurrage charges being levied by MIAL on the cargo being processed in their domestic and international cargo terminal. MIAL had in their submission considered that since this income is of the nature of a rent being levied on the cargo, which occupies space in its cargo terminals, this income has been considered as part of the Rents & Services income.

**19.20.** The Authority noted that the definition of “Demurrage” as per the Airport Authority of India (Storage and processing of goods) Regulations, 1993 (hereinafter referred to as “the Regulations”), S. 2.2 (n) is as under:-

*“2.2(n) “Demurrage” means the rate or amount of charges payable to the Authority by a shipper or consignee or carrier or agent or passenger for utilizing storage facility at Cargo Terminal, for storage of cargo, goods, unaccompanied baggage, stores, courier bags, express parcels, postal mail, etc. for extended period beyond the stipulated free storage period for clearance or removal from the Cargo Terminal of the Activity or of the Customs at the Cargo Terminal;”*

**19.21.** The Authority noted from the above definition that Demurrage is charged for utilisation of storage facility at cargo terminal, for storage of cargo, goods, unaccompanied baggage, stores, courier bags, express parcels, postal mail, etc. or in other words, Demurrage is charged for the Storage of Goods at the Cargo facilities extended by such service provider beyond the free period. Though the charged rate is higher after the expiry of the prescribed period, if the cargo is not moved out of the cargo facility area, nonetheless, the basic character of the demurrages remains that of a charge for utilisation of Cargo Facilities at an airport.

**19.22.** Any service provided for the cargo facility provided at an airport is an Aeronautical Service and hence the Authority is required under the AERA Act to determine charges (including demurrage charges) for such aeronautical services – by whatever name they may be called. As per the AERA Act, demurrage should come within the ambit of aeronautical

service. Merely calling it a penal charge does not make it different from the underlying service being rendered.

**19.23.** In view of the above, the Authority had proposed that revenue accruing to MIAL from Demurrage (which MIAL had classified under Other Rental Incomes) should be clubbed with revenue from Cargo services. In other words, the nature of the service giving rise to the demurrage charge is also an aeronautical service on par with cargo service. As regards the classification of the revenue on account of this service accruing to the Airport Operator (based on who is providing this service), the Authority has separately discussed the treatment of revenue from cargo services in para 20.

**19.24.** *The Authority had proposed that demurrage charges are towards provision of aeronautical service namely, cargo facility service and hence tariff for the same has to be determined by the Authority under Section 13 (1) (a) of the Act.*

**19.25.** The basis of projections for non-aeronautical revenues followed by MIAL in their MYTP submission for the current control period is presented below:

**Table 99: Basis of Projections for non-aeronautical revenues by MIAL**

Head	MIAL Basis
Retail Licenses Revenue	
F&B	Total Embarking Passenger Growth factor – CPI-IW
Flight Kitchen	Total Embarking Passenger
Retail concession	Growth factor – CPI-IW Change in Area
Foreign exchange, Banks & ATM	
Bank/ATM	Growth factor – 12% (Contractual)
Forex Revenue	No Growth factor Total International Passenger
Communication	
DAS & IT Related	Hard Coded Value based on contracts
CUTE Counter Charges	Rate fixed as per contract Total Embarking passenger
Car Rentals & Taxi Service	Total Disembarking Passenger Growth factor – CPI-IW
Duty Free Shops	MAG
Advertising Income	Growth factor – 10% No of sites
Car Parking	Hard Coded Numbers as per the contracts
Ground Handling	MAG Other revenue is increased with CPI-IW
Others	Total passenger



	Growth factor – CPI-IW
FTC	Total ATM Growth Factor – WPI (as per contract)
Rent & Services Revenue	
Land Rent & Lease	Land Leases (Private) Rent Growth factor – 7.5%  Land Leases (Govt.) Rent Growth factor – 0%
Hanger Rent	Rent Growth factor – 7.5%
Terminal Bld Rent	Rent Growth factor – 7.5%
Lounges	Growth Factor – CPI-IW
Other Rental Incomes (Demurrage)	Growth Factor – WPI
Cargo Bld Rent	Rent Growth factor – 7.5%
Cargo Revenue	
Domestic cargo	Agreement with CONCOR
International cargo	As per MIAL RFP
Perishable Cargo	Agreement with CSC
Courier Revenue	Growth Factor – WPI

**19.26.** The Authority had noted that MIAL have considered the following factors in projecting the non-aeronautical revenues under respective heads:

- Inflationary increase
- On account of increase in number of passengers
- Contract / Agreement with concessionaires
- Increase in the underlying factors such as number of sites for advertising and change in area for retail concession

**19.27.** The Authority had noted that the above factors, as considered by MIAL, do not include real increase in the per unit non-aeronautical tariff. MIAL, during the discussions, mentioned that MIAL do not have a basis to consider a real increase in its non-aeronautical revenue and hence they have considered the inflationary increase not the real increase. The Authority has noted this comment.

**19.28.** The Authority was of the view that in the normal course of business, a real increase in revenue would reflect the ability of the operator to enhance the price of its goods in view of the prevalent market conditions including prevalent penetration levels and ability to enhance the same, traffic movement and demand and supply side factors.

**19.29.** Based on the above, the Authority had proposed that it will consider the basis of projections used by MIAL for the non-aeronautical revenues, as presented in the paras

above, in the expectation that the current levels of non-aeronautical revenues will serve as a floor level of such revenues and that in future, this floor level will be surpassed.

**19.30.** As regards projection of non-aeronautical revenue at CSIA over the remaining part of the control period, the Authority deliberated on the appropriate methodology, if any, for forecasting the non-aeronautical revenue. It, however, noted that the past growth of non-aeronautical revenue may not serve either as a benchmark or guide in making the forecast. This is because the new terminal at CSIA is likely to have a substantially different business context.

**19.31.** Furthermore, the expansion/modernisation of CSIA is not yet complete. After completion of the terminal building at CSIA, MIAL would be in a position to grant necessary concessions to vendors. The amount of non-aeronautical revenues that MIAL may be able to obtain at CSIA is, therefore, difficult to estimate.

**19.32.** Having regard to these considerations, the Authority considered that for the first control period it may consider the forecast of non-aeronautical revenue provided by MIAL as indicated above for determination of tariffs and true up the actual receipts from non-aeronautical revenue while determining tariffs for the next control period.

**19.33. *The Authority had proposed to retain the forecasts as proposed in the Non-Aeronautical Revenue.***

**19.34. *The Authority also proposed to true-up the actual non-aeronautical revenue at the time of tariff determination for the next control period subject to the projections by MIAL in respect of non-aeronautical revenue being treated as minimum / floor for the current control period.***

#### ***Revenue from Non-Transfer Assets***

**19.35.** In their submission, MIAL had not included gross revenue from Non-Transfer Assets (assets other than Aeronautical and Non Aeronautical) towards cross-subsidisation of aeronautical costs while determining the target revenue.

**19.36.** The Authority had noted that MIAL have termed the Non-Transfer Assets as “*Other than Revenue Share Assets*”. MIAL had submitted that revenue from other revenue share

assets have not been used for subsidisation of aeronautical revenue (submission dated 04.09.2012). MIAL stated as under,

*“In MYTP model, revenue from Other than Revenue Share Assets is subsumed in the “Revenue from Revenue Share Assets”. Therefore as in the model, the same is to be excluded from the “Revenue from Revenue Share Assets” and only the net revenue (i.e. Revenue from Revenue Share Assets less Revenue from Other than Revenue Share Assets) should be used for subsidization of Aeronautical revenue.”*

19.37. In response to the Authority’s clarification seeking the basis for projection of revenue from other than revenue sharing assets, MIAL had submitted the following details under three heads:

- Schedule 6 of OMDA, Part II Entry No 15 – Flight Catering Services
- Schedule 6 of OMDA, Part II Entry No 18 – Hotels & Motels
- Schedule 6 of OMDA, Part II Entry No 29 – Vehicle Fuelling Services

**Table 100: Revenue from Other than revenue sharing assets submitted by MIAL**

Rs in crs				Projection	
Revenue head / name of the party	Revenue head	Description of the Area	Area in sq.m.	FY 13	FY 14
<b>Schedule 6 of OMDA, Part II Entry No 15 - Flight Catering Services</b>					
Ambassador Flight Catering	Land Rent	Land near T2	15,000	0.98	1.05
Oberoi Flight Catering	Land Rent	Land near T2	22,000	1.44	1.55
Cheffair	Land Rent	Land for Flight catering	14,000	0.39	0.47
Indian Hotel (Taj Air Caterers)	Land Rent	Access Road for Flight catering	2,955	0.37	0.40
Indian Hotel (Taj Air Caterers)	Land Rent	Access Road for Flight catering	887	0.22	0.24
<b>Schedule 6 of OMDA, Part II Entry No 18 - Hotels &amp; Motels</b>					
Batra Hospitality	Land Rent	Land near T1	30,047	0.85	0.85
Batra Hospitality	F&B	Revenue share on land		1.20	1.20
Asian Hotel	Land Rent	Land for beautification	415	0.05	0.05
Bharat Hotel	Land Rent	Approach road to hotel	558	0.14	0.15
<b>Schedule 6 of OMDA, Part II Entry No 29 - Vehicle fuelling services</b>					
IOCL	Land Rent	Retail petrol outlet near T2	2,700	0.18	0.20
IOCL	Land Rent	Retail petrol outlet near T1	1,170	0.08	0.09
IOCL	Land Rent	Retail petrol outlet near Cargo	2,600	0.18	0.19
Total			92,622	6.08	6.43

**19.38.** The Authority noted that in terms of Schedule 1 of the SSA, 30% of the gross revenue generated by MIAL from the Revenue Share Assets is to be used to subsidise the Target Revenue. The Revenue Share Assets is defined in the SSA as under,

*““Revenue Share Assets” shall mean (a) Non-Aeronautical Assets; and (b) assets required for provision of aeronautical related services arising at the Airport and not considered in revenues from Non-Aeronautical Assets (e.g. Public admission fee etc.)”.*

**19.39.** The Authority, further, had reference to OMDA for the definition of Non-transfer assets. The definition, provided in Section 1.1 of OMDA, is as follows,

*“Non-Transfer Assets” shall mean all assets required or necessary for the performance of Non-Aeronautical Services as listed in Part II of Schedule 6 hereof as located at the Airport Site (irrespective of whether they are owned by the JVC or any third Entity), provided the same are not Non-Aeronautical Assets.”*

**19.40.** The above definition provides that Non-Transfer Assets are not Non-Aeronautical Assets and hence the revenue from Non-Transfer Assets does not form part of Revenue Share Assets and thus are not to be considered for subsidisation of aeronautical costs. Hence the submission of MIAL on this count appeared to be acceptable.

**19.41. *The Authority had proposed to exclude the gross revenue from Non-Transfer Assets towards cross-subsidisation of aeronautical cost while determining the target revenue.***

**b Stakeholder comments on Issues pertaining to Revenue from Revenue from Revenue Share Assets**

**19.42.** FIA in its submission also stated that

*“While reviewing forecasts provided by MIAL, in the CP No.22/2012-13, Authority has noted that:*

*Revenue increase as considered by MIAL, does not include real increase in the per unit non-aeronautical tariff and only inflationary increase has been considered.*

*Further, past growth of non-aeronautical revenue may not serve either as a benchmark or guide in making the forecast. This is because the new terminal at CSI Airport is likely to have a substantially different business model.”*

**19.43.** FIA further stated that considering forecast provided by MIAL is not accurate owing to aforementioned gaps. FIA further stated that the Authority should reasonably estimate or appoint a consultant to determine revenue from new premises as it may not be appropriate to burden the airlines and passengers with higher tariff in this control period and provide relief for the same in subsequent period.

**19.44.** ACI proposed that either no true up should be done or complete true up should be done for the cross-subsidization as only upward true up of revenues would be injustice to the airport operator

**19.45.** DIAL in their submission stated that there should not be any true up in case of non-aeronautical revenue

**19.46.** IATA agrees that truing up for the next control period and setting MIAL's forecast as the floor would be an appropriate way to adjust for the forecast of non-aeronautical revenue

**19.47.** Referring to the agreement between MIAL and HDIL in respect of slum rehabilitation, APAI felt that the land made available by slum rehabilitation may help in generating substantial revenue for MIAL. APAI on this issue said *"More clarity is required with regard to the agreement entered into with HDIL for slum rehabilitation project wherein substantial revenue will be generated by MIAL."*

**19.48.** APAO is of the view that no true-up of non-aeronautical revenue should be done provided realistic forecasts of non-aeronautical revenue are made by the airport operator / Authority. This approach will help provide the right incentive for investors in airport assets.

**19.49.** British Airways stated that

*"Similarly, the determination of what is deemed to be aeronautical and non-aeronautical revenue is a fundamental building block that will lead to the proper determination of the charges. British Airways would consider the revenue generated from (i) cargo services, (ii) ground handling, (iii) fuel throughput, and, (iv) CUTE counter charges as aeronautical revenue. This*

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*should be the case regardless of whether the airport provides the service itself or the service is provided through the auspices of a concessionaire. Clearly, where the airport has a monopolistic position, there is a requirement for you, as the economic regulator to act in lieu of the normal competitive forces that would otherwise regulate prices.”*

**c MIAL’s Response to Stakeholder comments on Issues pertaining to Revenue from Revenue Share Assets**

**19.50.** MIAL has responded to IATA comment and stated as under,

*“The projection of non-aeronautical revenue submitted by MIAL to the Authority is primarily based on the past trends and projected inflation.*

*Stakeholders would derive assurance from the fact that the Shared Till approach as per the SSA encourages growth in non-aeronautical revenues for the Airport Operator. There is a natural incentive for MIAL to strive to increase, and not stifle, its non-aeronautical revenues. Given the safeguard, it is not necessary to use projections of non-aeronautical revenue submitted by MIAL as a minimum / floor. It will be against the principle of natural justice.*

*MIAL, in its response to the Consultation Paper, has requested the Authority not to restrict true-up of the non-aeronautical revenue only when the actual non-aeronautical revenues are above the minimum/floor.*

*However, if the Authority decides to true-up the actual non-aeronautical revenues, it should be done consistently for both increase or decrease compared to the projections, considering cumulative non-aeronautical revenue, and not the projections for individual revenue heads under non-aeronautical activities.”*

**d MIAL Comments on Issues pertaining to Revenue from Revenue from Revenue Share Assets**

**19.51.** MIAL commented on the issue, as under,

*“The projection of non-aeronautical revenue submitted by MIAL to the Authority is primarily based on the past trends and projected inflation.*

*The Authority would derive assurance from the fact that the Shared Till approach as per the SSA encourages growth in non-aeronautical revenues for the Airport Operator. There is a natural incentive for MIAL to strive to increase, and not stifle, its nonaeronautical revenues. Given the safeguard, it is not necessary to use projections of non-aeronautical revenue submitted by MIAL as a minimum / floor.*

**19.52.** On the issue of Demurrage income, MIAL stated that

*“Demurrage being in the nature of a penalty is not a service. It is a settled law that demurrage is a charge levied on goods which is imposed in order to (i) facilitate smooth movement of goods, (ii) prevent unduly long retention of goods, and (iii) ensure that there is no congestion at the port/airport.*

*Section 2(a)(v) of AERA Act defines aeronautical service as "means any service provided for the cargo facility at an airport". The usage of the words "means" and "for" in the definition indicates that the definition of "aeronautical service" must be construed restrictively, whereas it is respectfully submitted that AERA has artificially stretched its meaning by including demurrage.*

*Demurrage is a charge levied on goods not cleared from the airport premises within the free period, and such a charge is not levied in relation to cargo related services. Therefore, demurrage is charged for goods which are not cleared from the airport premises and there is no element of any service being provided by the airport operator. Accordingly, the levy of demurrage is independent of any cargo services provided by MIAL and the charges imposed for the same.”*

**19.53.** MIAL further requested the Authority to not link income from demurrage with cargo facility service or aeronautical service. Demurrage charges should be considered as non-aeronautical revenue outside the regulatory purview of the Authority.

**e Authority’s examination of Issues pertaining to Revenue from Revenue Share Assets**

**19.54.** The Authority has examined the comments received from the stakeholders and MIAL’s response to these comments.

**19.55.** The Authority, in its Consultation Paper 22/2012-13 dated 11.10.2012 had given its reasons for the methodology, it proposes, to true up the non-Aeronautical Revenue. Having regard to the fact that the concessions are yet to be awarded in the new terminal building of CSIA, the Authority had also proposed to consider the figure of non-aeronautical revenue as proposed by MIAL as a floor. The Authority in its Consultation Paper 16 / 2012-13 dated 28.09.2012 in respect of Chennai International Airport had an occasion to consider a similar issue as the terminal building for Chennai International Airport was under construction and concessions for non-aeronautical activities were not awarded. The Authority, in case of Chennai International Airport, had recognized the difficulty in projection of non-aeronautical on account of difference in sizes of existing and new terminal and accordingly had proposed a true-up of the non-aeronautical revenues for first Control Period, however, without considering the non-aeronautical revenue as proposed by Chennai Airport as floor.

**19.56.** The Authority feels that the case of CSI Airport, Mumbai is a similar case as that Chennai International Airport as the construction of the new terminal is under way and the concessions for the non-aeronautical activities for the new terminal has not been awarded yet. Further the determination of area, to be considered under commercial / non-aeronautical activities, is yet to be finalized. The Authority thus feels that the case of CSI Airport, Mumbai is a similar case to that of Chennai International Airport and hence a similar approach as that followed in case of Chennai International Airport, can be followed.

**19.57.** The Authority, therefore, decides to retain the forecasts as proposed by MIAL in the Non-Aeronautical Revenue for the current Control Period. It also notes that the past trend of the non-aeronautical revenue may not be an appropriate factor to estimate non-aeronautical revenue in future because a new terminal is being put in place, hence it has decided to true-up the actual Non-Aeronautical Revenue at the time of tariff determination for the next Control Period. However, once the terminal building is in place in the next Control Period, the Authority may reckon the level of actual non-aeronautical revenue in the current Control Period as a floor for the next Control Period.

**19.58.** Regarding the issue of income from demurrage, it is observed that MIAL has referred to the definition of "aeronautical service". MIAL has stated that the usage of terms "means" and "for" in the definition indicate that this definition must be "construed restrictively". In this regard, the Authority referred to the definition of aeronautical service to examine



whether this definition is a restrictive one or not. It has observed that the said definition reads as under:

*“Aeronautical service means any service provided for the cargo facility at an airport [Section 2(a)(v) of the AERA Act].”*

**19.59.** This definition stipulates that *“any service provided for cargo facility at an airport”* will be an aeronautical service. In a definition, to have a true and complete interpretation, all the phrases contained therein have to be read and no phrase thereof should be ignored.

**19.60.** As per “Words and phrases legally defined” (4<sup>th</sup> Edition, Lexis Nexis) “any” is “a word with very wide meaning and prima-facie the use of it excludes limitation”. It further states that “any” is a “word which ordinarily excludes limitation or qualification and which should be given as wide a construction as possible”. Further “Supreme Courts words and phrases by Surendra Malik and Sumeet Malik” states that “any” has the following meaning “some; one of many; an indefinite number”.

**19.61.** In the definition of aeronautical services, “any” qualifies the phrase “service provided”. Thus, “any service provided” would need to be given a wide and unrestricted meaning.

**19.62.** Thereafter, this clause, i.e., “any service provided” is qualified by “for the cargo facility at an airport”. This qualification of “any service provided” is in respect of “for the cargo facility at an airport”. As per Supreme Court Words & Phrases by Surendra Malik & Sumeet Malik *““for” has many shades of meaning. It connotes the end with reference to which anything is done”*. In such a case an interpretation is possible that “any service provided for” include even the provision of any land, equipment or infrastructure also – if the same is provided for cargo facility by a person at the airport. Thus, in case, the airport operator provides any infrastructure or equipment etc. for cargo facility, then this would also qualify to be treated as an aeronautical service under Section 2(a)(v) of the AERA Act. This implies that revenue accruing to the airport operator on account of such cargo service will also qualify to be aeronautical revenue in the hands of the airport operator.

**19.63.** However, as stated hereinabove, the Authority has interpreted this definition to mean that if a particular service (cargo service in the instant case) is provided by an airport operator himself, only then the revenue accruing to it from this service will be treated as aeronautical revenue in his hands. In case, the provision of cargo service is outsourced by

the airport operator to a third party independent service provider (ISP), then the rental/revenue share/royalty etc. accruing to the airport operator from such third party ISP will be treated as non-aeronautical revenue in his hands.

**19.64.** Thus, just because the phrases “means” and “for” appear in the definition of aeronautical service, this definition does not become restrictive. Instead the definition when examined in its entirety can also be construed to be a definition with wide unlimited and unrestricted scope.

**19.65.** In view of above, the Authority is unable to accept MIAL’s contention that the definition of aeronautical service under Section 2(a)(v) of the AERA Act is restrictive.

**19.66.** As regards MIAL’s comment on the issue of revenue from demurrage, the Authority has already examined this issue Para 19.20 Supra. The Authority has made clear therein that the demurrage is defined in the Airport Authority of India (Storage and processing of goods) Regulations, 1993 as *“the rate or amount of charges payable to the Authority by a shipper or consignee or carrier or agent or passenger for utilizing storage facility at Cargo Terminal, for storage of cargo, goods, unaccompanied baggage, stores, courier bags, express parcels, postal mail, etc. for extended period beyond the stipulated free storage period for clearance or removal from the Cargo Terminal of the Activity or of the Customs at the Cargo Terminal;”* MIAL has sought to give a different and restrictive interpretation to the definition of cargo service under the AERA Act. The Authority does not find any warrant for MIAL’s interpretation. It appears that demurrage forms half of the revenue from cargo service. The treatment of revenue from cargo services (aeronautical revenue or non-aeronautical revenue) on which the Authority has calculated the X-factor is already explained in detail in Para 20, though in the instant case, the Authority has calculated X-factor as if this revenue is non-aeronautical (though as mentioned in 20.11 below supra the Authority’s own analysis and interpretation indicated otherwise). MIAL appears to give another reason to take demurrage out of the revenue from cargo service in accordance with its reading of the AERA Act. The correct interpretation of the nature of demurrage in accordance with both the AERA Act read with AAI Regulations is given below.

**19.67.** The Authority observed that as discussed above, “any” service provided “for” the cargo facility at an airport is an aeronautical service. It has also clarified that use of the word “any” takes out any likely restriction as has been attempted to be put by MIAL. As regards

the nature of the revenue from the cargo service, the Authority has already given its detailed comments and analysis in Para.... The word “demurrage” is not defined in the AERA Act. It has however been defined in the Airport Authority of India (Storage and processing of goods) Regulations, 1993. It is therefore not open to attach any other meaning to the word ‘demurrage’ than what is contemplated in the Airport Authority of India (Storage and processing of goods) Regulations, 1993 according to which demurrage is *“the rate or amount of charges payable to the Authority by a shipper or consignee or carrier or agent or passenger for utilizing storage facility at Cargo Terminal, for storage of cargo, goods, unaccompanied baggage, stores, courier bags, express parcels, postal mail, etc. for extended period beyond the stipulated free storage period for clearance or removal from the Cargo Terminal of the Activity or of the Customs at the Cargo Terminal;”*. The Airport Authority of India (Storage and processing of goods) Regulations, 1993 therefore regard demurrage as a nothing but an additional charge for *“utilizing storage facility at Cargo Terminal, for storage of cargo, goods, unaccompanied baggage, stores, courier bags, express parcels, postal mail, etc. for extended period beyond the stipulated free storage period for clearance or removal from the Cargo Terminal of the Activity or of the Customs at the Cargo Terminal;”*. The Authority therefore reiterates its stand to include demurrage revenue as part of revenue from cargo services.

**19.68.** Further, regarding the contention that *“demurrage is levied on goods which are not cleared from the airport premises and there is no element of any service being provided by the airport operator”*, it is observed that in case the goods are not removed from the premises, they qualify to be called – imported/export goods (as the case may be) and they continue to be warehoused in the import/export warehouse – availing the warehousing facilities. Hence, the Authority is unable to accept that no service is being provided by the cargo service provider to such goods – just because they happen to have exceeded the free warehousing period. Instead, such goods continue to avail of services in the warehouse as any other goods and hence, the charges levied / collected for over-stayal of goods beyond free period – by whatever name be called (called as demurrage in the instant case), is also solely and only in respect of such services being provided by the cargo service provider (in the instant case, MIAL). Hence, demurrage is a charge which is a part of charges towards cargo service.

**Decision No. XVI. Regarding Revenue from Revenue Share Assets**

**XVI.a. The Authority decides to retain the Non-Aeronautical Revenue forecasts as proposed by MIAL.**

**XVI.b. The Authority decides that demurrage charges are integral part of charges for provision of aeronautical service namely, cargo facility service, hence it is an aeronautical charge and is to be determined by the Authority under Section 13 (1) (a) of the AERA Act.**

**XVI.c. The Authority decides to exclude the gross revenue from Non-Transfer Assets towards cross-subsidisation of aeronautical cost while determining the target revenue.**

**Truing Up: 7. Correction / Truing up for Revenue from Revenue Share Assets**

**7.a. The Authority also decides to true-up the actual Non-Aeronautical Revenue at the time of tariff determination for the next Control Period. However, once the terminal building is completed in the beginning of the next Control Period, the Authority may reckon the level of actual non-aeronautical revenue in the current Control Period as a floor for the next Control Period.**

## 20. Treatment of revenue from Cargo Services

### a Authority's position on Issues pertaining to Treatment of revenue from Cargo Services in the Consultation Paper

20.1. MIAL had considered cargo as a non-aeronautical service and had submitted as under (submission dated 11.10.2011):

*"Aeronautical Services and Non-Aeronautical Services are defined under OMDA and the same definitions have been used for the purpose of classification of services. Further, OMDA provides detailed list of various services and facilities that would form part of the Aeronautical Services and Non-Aeronautical Services in Schedule 5 and Schedule 6 respectively." MIAL have further submitted that "MIAL for the purpose of this filing, has adopted the asset by asset approach where in assets are identified as Aeronautical and Non-Aeronautical based on the provisions of OMDA and in case of common assets they have been allocated based on the approach described below. While the AERA Act defines the Aeronautical Services to include Cargo Handling, the same is explicitly included in Non Aeronautical Services under schedule 6 of OMDA. Therefore, for the purposes of calculating Aeronautical Charges as per SSA, the same has been considered as a Non Aeronautical Service."*

20.2. MIAL also submitted the following details on the cargo revenue.

*"Cargo revenue has been projected based on yield per ton for each category of charges in FY 2011. Increase in cargo tariff has been considered in December 2011, April 2012 and April 2013 based on 5 year CAGR of WPI of 6.54%."*

20.3. MIAL submitted the auditor certificates on cargo income till FY 2012.

**Table 101: Auditor certificate on revenue from cargo services**

Cargo Income (in Rs mn)	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12
Terminal Charges	518	679	684	769	949	984
Destuffing	82	102	125	128	163	163
Palatisation	2	2	15	33	51	79
X-Ray	72	87	113	119	152	164
Other Cargo Income	15	28	43	70	85	89
Domestic Cargo Handling	-	-	-	1	60	107
Courier	-	-	-	85	79	94

**20.4.** Further MIAL had, vide submission dated 26.06.2012, stated that they have finalised concessionaires for outsourcing the Domestic cargo operations by July, 2012 and that the International cargo is also expected to be given out on concession from July 2012. MIAL submitted a revised tariff model to reflect the change in date of outsourcing of Domestic and International Cargo operations. In their submission dated 24.07.2012, MIAL had submitted as under:

*“Outsourcing of Cargo Operations*

*a) Domestic Cargo*

*The Company had invited Bids for Santacruz Air Cargo Terminal (SACT) Concession for a period of 10 years comprising of handling of domestic cargo and export perishable cargo. Three Bids were received from the qualified Bidders, viz. (1) Container Corporation of India Ltd. (CONCOR), (2) Consortium of Celebi Hava Servisi A.S. and NAS Aviation Services India Pvt. Ltd. (Celebi) and (3) Consortium of WFS Global Holding and Bird Consultancy Services Pvt. Ltd. (WFS-Bird). CONCOR emerged as the highest Bidder. The Revenue Share percentage payable by the concessioner shall be 42% and MAG shall be Rs. 7 Crs. p.a. subject to escalation of 5% per annum for each financial year. Commencement date for the same is expected to be 1st September 2012. Actual revenue from handling of domestic cargo by MIAL for the first quarter of FY 13 was Rs. 2.76 Crs.*

*b) International Cargo*

*Out of the six applicants who participated in the RFQ process, the following five applicants were found to be eligible for issue of RFP:*

- 1. Consortium of WFS Global Holding and Bird Consultancy Services Pvt. Ltd.*
- 2. Celebi Hava Servisi A.S.*
- 3. Cargo Service Centre India Pvt. Ltd.*
- 4. Menzies Aviation PLC*
- 5. Container Corporation of India Ltd.*

Accordingly, RFP was issued to the above applicants on March 2, 2012. Based on the queries/requests from Bidders for ensuring viability of the project, amendments and clarifications were issued pursuant to the RFP. The last date for submission of Bids was 31st May 2012. MIAL is in process of evaluating the bids received and award concession for International cargo.”

20.5. MIAL also submitted the details related to expenses and head count for cargo operations, which are as under:

a) Expenses related to Cargo handling

**Table 102: Summary of expenses related to Cargo handling submitted by MIAL**

In Rs. Crs.)	FY 10	FY 11	FY 12	Apr 12 - Jun 12
Employee Cost	5.04	7.45	10.40	3.34
Repair & Maintenance Expense	1.65	1.36	3.30	1.46
Advertisement Expense	0.03	0.03	0.20	0.02
Administrative expenses	1.82	2.70	7.43	2.54
Insurance Expense	0.25	0.23	-	
Operating Expenditure	12.93	16.16	20.47	5.57
Rent, Rates and Taxes	-	-	0.06	0.03
Consumable Spares	-	-	0.21	0.09
Total	21.72	27.92	42.06	13.05

b) Head Count

Auditor’s certificate (in original) for the Head Count for Cargo Operations is as follows:

	FY 10	FY 11	FY 12
Head Count (Nos)	81	114	149

20.6. MIAL had also submitted details of cargo assets as under, vide its submission dated 08.08.2012:

1. Details of Fixed Assets- Cargo

Authority has asked for year-wise details of assets capitalised for Cargo Operations: Details of Fixed Assets capitalised for Cargo as on FY 10 (cumulative upto March 10) are as under:

Assets Class	Gross Block (Rs Crs.)			Depreciation (Rs Crs.)			Net Block (Rs Crs.) as at 31.03.2010
	Opening Gross Block	Additions	Closing Gross Block	Opening	During the year	Closing	

Assets Class	Gross Block (Rs Crs.)			Depreciation (Rs Crs.)			Net Block (Rs Crs.)
	Opening Gross Block	Additions	Closing Gross Block	Opening	During the year	Closing	as at 31.03.2010
Buildings	19.19	18.62	37.82	0.54	1.18	1.73	36.09
Compute Software	-	-	-	-	-	-	-
Computers	0.24	-	0.24	0.06	0.04	0.10	0.14
Furniture & Fixtures	0.25	0.36	0.61	0.03	0.06	0.08	0.52
Office Equipments	0.62	0.60	1.21	0.10	0.07	0.17	1.04
Plant & Machinery	2.74	1.09	3.83	0.73	0.40	1.12	2.71
Total	23.05	20.67	43.72	1.46	1.75	3.21	40.50

*Details of Fixed Assets for Cargo as on FY 11 are as under:*

Assets Class	Gross Block (Rs Crs.)			Depreciation (Rs Crs.)			Net Block (Rs Crs.)
	Opening Gross Block	Additions	Closing Gross Block	Opening	During the year	Closing	as at 31.03.2011
Buildings	37.82	0.48	38.29	1.73	1.30	3.02	35.27
Compute Software	-	0.14	0.14	-	0.01	0.01	0.13
Computers	0.24	0.04	0.28	0.10	0.04	0.15	0.13
Furniture & Fixtures	0.61	0.15	0.75	0.08	0.14	0.22	0.53
Office Equipments	1.21	0.05	1.26	0.17	0.13	0.30	0.96
Plant & Machinery	3.83	1.26	5.10	1.12	0.41	1.53	3.57
Total	43.72	2.11	45.83	3.21	2.02	5.23	40.59

*Details of Fixed Assets for Cargo as on FY 12 are as under:*

Assets Class	Gross Block (Rs Crs.)			Depreciation (Rs Crs.)			Net Block (Rs Crs.)
	Opening Gross Block	Additions	Closing Gross Block	Opening	During the year	Closing	as at 31.03.2011
Buildings	38.29	8.45	46.75	3.02	1.47	4.49	42.25
Compute Software	0.14	-	0.14	0.01	0.02	0.03	0.11
Computers	0.28	0.08	0.36	0.15	0.05	0.19	0.16
Furniture & Fixtures	0.75	1.64	2.40	0.22	0.20	0.43	1.97
Office Equipments	1.26	0.09	1.35	0.03	0.13	0.44	0.91
Plant &	5.10	3.31	8.41	1.53	0.70	2.23	6.18



Assets Class	Gross Block (Rs Crs.)			Depreciation (Rs Crs.)			Net Block (Rs Crs.)
	Opening Gross Block	Additions	Closing Gross Block	Opening	During the year	Closing	as at 31.03.2011
Machinery							
Total	45.83	13.57	59.40	5.23	2.57	7.81	51.59

*Details of Fixed Assets for Cargo as on 30.06.2012 are as under:*

Assets Class	Gross Block (Rs Crs.)			Depreciation (Rs Crs.)			Net Block (Rs Crs.)
	Opening Gross Block	Additions	Closing Gross Block	Opening	During the year	Closing	as at 30.06.2012
Buildings	46.75	-	46.75	4.49	0.39	4.89	41.86
Compute Software	0.14	-	0.14	0.03	0.01	0.04	0.10
Computers	0.36	-	0.36	0.19	0.01	0.21	0.15
Furniture & Fixtures	2.40	-	2.40	0.43	0.05	0.48	1.92
Office Equipments	1.35	-	1.35	0.44	0.04	0.47	0.88
Plant & Machinery	8.41	0.22	8.63	2.23	0.22	2.45	6.18
Total	59.40	0.22	59.62	7.81	0.72	8.53	51.09

**20.7. Revenue from Perishable Cargo:** As regards the revenue from perishable cargo, MIAL had vide submission dated 31.07.2012, submitted that this has been outsourced to Cargo Service Centre India Pvt Ltd and stated as under:

*“Cargo Service Centre India Private Limited (CSC), started Cargo Handling Services at the Perishable Cargo Terminal at CSI Airport, Sahar Cargo Complex from FY 12. MIAL receives higher of MAG (Minimum Annual Guarantee) and Revenue Share from CSC. However till FY 15 it is envisaged that MIAL would receive only MAG considering level of operations in the initial years and higher MAG.” MIAL provided the Agreement entered with CSC attached as Annexure 10 in their submission.*

**20.8.** Further, vide their submission dated 08.08.2012, MIAL submitted that

*“Authority has asked for agreement copy entered with Cargo Service Centre (CSC) for Perishable Cargo revenue. Copy of amended agreement entered*

*with CSC is attached as Annexure 1. It may be noted that as per this agreement start date was 01.04 .2011 though actual billing for fee started from -16.05.2011 since facility became operational from 16.05.2011.”*

**20.9. Ground Handling** – In respect of the revenue from Ground Handling services, MIAL, vide submission dated July 31, 2012, submitted relevant extracts of the contract entered with Cambata and Celebi and stated as follows:

*“...revenue from Ground Handling concession are received from Cambata and Celebi, details of which are as follows:*

<i>Name of the concessionaire</i>	<i>Minimum Annual Guarantee amount</i>	<i>Annual Guaranteed Fee (Additional)</i>	<i>Total</i>
<i>Cambata</i>	<i>15</i>	<i>1</i>	<i>16</i>
<i>Celebi</i>	<i>15</i>	<i>1</i>	<i>16</i>
	<i>30</i>	<i>2</i>	<i>32</i>

*”*

**20.10.** MIAL had also submitted a comparison of potential revenue share in FY 13 and FY 14 and MAG in the respective years to present that they will continue to get MAG till FY 14.

**Observations in respect of treatment of revenues from Cargo & Ground Handling services:**

**20.11.** The Authority had in the DIAL Tariff Determination Order, extensively dealt with the issue of treatment of revenue from Cargo and Ground Handling in respect of DIAL (paras 21.6.18 to 21.6.27 refers). It had also discussed the provisions of the SSA entered into between the Government of India and DIAL as well as the OMDA entered into between AAI and DIAL. It had stated therein that the revenue in the hands of the airport operator on account of rendering Cargo and Ground Handling services (being aeronautical services as per the AERA Act) by himself would be treated as aeronautical revenue. However, if the airport operator has outsourced these services to a third-party concessionaire (which may or may not include JV), the revenues which the airport operator would receive from such third-party concessionaire would be treated as non-aeronautical revenues. While arriving at this distinction and categorisation the Authority had gone into the relevant provisions of the AERA Act as well as the two agreements mentioned above.

**20.12.** As per the AERA Act aeronautical services, namely, Ground Handing, Cargo Facility and Supply of Fuel to the aircraft are defined as aeronautical services under Section 2(a) of the Act. Further, under Section 13(a) of the Act, the Authority is required to determine the tariff for aeronautical services, taking into consideration, inter alia, the *“concessions offered*

*by the Central Govt. in any agreement or memorandum of understanding or otherwise” (sec 13(1)(a)(vi) and any other relevant factors [sec 13(1)(a)(vii).*

**20.13.** The Authority had, therefore, while arriving at the above-mentioned approach of treatment of revenue from Cargo and Ground Handling services had taken into account these provisions of AERA Act, noting that the AERA Act specifies cargo service as an aeronautical service and thus has to be regarded as such. The Authority is also cognizant of the fact that both SSA and OMDA clearly mention formation of “Regulatory Authority” in OMDA and “Economic Regulatory Authority” in SSA so that the bidders were fully aware of this intention of the Government at the time of the bidding process.

**20.14.** The Authority had issued its consultation paper in respect of tariff determination of Delhi International Airport on 03.01.2012. In response to this paper, the Government had issued a letter No. AV24032/4/2012-AD dated 09.03.2012 to the Authority recognising that Cargo and Ground Handling services are defined as aeronautical services in the AERA Act while they are categorised as non-aeronautical services under OMDA and further stating that AERA should adhere to the provisions of OMDA.

**20.15.** After going through the above-mentioned provisions in the Act, SSA, OMDA as well as the Government’s letter dated 09.03.2012, the Authority had given its decision in detail in Para 24 of the DIAL Tariff Determination Order, noting that:

*“The MoCA have commented on this approach stating, inter alia that the Authority should adhere to the relevant provisions of the contractual agreements in the process of determination of tariff. The Authority infers from the Ministry of Civil Aviation’s (MoCA) letter No.AV.24032/4/2012-AD, dated 09.03.2012, that according to MoCA’s interpretation revenues from Cargo and Ground Handling services accruing to the airport operator should be regarded as non-aeronautical revenues, regardless and irrespective of whether these services are provided by the airport operator himself or concessionaire (including JV) appointed by the airport operator.”*

**20.16.** The Authority had in the DIAL Tariff Determination Order, also stated that *“the above inference of the Authority is being brought to the notice of the Government”*. The Authority further decided that *“Depending on the confirmation of the Government on the treatment of revenues from Cargo and Ground Handling services, the Authority would duly*

*consider the matter and the correction/truing up as appropriate would be considered in the next control period commencing from 1 April, 2014.”*

**20.17.** Thereafter, MIAL vide its letter no. MIAL/CEO/9 dated 10.05.2012 requested the MoCA to confirm the above-mentioned inference of the Authority with respect to the interpretation of the Government’s letter dated 09.03.2012. The Government asked for the comments of the Authority on the letter of MIAL. It also asked what specific issues on which clarification/confirmation was requested by the Authority from the Government. The Authority gave its detailed comments vide its letter no AERA/20010/MYTP/MIAL/2011-12/Vol.III/1342 dated 03.09.2012 to the Government giving its detailed reasoning and logic for making a distinction between the nature of the revenue from Cargo services if these are provided by the airport operator himself (the nature of the revenue will then be aeronautical revenue) as contrasted from its nature when the airport operator does not provide it himself but concessioned it out to a third party (in this case the nature of the revenue will be non-aeronautical revenue). The Government in its response to these letters replied vide letter No.AV.24032/04/2012-AD dated 10.09.2012, inter alia, stating as under:

*“ .....revenues from Cargo and Ground Handling services accruing to the airport operator should be categorized as non-aeronautical revenues as provided under the OMDA. This categorization is regardless and irrespective of whether these services are provided by the airport operator himself or through concessionaires (including JV appointed by the airport operator). The same clarification holds good even for CSI Airport, Mumbai as OMDAs of both the airports are identical.”*

**20.18.** In this letter, the Government had also observed that:

*“.....basic contention of AERA is that revenue from these (cargo and ground handling) services would be treated as aeronautical revenue if these services are provided by the airport operator himself and they would be treated as non-aeronautical revenue if they are provided by a third party through outsourcing contract, license etc”.*

The Government had however stated that

*“..this argument of AERA is not supported either by AERA Act or by OMDA. As per Schedule-6 of OMDA of Mumbai Airport, these services are classified*

*as non-aeronautical. Section 13(1)(a)(vi) of the AERA Act clearly states that concessions offered by the Central Government in any Agreement or Memorandum of Understanding or otherwise will have to be taken into consideration by AERA while determining the tariff”.*

The letters received from the Ministry and the Authority’s response in this matter were annexed to the Consultation Paper No.22/2012-13 dated 11.10.2012.

**20.19.** The Authority had carefully considered the views and contents reflected in the letter by the Government. As already indicated, it had given detailed consideration both to the AERA Act as well as provisions in SSA/OMDA and only thereafter had made the distinction that revenues at the hands of airport operator from services of Cargo and Ground Handling need to be regarded as aeronautical revenue if these services are provided by airport operator himself. If, however, airport operator were to concession out the services to a third party, the revenues in the hands of the airport operator from such third party concessionaires (which would be in the nature of royalty, revenue share, rentals or dividends, etc) should be regarded as non-aeronautical revenues.

**20.20.** To understand more completely the rationale behind this approach, Authority had given its analysis of the various definitions both in SSA as well as OMDA and how the Authority had taken both these documents into consideration along with the AERA Act to arrive at its decision.

20.20.1. **Revenue Target:** The Authority had noted that under Schedule-I of the SSA, various components of revenue target have been given. One of the components is *“30% of gross revenue generated by the JV Company (MIAL) from the Revenue Share Asset”*, and that *“the costs in relation to such revenue shall not be included while calculating aeronautical charges”*. The Schedule also defines *“Revenue Share Asset”* as meaning (a) non-aeronautical assets: and (b) assets required for provisions of aeronautical related services arising at the airport and not considered in revenues from non-aeronautical assets (e.g. Public Admission Fee, etc.). Hence in order that a revenue stream qualifies to be reckoned at 30% towards the *“Revenue Target”*, such a revenue stream should be generated by the *“revenue share asset”*.

20.20.2. **Non-aeronautical assets:** These are defined in OMDA as under:

*“Non-Aeronautical Assets” shall mean:*

*All assets required or necessary for the performance of Non-Aeronautical Services at the Airport as listed in Part I of Schedule 6 and any other services mutually agreed to be added to the Schedule 6 hereof as located at the Airport (irrespective of whether they are owned by the JVC or any third Entity); and*

*All assets required or necessary for the performance of Non-Aeronautical Services at the Airport as listed in Part II of Schedule 6 hereof as located at the Airport (irrespective of whether they are owned by the JVC or any third Entity), to the extent such assets (a) are located within or form part of any terminal building; (b) are conjoined to any other Aeronautical Assets, asset included in paragraph (i) above and such assets are incapable of independent access and independent existence; or (c) are predominantly servicing/catering any terminal complex/cargo complex.*

20.20.3. **Non Aeronautical Services:** Part I of Schedule 6 of OMDA mentions Cargo Handling and Cargo Terminals as well as Ground Handling services as non-aeronautical services. The OMDA defines non-aeronautical services to mean such services as are listed in Part I and Part II of Schedule 6 of OMDA.

20.20.4. **Asset Classification:** Under AERA Act, Cargo service is an aeronautical service hence the asset which generate and are capable of giving this service would be required to be categorised as aeronautical assets. If these assets are aeronautical assets, they are not the revenue share assets within the definition of the SSA. Hence the gross revenues generated from these assets (which are not revenue share assets) cannot be subject to only 30% share. However, in this case, the costs associated in generating any such aeronautical revenues (excluding the revenue share to AAI which is expressly prohibited) would also be considered as a cost.

20.20.5. **Revenue Classification:** From another standpoint, the Authority has considered the nature of the service (namely, Cargo and Ground Handling) when provided by the airport operator himself as contrasted when it is provided by a third party concessionaire. When the airport operator himself is providing the Cargo service, he is providing an aeronautical service and hence the revenue in his

hands from such a service is aeronautical revenue. The airport operator is, in this case, the regulated entity for provision of the cargo service. When the airport operator concedes out Cargo/Ground Handling service to a third party, a view could be taken that it is again the Airport Operator, who is “causing the cargo service (i.e. aeronautical service) to be provided” and hence the revenue in the hands of the Airport Operator should, in this case, also be regarded as aeronautical revenue. However, for clarity in implementation, the Authority has in case of the cargo service being outsourced, the Airport Operator himself is not directly providing the aeronautical service, which is then directly provided by the concessionaire (also called the Independent Service Provider). The Airport operator in this view is not the regulated entity for the Cargo/Ground Handling service, but the third party concessionaire (or independent service provider) becomes the regulated entity since the independent service provider is directly providing aeronautical service. Hence in this alternative view, the revenues that the airport operator receives from the third-party concessionaire are not treated as aeronautical revenues but non-aeronautical revenues of which 30% is reckoned towards determination of aeronautical charges (without any cost pass through). This view has also the advantage of keeping the revenue streams in the hands of the entity directly providing the aeronautical service (the Airport Operator or the third party concessionaire) distinct and tractable.

20.20.6. **Regulated Entity:** The entity that provides an aeronautical service is the regulated entity and the revenue at the hands of such an entity is aeronautical revenue. If the cargo and ground handling services are provided by the airport operator himself, then he becomes the regulated entity. If on the other hand, the airport operator has concessioned out these services to a third party, then that third party becomes the regulated entity (and not the airport operator).

**20.21.** The Authority observed that this is a reasonable classification to make a distinction between the nature of the revenue derived by the airport operator under these two different modalities of rendering the aeronautical services viz. cargo or ground handling and hence the Authority came to the conclusion that while discharging its functions under the AERA Act, it has remained within the mandate of the AERA Act and given appropriate

consideration to concessions offered by the Central Govt. (in this case SSA) as well as any other factor relevant for this factor (which in this case is OMDA).

**20.22.** The Authority had always given due consideration to the concession agreements of Central Government as well as any other relevant material as required by section 13(1)(a)(vi) and sec 13(1)(a)(vii) of the Act. While specifically addressing the issue of tariff determination in Delhi and Mumbai and more particularly, the issue of treatment of revenue from Cargo and Ground Handling service at these two airports, the Authority had also appropriately taken into considerations the concessions offered by the Central Govt. (SSA) as well as other relevant factors (OMDA). The Authority has already stated this aspect in its, Guiding Principles. The reading of Clause 13(1)(a)(vi) and 13(1)(a)(vii) that the Authority should take into consideration the concession offered by the Central Government or any other factor which may be relevant for the purposes of this Act, in the opinion of the Authority, does not indicate that these documents should be accorded primacy over the provisions of the Act, but that these documents would need to be taken into account while determining tariff for aeronautical services.

**20.23.** The issue of different treatment in OMDA and the AERA Act was recently commented upon by CAG in its Report No. 5 of 2012-13. The Ministry in its response had recognised this difference and clarified as under:

*“2.1 Conflict between OMDA and AERA Act in defining aeronautical and non-aeronautical services:*

*OMDA pre-dates AERA Act:*

*The non-aeronautical services mentioned under OMDA were part of the bidding process. It is totally absurd to say that this provision was made for giving undue advantage to DIAL. Had that been the case, AERA Act should have been enacted to match the provisions of OMDA. Instead of undue benefit to DIAL, inclusion of services which were mentioned as non-aeronautical in OMDA, as aeronautical in AERA Act, brings transparency in setting of these charges, which would ultimately benefit the users.”*

**20.24.** The Authority had felt that this response of the Government is indicative of its recognition that after passing of the AERA Act, cargo and ground handling services would need to be reckoned as aeronautical services. Once this is done and if the cargo service is



provided by the airport operator himself, the provisions of SSA and OMDA themselves would not permit the assets rendering these services to be the “Revenue Share Assets” for the purpose of taking only 30% of the revenue from these assets towards determination of aeronautical tariffs. Taking these revenues as aeronautical would lower the aeronautical charges and ultimately benefit the users.

**20.25.** To summarize, therefore, the Authority’s view of treating revenues from Cargo services at the hands of the airport operator as Aeronautical revenue if such a service is provided by the airport operator himself but treating revenues at the hands of the airport operator from the third party concessionaire, whom he may concession out the Cargo service to, as *Non-aeronautical* is supported by what according to the Authority, was a proper and harmonious analysis of the provisions of the AERA Act as well as those of SSA and OMDA.

**20.26.** The Government had however, in its letter No.AV.24032/04/2012-AD dated 10.09.2012 referred to above, stated that the revenues from Cargo and Ground Handling services accruing to the airport operator should be categorised as non-aeronautical revenues as provided under OMDA, and that this categorisation is regardless of whether airport operator himself provides these services or concedes them out. The interpretation of the Govt., of the provisions of OMDA is on the issue of revenues from the Cargo and Ground Handling Services accruing to the airport operator is different from that of the Authority. The substance of the Government’s interpretation is that the revenues accruing to the airport operator (during the period he was himself rendering what according to the AERA Act is an aeronautical service) be reckoned at 30% of such gross revenues. The Authority had noted that the SSA is executed by the Government with MIAL and further that OMDA is executed between AAI (which is under the MoCA) and MIAL, and the Authority had noted the Government’s interpretation on this issue. The implication for tariff determination of this interpretation of the Government is given below:

20.26.1. After the issue of the DIAL Tariff Determination Order, MIAL have given its MYTP along with Annual Tariff Proposal (ATP) during this period and the figure of cargo revenues in the hand of MIAL during the period it was rendering this service (i.e., 01-04-2009 till 31st Sep/Oct, 2012) have become available.

20.26.2. During the first 3 ½ years of the current control period (i.e. from 1st April, 2009 till September-October, 2012), the total revenue from Cargo service being provided by MIAL directly is approximately Rs. 998.62 crores. The corresponding expenditure in the hands of MIAL towards provision of this service is Rs. 123.23 crores. Under AERA’s revenue recognition approach and interpretation, therefore, the balance of Rs. 875.34 crores would be reckoned as aeronautical revenue for the purposes of determination of aeronautical tariffs in respect of CSI Airport. Under the interpretation of the Government (vide its letter of 10.09.2012) 30% of the gross cargo revenue i.e. Rs. 998.62 crores, i.e., approx. Rs. 299.6 crores would be reckoned towards determination of aeronautical tariff instead of Rs. 875.34 crores, a difference of Rs. 575.80 crores. While considering the Annual Tariff Proposals, the Authority has also examined the impact of the above alternative interpretations on the ‘X’ factor as well as actual tariffs as below:

20.26.2.a. Based on reckoning Rs. 875.34 crores towards aeronautical tariffs, the “CPI-X” factor comes to 75.64%. Taking CPI at 9.4% (RBI forecast), the “X” factor comes to (-)66.24%. Alternatively, based on the reckoning of Rs. 299.60 crores towards aeronautical tariffs, the “CPI-X” comes to 160.96%. In this case the “X” factor is calculated at (-)151.56%.

20.26.2.b. Keeping the proposed increase in Landing, Parking and Housing charges as indicated by MIAL (for example, between 100% to 120% for international landing and 40% for domestic landing), and also adopting the same ratio of 1:2 between departing domestic and international passengers as proposed by MIAL, the tentative assessment of required UDF considering the date of levy of UDF as 01.01.2013 is as under:

**Table 103: Impact on X - Factor and UDF based on treatment of cargo revenue**

Treatment of revenue from cargo in the hands of Airport Operator	“X” factor	UDF Domestic per PAX in Rs.	UDF International Per PAX in Rs
Aeronautical	(-)66.24%	65	130
Non-Aeronautical	(-)151.56%	257	513

**20.27. The Authority has noted the Government's confirmation that the revenue from services of cargo and ground handling in Delhi and Mumbai be regarded as non-aeronautical revenue in the hands of the respective Airport Operators, irrespective of whether these services are provided by the Airport Operator itself or concessioned out to third parties. It accordingly presented the calculation of X-factor as well as effect on tariff for the current control period (refer Table 103).**

**b Stakeholder Comments on the Issues pertaining to Treatment of revenue from Cargo Services**

**20.28.** The Authority has received comments from various Stakeholders on the treatment of revenue from cargo services.

**20.29.** IATA, on this issue, commented as under,

*“• It is clear from the AERA Act that any service provided for the cargo facility at a major airport is classified as an aeronautical service. The AERA Act is specifically put in place to regulate the monopolistic powers of an airport. It follows that any revenue from an aeronautical service that the airport derives as a monopolistic entity irrespective of whether the airport provides the service itself or concessions it out (it still retains monopolistic powers over the concessionaires) should be classified as aeronautical revenue.*

*• IATA believes that while the AERA Act requires the authority to take into consideration the concession offered by the Central Government, it does not require the authority to unquestionably accept all terms in the concession agreement. Where the terms in the concession agreement contradict the AERA Act, the provisions of the act should take primacy.*

*• The Ministry of Civil Aviation had alluded to cargo being a key aeronautical activity and an activity to be regulated by AERA in a working group report on 'Air Cargo Logistics in India' published in May 2012. On page 109 of the report, on a view expressed concerning express cargo, the report stated the following: '...it is important to appreciate the role of air express operations and express cargo as a whole being a key aeronautical*

*activity and not an ancillary non-aeronautical activity akin to duty free shops. There is thus a clear need for regulatory intervention with a solid regulatory framework recognizing Express Cargo as an integral aeronautical activity..."*

**20.30.** On this issue, FIA commented as under,

*"It is submitted that in the CP No.22/2012-13, the Authority has noted the MoCA's confirmation vide its letter (letter No.AV.24032/04/2012-AD) dated 10.09.2012 that the revenue from services of cargo and ground handling in Delhi and Mumbai be regarded as non-aeronautical revenue in the hands of the respective Airport Operators, irrespective of whether these services are provided by the Airport Operator itself or concessioned out to third parties.*

*It is submitted that as per Section 2(a) of the AERA Act, cargo, ground handling and FTC are aeronautical services. Hence, Authority ought to follow the mandate of statutory provisions and treat revenue arising out of such services as aeronautical revenue."*

**20.31.** APAI's comments on the treatment of revenue from cargo services are as under,

*"It said that, "AERA's interpretation on clause 13(1)(a) of AERA is in consonance with the AERA's Act and SSA. The AERA act should over-ride the concession agreements and accordingly revenue from Cargo Services assigned by MIAL should be treated as aeronautical revenue" They also stated "Revenue from Cargo services as an aeronautical income will substantially change the methodology used by MIAL to justify the levy of DF. On going through the details of revenue generated by MIAL from Cargo Service and taking the same for determining the impact on "X" factor and UDF based on treatment of Cargo revenue is substantial. As per this working, the UDF for domestic passenger must be levied @ Rs.65/- and for international @ Rs.130/-."*

**20.32.** Appreciating the position, taken by the Authority, APAO commented as under,

*"5.2 We agree with the Authority's position to consider revenue from cargo as non-aeronautical revenue, 30% of which shall go towards cross-*

*subsidizing the target revenue requirement. This is as per the OMDA and has been confirmed by the Government.*

*5.3 The Authority has pointed out that as per section 2 (a) (vi) of the AERA Act, the services provided for cargo facility at an airport is an “aeronautical service”. As per the guidelines issued by the Authority the tariffs for cargo facility service being provided by MIAL at CSI Airport, Mumbai merits to be determined under “Light Touch Approach”, as the service is “Material but Competitive”.*

*5.4 We appreciate the position taken by the Authority in this regard.”*

**20.33.** Cathay Pacific, on this issue commented as under,

*“We are in full agreement with AERA’s interpretation of Clause 1 3(1)(a)(vi) and (vii) of the AERA Act that the airport’s revenue from cargo services should be treated as aeronautical revenue for the purpose of tariff determination. We are hence at a complete loss when the proposed decision by AERA is to take the revenue from cargo services as non-aeronautical revenue, which does seem to be acting against the obligation of maintaining AERA as an independent authority. We urge AERA to review this in accordance with the AERA Act and include the revenue from cargo services as aeronautical revenue for the purpose of tariff termination.”*

**20.34.** With regard to the consideration of revenue from cargo services, ASSOCHAM commented as under,

*“We concur with the views of AERA that cargo service is an Aeronautical service under the provision of the AERA Act but while doing the tariff determination only 30% of cargo revenue should be taken into account for the purpose of cross subsidy considering the provision of OMDA and SSA and clarification of the Central Government that revenue from cargo services should be considered as non aeronautical irrespective whether these services are provided by the Airport operator itself or outsourced.”*

**c MIAL’s response to Stakeholder Comments on the Issues pertaining to Treatment of revenue from Cargo Services**

**20.35.** MIAL has responded to FIA comment as under,

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*“The authority has correctly computed X factor in line with the provisions of OMDA/SSA. We are in agreement with the above position of the Authority presuming it as a harmonious construction of the AERA Act and OMDA*

*As per the guidelines issued by the Authority the tariffs for cargo facility service being provided by MIAL at CSI Airport, Mumbai merits to be determined under “Light Touch Approach”, as the service is “Material but Competitive”. We are in agreement with the above position of the Authority presuming it as a harmonious construction of the AERA Act and OMDA.”*

**20.36. MIAL’s Comments –**

*“SSA considers 30% of gross revenue generated from Revenue Share Assets as cross-subsidy while calculating aeronautical charges. Revenue Share Assets include Non-Aeronautical Assets. Non-Aeronautical Assets, are defined in OMDA, include all assets required or necessary for the performance of Non-Aeronautical Services at the airport. Schedule 6 of OMDA classifies cargo and ground handling services as non-aeronautical.*

*Accordingly, MoCA has correctly interpreted SSA and conveyed its understanding to the Authority and the Authority has decided to consider 30% of revenues from these services for the purpose of cross-subsidy, while the Authority continues to regulate the charges for these services.*

*It will not be out of place to mention that cargo service charges at CSI Airport are competitive as compared to other Indian airports.*

*Additionally, fear of monopoly is unfounded and baseless as the Authority is regulating aeronautical charges for these services provided by respective service providers”*

**d MIAL’s own Comments on the Issues pertaining to Treatment of revenue from Cargo Services**

**20.37.** MIAL has commented as under,

*“The authority has correctly computed X factor in line with the provisions of OMDA/SSA. We are in agreement with the above position of the Authority presuming it as a harmonious construction of the AERA Act and OMDA As per the guidelines issued by the Authority the tariffs for cargo facility service being provided by MIAL at CSI Airport, Mumbai merits to be determined under “Light Touch Approach”, as the service is “Material but Competitive”. We are in agreement with the above position of the Authority presuming it as a harmonious construction of the AERA Act and OMDA.”*

**e Authority’s Examination of the Issue pertaining to Treatment of revenue from Cargo Services**

**20.38.** The Authority has given its detailed comments on the treatment of cargo service as an aeronautical service and treating revenue in the hands of the airport operator therefrom as an aeronautical revenue, as long as this service is provided by the airport operator himself. It has also analysed the provisions of SSA / OMDA read with the AERA Act. It had mentioned that the classification of cargo service as aeronautical service has been done in the AERA Act. It notes that the Government has also regarded cargo service as aeronautical service.

**20.39.** The Authority has also noted the legislative intent in putting services like cargo and ground handling in the category of aeronautical services. The Department Related Parliamentary Standing Committee on Transport, Tourism and Culture, in para no. 31 of its 133<sup>rd</sup> report on the Airports Economic Regulatory Authority of India bill 2007, had recommended to include the fuel supply infrastructure at the airports within the purview of AERA, a recommendation which was accepted by the Ministry and accordingly fuel supply was put as an aeronautical service. The Authority also notes that in addition to fuel supply, the Government had also, suo-moto added the two services, namely, ‘ground handling service relating to aircraft, passengers and cargo at an airport’ as well as ‘the cargo facility at airport’ within the definition of aeronautical services. Hence, the Authority had inferred that the revenues from cargo service if and as long as provided by the airport operator would be treated as aeronautical revenues in his comments.

**20.40.** The Authority had also highlighted that there are two factors to be considered while determining the nature of the revenues from cargo service under OMDA / SSA. One factor is the classification of the assets that give rise or are used to generate revenue from cargo service. The other factor is the provider of cargo service at the airport. Such provider of cargo service becomes the regulated entity and the revenue generated from the cargo service accrues to such regulated entity. If the airport operator provides cargo service, he becomes the regulated entity for the purpose of cargo service. However if the airport operator farms out provision of cargo service to a third party, that third party becomes the regulated entity. The nature of the cargo service namely, aeronautical does not change on account of who is providing the service (identical considerations apply to Ground Handling service as well).

**20.41.** The Authority had also highlighted that it would regard the assets used to give aeronautical service as aeronautical assets. It had also pointed out that such aeronautical assets can not come within the definition of revenue share assets (refer to Para 19.38 giving definition of revenue share assets). Hence if the airport operator is providing the cargo service, the question of taking only 30% of the gross revenue generated from the cargo assets (which as mentioned above are not revenue share assets) does not arise within the definition of Schedule 1 of SSA.

**20.42.** When the cargo service is provided by a third party, the revenue accruing to the third party on account of providing this service would be aeronautical revenue in the hands of the third party. Since the nature of the cargo service as aeronautical does not alter on account of who provides it (airport operator himself or the third party) it follows that the nature of the revenue from cargo service in the hands of its provider being aeronautical revenue cannot change merely on account of who has provided cargo service. Hence if the cargo service is provided by the airport operator the revenues in his hands need to be treated as aeronautical revenues, especially on account of the fact that the assets used for giving cargo service would be called aeronautical assets and hence not within the definition of revenue share assets as per Schedule 1 of the SSA.

**20.43.** In the event that the cargo service is provided by a third party, the airport operator may receive certain sums of monies from such third party on account of pre-agreed revenue share or lease rental etc. The Authority had also mentioned in the Consultation Paper –



22/2012-13 dated 11.10.2012 that there could be a plausible view that even when the cargo service is given by a third party, the airport operator could be said to have “caused to have the service provided” (albeit through the third party). In such an interpretation the revenue, that airport operator receives, from such third party would also fall in the category of aeronautical revenue. The Authority however has not followed this interpretation for reasons already mentioned in the paras 20.38 to 20.42 above.

**20.44.** The Authority had however noted that the Government has interpreted the revenue from cargo service (even when provided by the airport operator) as non-aeronautical revenue in his hands. The Authority therefore calculates that X-factor based on this interpretation of the Government.

**20.45.** The Authority calculates X-factor based on the interpretation of the Government that the revenue from the aeronautical service namely, cargo service (when provided by the airport operator) be categorized as non-aeronautical revenue.

**Decision No. XVII. Regarding Treatment of revenue from Cargo Services**

**XVII.a. The Authority calculates the X-Factor based on the Government’s letter No.AV.24032/04/2012-AD dated 10.09.2012 that the revenue from services of cargo and ground handling in Delhi and Mumbai Airports be regarded as non-aeronautical revenue in the hands of the respective Airport Operators, irrespective of whether these services are provided by the Airport Operator itself or concessioned out to third parties.**

## **21. Treatment of revenue from Ground Handling Services**

### **a Authority's position on Issues pertaining to Treatment of revenue from Ground Handling Services in the Consultation Paper**

**21.1.** The Authority had considered the issue of treatment of revenue from Ground Handling services along with that of revenue from cargo services in its Consultation Paper 22/2012-13. MIAL's submission on the treatment of revenue from Ground Handling services can be referred at Para 20.9 above. The Authority's position in this respect was to treat the revenue from Ground Handling services in the same manner as was proposed for the treatment of revenue from Cargo services.

### **b Stakeholder Comments on the Issues pertaining to Treatment of revenue from Ground Handling Services**

**21.2.** IATA Comments –

*“Like for cargo services, the AERA Act clearly categorizes ground handling services relating to aircraft, passengers and cargo at a major airport as aeronautical services. It is the intention of the AERA Act to regulate the monopolistic power of the airport in the area of ground handling services as well. Hence, irrespective of whether the airport provides the service itself or concedes it out (the airport still holds a monopolistic position over ground handling concessionaires), the revenue that the airport derives from ground handling services should be treated as aeronautical revenue.”*

### **c MIAL's response to Stakeholder comments on the Issues pertaining to Treatment of revenue from Ground Handling Services**

**21.3.** Responding to IATA comment, MIAL has referred to its response against treatment of revenue from cargo services and additionally stated as under,

*“Additionally, fear of monopoly is unfounded and baseless as the Authority is regulating aeronautical charges for these services provided by respective service providers”*

### **d MIAL's own comments on the Issues pertaining to Treatment of revenue from Ground Handling Services**

**21.4.** MIAL has not provided its own comments on the issue.

**e Authority's Examination on the Issues pertaining to Treatment of revenue from Ground Handling Services**

**21.5.** The Authority has examined the comments from various stakeholders on the issue of treatment of revenue from Ground Handling services. The Authority is in agreement with the observation of IATA that Ground Handling services relating to aircraft, passengers and cargo at a major airport are aeronautical services, though it is non-aeronautical service as per OMDA. The Authority has indicated in its examination of treatment of revenue from cargo services that the nature of the ground handling service namely, aeronautical, does not change on account of who is providing the service. However the Authority has considered the revenue from Ground Handling services as non-aeronautical revenue on account of the considerations already mentioned in its examination of treatment of revenue from cargo services.

**21.6.** As regards the issue of monopoly in respect of provision of Ground Handling services at CSI Airport, Mumbai is concerned; the Authority notes that MIAL has outsourced the Ground Handling service at CSI Airport, Mumbai to third party service providers. These parties are Celebi NAS Airport Services India Pvt. Ltd. (Celebi NAS) and Cambata Aviation Private Limited (Cambata). The Authority has determined the tariff for these two service providers. The Authority regards that since the number of Ground Handling service providers at CSI Airport, Mumbai is two or more, it indicates presence of competition at the airport for provision of Ground Handling service.

**21.7.** The Authority, thus, decides to extend its decision taken in respect of revenue from cargo services, as stated in Decision No. XVII above, to revenue from ground handling services. The Authority also notes that unlike the cargo service, MIAL has not by itself provided the ground handling service and that it had concessioned out the service to third parties. It however notes that ground handling services is defined as an aeronautical service under AERA Act.

## **22. Treatment of revenue from Fuel Throughput Charges**

### **a Authority's position on Issues pertaining to Treatment of revenue from Fuel Throughput Charges in the Consultation Paper**

**22.1.** MIAL had in their tariff proposal has considered Fuel Throughput Charges (FTC) as non-aeronautical revenue. MIAL had submitted that

*“FTC should be treated Non-aeronautical revenue for the purpose of tariff determination considering the views / decisions of the Authority that services such as Cargo Handling, Ground Handling and Into-plane not being provided by the Airport operator has been considered as Non – Aeronautical. FTC is a consideration for concession given to Oil Companies and no services are being provided by the Airport Operator to Oil Companies. AERA has also decided that Oil Companies are only selling ATF to the Airlines and not providing any services and therefore will not be covered under the Aeronautical services, hence FTC received by MIAL should not be considered as an Aeronautical charge.”*

### **Observations in respect of treatment of revenues from and proposed increase in Fuel Throughput Charges**

**22.2.** MIAL have considered the FTC as non-aeronautical for the purpose of tariff determination considering that it is a fee/charge for concession given to oil companies and no service is being provided by the airport operator to the oil companies. MIAL, in their submission dated 24.07.2012, submitted that they *“had taken escalation in rate of 7%, 6.54% and 6.54% in FY 12, FY 13 and FY 14 respectively for FTC. There is ceiling of 7% and floor level of 5% agreed escalations for FY 13 and FY 14 as per agreement.”* Further, MIAL have also stated that

*“.... FTC should be treated Non Aeronautical revenue for the purpose of tariff determination considering the views / decisions of the Authority that services such as Cargo Handling, Ground Handling and Into-plane not being provided by the Airport Operator has been considered Non-Aeronautical. FTC is a consideration for concession given to Oil Companies and no services are being provided by the Airport Operator to Oil Companies.”*

**22.3.** The Authority notes that under Entry 17 of Schedule 5 of the OMDA a specific mention of *“common hydrant infrastructure for aircraft fuelling services by authorised providers”* is mentioned as an aeronautical service. There is no mention pertaining to fuel supply in Schedule 6 of OMDA defining non-aeronautical service. Further the Authority also notes that mere establishment of Common hydrant infrastructure alone does not comprise any service unless the concerned fuel hydrant gets appropriate fuel into it. Hence the activity of populating the fuel hydrant infrastructure with appropriate fuel forms an integral and inalienable part of the chain of supply of fuel to the aircraft at the airport. The supply of fuel in this case, i.e., entry of fuel into the CSI Airport, Mumbai is entirely in the control of MIAL, the Airport Operator and thus, MIAL becomes a service provider in the chain of supply of fuel to the aircraft at the CSI Airport, Mumbai.

**22.4.** The Authority had also noted the submission made by MIAL in its letter dated 20.10.2010 on the issue of provisions in OMDA. MIAL had stated that the list of non-aeronautical services in Schedule 6 of OMDA does not include the revenue stream namely *“common hydrant infrastructure for aircraft fueling service by authorised providers”*. It has, however, added that *“Schedule 6 of OMDA listing non-aeronautical services is not an exhaustive list. It does not cover revenues from advertisement concession, which does not mean advertisement concession revenue becomes aeronautical revenue. MIAL has also averred that the common hydrant infrastructure “is no doubt directly related to supply of fuel at airport but it is distinct and separate charge”*.

**22.5.** The Authority is of the view that the example of advertisement concession as not finding mention in Schedule 6 of OMDA with reference to *“fuel throughput charge”* is an inappropriate example. Schedule 6 of OMDA defines non-aeronautical services to mean *“the following facilities and services (including Part I and Part II)”*. The Authority’s decision to include fuel throughput charge as relating to an aeronautical service is not on account of its inclusion or non-inclusion in Schedule 6 of OMDA. Its decision is based on the legal provisions of AERA Act that treats fuel supply as an aeronautical service. Coming to the advertisement concession, the advertisement service is not defined as aeronautical service in the AERA Act. Hence, the Authority would not be inclined to include advertisement service as an aeronautical service.

**22.6.** On the other hand, the Authority notes that the facilities and service of common hydrant infrastructure is mentioned in Schedule 5 of OMDA under the caption “*a more detailed list of the above facilities and services would include the following*”. The Authority also notes that entry 11 of Schedule 5 of aeronautical services states that “any other services deemed to be necessary for the safe and efficient operation of the airport” to mean provision of aeronautical service. The Authority therefore does not find any warrant in Schedule 6 of OMDA to indicate that OMDA regards the fuel throughput charge as a non-aeronautical charge or revenue. On the contrary, Schedule 5 of OMDA clearly indicates that aircraft fueling services and particularly the common hydrant infrastructure is an aeronautical service. And to the extent, it is provided by the airport operator, the revenues arising from such fuel supply would be regarded as aeronautical revenues in the hands of the airport operator.

**22.7.** The Authority further noted the submissions made in this letter of 20.10.2010 from MIAL, according to which MIAL stated that,

*“Assuming, without admitting, that by virtue of AERA Act, even throughput charge is Aeronautical Revenue, even then, by virtue of concession agreement (SSA) executed between GOI and MIAL, it has to be seen that MIAL is not put to an economic jeopardy by adopting the agreement in a fractured manner by way of pick and choose, i.e, insisting for Annual Fee (Revenue share) of 38.7% which is not allowed as a pass-through as per OMDA, but revenue streams which were non-aeronautical as per OMDA to be treated as aeronautical and instead of 30% cross-subsidisation, a 100% cross-subsidisation by virtue of putting the same in a till. We have already elaborated our stand in this respect in our response to AERA Consultation Paper No. 3/2009-10 dated 26th February, 2010.”*

**22.8.** The Authority noted that it is mandated to determine aeronautical charges in accordance with the provisions of the AERA Act. While so doing, it is also required to take into consideration the concessions offered by the Central Government as well as any other factor, which may be relevant under Section 13(1)(a)(vi) and 13(1)(a)(vii) of the Act. The Authority is also of the view that the provisions of the AERA Act would need to be given primacy. At any rate, the SSA and OMDA both clearly indicate the intention of the

Government to establish an independent regulator so it cannot be said that the bidders were unaware of this likely future development impacting on tariff determination. Hence if any alleged economic jeopardy is perceived to have been caused on account of the determination of aeronautical tariff in accordance with the provisions of the Act, appropriate remedy, if any, would need to be sought by the airport operator solely within the provisions of SSA/OMDA together with the provisions of the Act. Such perceived “economic jeopardy” cannot be said to have been caused by *“adopting the agreement in a fractured manner by way of pick and choose.....”*. Authority has already taken a stand that fuel throughput is an element in the chain of fuel supply to the aircraft and fuel supply to an aircraft is defined as aeronautical service by AERA Act.

**22.9.** The Authority had also noted the decision of the Australian Competition and Consumer Commission (ACCC) in “Fuel throughput levies: report pursuant to the Commission’s monitoring functions under the Prices surveillance Act 1983, December, 1988”. In this report, ACCC has raised certain issues for determination and also given its findings thereof. It has concluded that *“the report concludes that the fuel throughput levies introduced by Brisbane Airport Corporation Ltd. (BACL) and proposed by Westralia Airport Corporation (WAC) are not justified in terms of increased in costs or through offsetting reductions in other charges.”* Furthermore, it has also come to the conclusion that *“there is a strong case that larger airports have market power in the market for refueling services.”* It has also stated that *“when considered in the light of the lack of any cost related justification for the levies, or offsetting reduction in the charges, there is a strong case that the imposition of a fuel throughput levy is taking advantage of market power.”*

**22.10.** Further, in terms of section 2(a)(vi) of the AERA Act, any service provided for *“supplying fuel to the aircraft at an airport”* is an *“aeronautical service”*. Thus the supply of fuel to the aircraft at an airport from the oil companies into the airport is an integral part of operations as defined in Section 2(a)(vi) of the AERA Act.

**22.11.** The Authority had commented on the issue of FTC in its Airport Order as well as in the DIAL Tariff Determination Order. The Authority gives hereunder its analysis and reasoning of treating Fuel Throughput Charge as aeronautical revenue in the hands of MIAL.

**22.12.** The Authority’s observations with respect to FTC:

22.12.1. Different parts of the aircraft fuel supply chain are serviced by different entities at the airport.

22.12.2. This aircraft fuel supply chain consists of various phases starting from the point of production of the fuel by the Oil Companies, its transportation to the airport and finally culminating in the supply of fuel to the aircraft at the airport.

22.12.3. The production of fuel for aircrafts is not an aeronautical activity. Hence, this is not under the regulatory ambit of the Authority.

22.12.4. The Fuel supply chain at an airport begins from entry of fuel into the airport premise and extends upto fuelling the aircraft. Service towards entry of fuel into the airport is provided by the Airport Operator, who has a monopoly over this service. The Airport Operator under an agreement with the Oil Marketing Companies charges for this service. These charges are termed as FTC. In the view of the Authority, it is a charge for providing this service. Merely calling it by the name of "fuel concession fee" or any other nomenclature does not change the nature of the service namely, aeronautical service and as this part is provided by the Airport Operator, the revenues arising from such aeronautical service in the hands of the Airport Operator are reckoned as aeronautical revenues in the hands of the Airport Operator.

22.12.5. Once fuel is inside the airport premises, it can be supplied to the aircraft either through fuel farm facility or through the oil tankers, which will depend upon the infrastructure available at the airport. Some airports may have Into-Plane (ITP) service for fuelling the aircraft.

22.12.6. The Authority has already taken a general approach on the treatment of revenues from aeronautical services when the same is provided by the airport operator or when such activity is provided by the third party in para 20.25 above.

**22.13.** Further, the Authority had in its Order No. 07/2010-11 dated 04.11.2010 (in the matter of suo moto revision of throughput charges by the airport operators) examined the issue in detail. The Authority has also carefully noted the position of ICAO in this matter.

**22.14.** According to para 41 of ICAO document 9082,

*"The council recommends that where fuel "throughput" charges are imposed they should be recognized by airport entities as being concession*

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*charges of an aeronautical nature and that fuel concessionaires should not add them automatically to the price of fuel to aircraft operators, although they may properly include them as a component of their costs in negotiating fuel supply prices with aircraft operators. The level of fuel "throughput" charges may reflect the value of the concession granted to fuel suppliers and should be related to the cost of the facilities provided, if any".*

**22.15.** The Authority is also cognizant of Appendix 3 into "Glossary of Terms" of ICAO document 9082, which are relied upon by the Airport Operator to treat "Concessions granted to Oil companies to supply aviation fuel and lubricants..." as non-aeronautical revenue.

**22.16.** The Authority's attention was also drawn by NACIL in its submissions to the Authority quoting from the Report (December, 1998) of the Australian Competition and Consumer Commission on fuel throughput levies. It was stated that,

*"The Commission is required to monitor the aircraft refueling services. It took up the review of the fuel throughput levies imposed by the private airports on the basis of arrangements which were negotiated and put in place by Federal Airport Corporation (FAC) before the airports were privatized. These arrangements included provisions for fuel throughput levies but these were not activated. Pursuant to privatization, the private airport operators introduced the levies on the basis of the validity of contractual arrangements. In the review Commission, inter-alia, found as under:"*

*(a) The fuel throughput levies were not justified in terms of increases in cost or through off setting reduction in other charges. The Commission was also of the view that the question of validity of contractual arrangements between the airport operators and lease holders is a matter for the relevant parties not the Commission.*

*(b) There is a strong case that large airports have market power in the market for refueling services. Further, when considered together with the monopoly nature of the market for land for refueling facilities, the lack of*

*alternatives to refueling at some airports reinforces the airports market power. When considered in the light of the lack of any cost related justification for the levies, of offsetting reduction in charges, there is a strong case that imposition of a fuel throughput is -taking advantage of market power.*

**22.17.** The Authority was informed that in light of the above findings, the Australian Consumer and Competition Commission recommended that a stricter form of price oversight in relation to aircraft refueling services and found that these services should be included within a CPI-X Price Cap. It would be also relevant to mention here that the Brisbane Airport and the Perth Airport have abolished the throughput fee in 2007.

**22.18.** In this regard, IATA had also made submissions to the Authority according to which the Market Access Fee is illegal in EU and in the Order has observed as under:

*(vii) Market Access Fee is illegal in EU: EU has issued a Directive (No.96/97/EC of 15.10.1996) on access to the ground handling market at community airports. As per sl. 7 of Annex, "fuel and oil handling" is part of ground handling service. Article 16(3) of the Directive provides that where access to airport installations gives rise to the collection of a fee, the latter shall be determined according to relevant, objective, transparent and non-discriminatory criteria. From the papers made available by IATA, it appears that the European Court of Justice has interpreted Art. 16(3) in a manner that it "precludes the managing body of an airport from making access to the ground handling market in the airport subject to payment by a supplier of ground handling services or self-handler of an access fee as consideration for the grant of a commercial opportunity, in addition to the fee payable by that supplier or self-handler for the use of the airport installations". In absence of any legal instrument of the nature of EU Directive, the ratio of EU Directive and its interpretation by the European Court of Justice may not be applicable in Indian context. However, EU position and the Australian position ..... demonstrate that the Fuel Throughput Charges are not encouraged in other jurisdictions.*

**22.19.** Thus, ICAO Guidance suggests that the level of such charges should reflect the value of concessions granted and should be related to the cost of the facility provided, if any. The Authority notes that MIAL have not made any case of business valuation or cost of providing these services.

**22.20.** As far as the Indian situation is concerned, the Authority notes that as per Section 2 (a) (vi) of the AERA Act, the service provided for supplying fuel to the aircraft at an airport is an aeronautical service. Hence, the matter of regarding the service of supply of fuel to the aircraft being an aeronautical service is put to rest by AERA Act. As noted by the Authority, fuel availability at the airport is an integral part of supply of fuel to an aircraft.

**22.21.** In view of the above, the Authority had in its Order no. 07/2010-11 dated 04.11.2010 decided that the FTC is an aeronautical charge.

**22.22.** The Authority noted that this position was challenged before the Hon'ble Appellate Tribunal. The Authority had made its detailed written submissions in the matter apart from outlining its assessments of the legal position as mentioned above. The appeal has since been withdrawn by MIAL. The Hon'ble Appellate Tribunal in its Order dated 05.10.2012 has stated as under,

*“After the two senior advocates had argued the matter extensively, the learned counsel for the appellant seeks to withdraw the matter, in view of the stand taken by Shri Nanda appearing for AERA (on instructions from AERA). The stand is that AERA is going to pass a final tariff determination order shortly by the end of November, 2012. Under the circumstances, he feels that there would be no point in our considering the ad-hoc increase in tariff. He also says that all the questions now raised would be kept open while considering the final determination of tariff.*

*Accordingly, the appeal is allowed to be withdrawn with the liberty that all the questions herein could be agitated at the stage of final determination of tariff. In the meanwhile, the order dated 04.11.2010 on ad-hoc determination of fuel throughput charges shall remain in force.*

*In view of this, the appeal stands disposed of as withdrawn.”*

**22.23.** Further, considering that MIAL have entered in to long term contractual agreements with the Oil Marketing companies, the Authority tentatively decided to consider the revision

in FTC in line with the agreements and also consider the escalation at CPI or 7%, whichever is less.

**22.24. The Authority had proposed that Fuel Throughput Charges are charges in respect of provision of aeronautical service namely, supply of fuel to the aircraft, hence it is an aeronautical charge and is to be determined by the Authority under the Section 13 (1) (a) of the AERA Act.**

**22.25. The Authority had proposed to consider Fuel Throughput revenue as aeronautical revenue.**

**22.26. The Authority had also proposed to consider the revision in Fuel Throughput Charges in line with the agreements with the oil marketing companies and consider the escalation at CPI or 7%, whichever is less.**

**22.27. The impact of considering FTC as aeronautical revenue on X – factor is as under (this sensitivity subsumes the impact of considering FTC as aeronautical revenue on Hypothetical RAB discussed in para 9.24):**

**Table 104: Sensitivity – Impact on X factor from considering Fuel Throughput revenue as aeronautical revenue**

Parameter	X Factor as per the Base Model	X Factor after change in assumptions
Fuel Throughput revenue as aeronautical revenue	-873.36%	-908.38%

**b Stakeholder Comments on Issues pertaining to Treatment of revenue from Fuel Throughput Charges**

**22.28.** The Authority has received comments from various Stakeholders on the issues pertaining to the treatment of revenue from FTC. While DIAL, ACI and APAO propose the revenue from FTC to be considered towards non-aeronautical revenue, IATA and BAR-India have suggested it to be considered towards aeronautical revenue.

**22.29.** Proposing the treatment of FTC as non-aeronautical revenue, ACI Comments as under,

*“ACI noted from the submissions that CSIA has not invested in any related infrastructure for the provision of fuel delivery to aircrafts. All services and infrastructure in this respect, including common hydrant, pipelines, etc. is created solely by the oil companies. CSIA only charges a concession fee from the oil companies for allowing them to operate.*

*ACI has further made reference to ICAO Document No. 9082 and has submitted that revenues from ‘non-aeronautical’ are defined to include concession granted to oil companies to supply aviation fuel and lubricants. The airport operators themselves do not provide any aeronautical services as far as Fuel Throughput Charges are concerned.*

**22.30.** DIAL Comments – DIAL proposed that the Authority should consider Fuel throughput Charge as Non Aeronautical Revenue.

**22.31.** IATA, on this issue, has commented as under –

*“As with cargo services and ground handling, the AERA Act considers a service provided for supply fuel to the aircraft at a major airport as an aeronautical service. While the debate is ongoing as to how ICAO treats fuel concession revenue (or FTC in the Indian context), what truly matters in India is what the AERA Act says. As the AERA Act classifies fuel service as an aeronautical service, it follows that any revenue derived by the airport irrespective of whether the airport provides the service itself or concessions it out, should be considered as aeronautical revenue.*

*IATA strongly objects to the tentative decision that FTC which is purely a market access fee without a cost basis should be allowed to automatically escalate at CPI or 7% whichever is less.*

*Fuel concession fees or market access fees have been abolished in many parts of the world. In a landmark ruling by the European Court of Justice in 2003 in the case of Hannover Airport versus Lufthansa, the court judgment (reproduced below) is this:*

*Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports, in particular Article 16(3) thereof, precludes the managing body of an airport from making access to*

*the groundhandling market in the airport subject to payment by a supplier of groundhandling services or self-handler of an access fee as consideration for the grant of a commercial opportunity, in addition to the fee payable by that supplier or self-handler for the use of the airport installations. On the other hand, that body is entitled to collect a fee for the use of airport installations, of an amount, to be determined according to the criteria laid down in Article 16(3) of the Directive, which takes account of the interest of that body in making a profit.*

*Ever since the ruling, every airport in the European Union had subsequently withdrawn market access fee for fuel supply.*

*The current level of FTC at BOM is already unreasonably high and the authority should not condone a baseless annual escalation that is unheard of anywhere in the world and that is only possible because of a lop-sided agreement that oil marketing companies have no alternative but to sign if they are to continue doing business at the airport. According to the AERA Act, the authority is not obligated to consider agreements that do not involve the Central government especially one that was put in place as a result of the overwhelming market power of the airport.”*

**22.32.** Raising concern over increase in FTC by 7%, FIA commented as under,

*“• In the CP No.22/2012-13 the Authority has tentatively accepted the proposal of MIAL for increase of the FTC by an increase of 7%. It is submitted that even though increased revenue from FTC goes towards calculation of overall passenger yield, the impact on an airline's operation is different if the cost is carried by the airline (through higher FTC) versus it being borne by the passenger (through higher UDF). As there is no cost basis for FTC, it would add to the load of the cost on airlines through increasingly higher FTC.*

*• It is submitted that an automatic annual escalation of a fee that has no cost basis based on an agreement between the airport and oil companies where airlines as the ultimate payer played no part in the negotiations, if any, should not be allowed by the Authority.”*

**22.33.** Requesting the Authority to make any revision in FTC only prospectively, IOCL commented as under,

*"IOCL in their submission stated that "As on date, the approved FTC rate for CSIA Mumbai is Rs. 561.75 per KL, which was approved on ad hoc basis vide Authority's order no. 07/2011-12 dated 4th November, 2010. So, FTC for airlines is continuing at 561.75 per KL" It also said, " Authority's proposal would lead to approval of higher FTC on retrospective basis, w.e.f 1.04.2011" and it made a request that approval of tariffs/rates including fuel throughput charges for the first control period be finalised at the earliest possible and revisions if any, be made from prospective date.*

*It made a reference to Consultation Paper No. 16/2012-13 dated 23.08.2012 in respect to tariff for Chennai International Airport, Chennai and Consultation paper number 17/2012-13 dated 30.8.2012 in respect of tariff for NSCBI Airport, Kolkata. It said that in both the papers, the implementation of revised FTC was proposed on prospective basis from 1st November, 2012. Also stating that in case of CSIA, Mumbai also, the approval for revised FTC needs to be considered on prospective basis.*

*In view of the above, it recommended "In place of flat increase in 7% in FTC for 2013-14, the escalation at CPI of 7% whichever is less, may be considered, as mentioned in tentative decision under clause 29.c of the consultation paper"*

*Also, "The Proposal increase should be made effective only on prospective basis, in order to avoid any financial loss to suppliers, who are only a conduit between Airlines and Airline Operators, for recovery from Airlines and subsequent payment of these charges to Airport Operators. As an option, Authority may consider adjusting the arrears on account of lower FTC collected during 2011-12 and part of 2012-13 as claimed by MIAL, during the balance part of FY 2012-13 and FY 2013-14"*

**22.34.** Raising a similar concern, as also raised by IOCL, HPCL commented –

*"HPCL in their submission stated "Any approval in FTC on retrospective basis i.e., effective 1st April 2011 would lead to severe financial loss to us*

*(Fuel Suppliers) as currently we are still recovering FTC at the rate Rs.561.75 from our airline customers as approved on ad hoc vid order dated 4th November 2010."*

*They want to draw the attention of the authority on all the previous communications with regard to revision in FTC/ITP charge wherein they have always requested the authority to consider and make revisions on a prospective basis to avoid financial losses to oil companies. Also, that the authorities may consider the adjustment of arrears due to MIAL on account of low FTC in subsequent years i.e., remaining part of FY13 and FY14.*

**22.35.** Supporting MIAL's stand on this position, APAO commented as under,

*"The fuel throughput charges being received are value of the concession given to the oil companies.*

*Authority has considered revenue from concessions such as In-to-plane (ITP) as Non-Aeronautical revenue. Treating revenue from concession to allow supply of fuel as aeronautical is inconsistent with Authority's own views. As in the case of ITP, fuel supply infrastructure is not owned by the Airport Operator and common hydrant infrastructure, pipelines, etc. also belong to the fuel suppliers. Both these cases are identical and non-distinguishable. Further, the Authority has treated other rental income as non aeronautical revenue as well.*

*As per ICAO Document No.9082 (Ninth Edition-2012; Appendix 3 - Glossary of Terms) wherein the "revenues from non-aeronautical sources" is defined to include concession granted to oil companies to supply aviation fuel and lubricants and the rental of terminal building space or premises to air carriers. The privilege/concession of grant of access to airport falls under revenue from non-aeronautical sources.*

*As per the form used by ICAO Contracting States to report financial data of airports (i.e. Form J), "Aviation fuel and oil – Include all concession fees, including any throughput charges, payable by oil companies for the right to sell aviation fuel and lubricants at the airport" is included as a concession (Item 3), i.e. non-aeronautical revenues.*



*The airport operators themselves do not provide any aeronautical services under the ambit of section 2(a) of AERA Act, 2008 insofar as FTC is concerned.*

*Revenue earned by MIAL should be treated as non-aeronautical revenue. Treating such revenue as aeronautical is inconsistent with the Authority's own view in determining the nature of revenues from cargo, ground handling and in-to-plane services. APAO would request the Authority to adopt a consistent approach with respect to classification of non aeronautical services and consider revenues from fuel throughput charges as non aeronautical revenues."*

**22.36.** Cathay Pacific commented as under,

*"Revenue derived by the airport from provision of such a service should be treated as aeronautical revenue and this should be the bottom-line. We strongly disagree that fuel throughput fee which is purely a market access fee without a cost basis should be allowed to automatically escalate at CPI or 7% whichever is less. The Authority should be well aware that fuel concession fees or market access fees have been abolished in many parts of the world. Fuel throughput fee at CSI Airport are already unreasonably high and the Authority should not condone a baseless annual escalation that is unheard of anywhere in the world because of a lop-sided agreement that oil marketing companies have no alternative but to sign if they are to continue doing business at the airport. According to the AERA Act, the Authority is not obligated to consider agreements that do not involve the Central government especially one that was put in place as a result of the overwhelming market power of the airport."*

**22.37.** BAR – India, on this issue, commented as under,

*"The Authority has tentatively decided to consider the revision in Fuel Throughput Charges in line with the agreements with the oil marketing companies and consider the escalation at CPI or at 7%, which is lesser. The tendency of the airport operators to charge Fuel Throughput charges at exploitative rates was expected to be curbed in as much as the same would*

*lead to lowering of airport charges and the impact on the airlines/passengers is likely to be neutralized /mitigated. It may be pointed out that the agreements were entered into between two parties 'who did not even bear the financial burden thereof. The oil companies who were paying the charges pass the same on to the airlines and the airport operator is the net gainer. AERA needs to reconsider the present charges and disallow any escalation.*

*According to Section 13 (1)(a)(vi) of the AERA Act, only the agreements entered into between the Central Government and the airport operator that offer a concession are to be taken into consideration at the time of determining the aeronautical tariff. As the Central Government is not a party to the agreements that have been entered into between the oil companies and the airport operator for supply of fuel, these do not constitute agreements that provide a concession from the Central Government. Hence, these agreements do not fall within the scope of Section 13(1)(a)(vi) of the AERA Act and ought not to be considered for the purpose of tariff determination, as they do not offer a concession provided by the Central Government.”*

**22.38.** Commenting upon the Authority’s position on consideration of Fuel Throughput Charges, Assocham stated as under,

*“AERA has proposed to consider the Fuel Throughput charges as Aeronautical income by completely disregarding the factual position that neither any assets are owned nor any services at all is being provided by MIAL and throughput charges being received are purely value of the concession given to the oil companies.*

*This approach of AERA is inconsistent with the approach adopted by AERA in the case of revenue received by the Airport Operators from into plane service providers.”*

**c MIAL’s Response to Stakeholder comments on Issues pertaining to Treatment of revenue from Fuel Throughput Charges**

**22.39.** MIAL has responded to FIA comments as under,

*“Concession fee, loosely worded as Fuel Throughput Charge (FTC), which is received by MIAL from the oil companies for parting with the right/privilege over the CSI Airport granted to the lessee/MIAL under the OMDA read with the State Support Agreement, for allowing the oil companies to carry on their business at the airport.*

*The charge is collected for providing the oil companies a commercial opportunity and platform for carrying on their business of fuel sale to airlines within the airport.*

*Therefore, fuel throughput charge is not against a ‘service’ provided by MIAL, let alone an ‘aeronautical service’; it is a charge for the parting of the privilege by MIAL in favour of oil companies.*

*Further, it may be noted that oil companies had entered into a well informed agreement where price mechanism was adequately defined.”*

**22.40.** Responding to Cathay Pacific Comments, MIAL stated as under,

*“Section 2(a)(vi) of the AERA Act by limiting the scope of "aeronautical services" only to the extent of "services provided for supplying fuel" (and not to privileges of access to the airport by the fuel supplier) is in consonance with the ICAO Document No.9082 wherein the “revenues from non-aeronautical sources” is defined to include concession granted to oil companies to supply aviation fuel. The privilege/concession of grant of access to airport does not involve the provision of any services. The charge for such grant of concession/ privilege falls under revenue from non-aeronautical sources. Extract from Appendix 3 - Glossary of Terms in Document 9082 (Eighth Edition – 2009) of International Civil Aviation Organization (ICAO) titled “ICAO’s Policies on Charges for Airports and Air Navigation Services” is reproduced below:*

*“Revenues from non-aeronautical sources - Any revenues received by an airport in consideration for the various commercial arrangements it makes in relation to the granting of concessions, the rental or leasing of premises and land, and free-zone operations, even though such arrangements may in fact apply to activities which may themselves be considered to be of an*

*aeronautical character (for example, concessions granted to oil companies to supply aviation fuel and lubricants and the rental of terminal building space or premises to air carriers). Also intended to be included are the gross revenues, less any sales tax or other taxes, earned by shops or services operated by the airport itself.”*

*If supply chain of fuel is examined at CSI airport, it is found that*

- (i) fuel is brought by oil companies to respective fuel farm (s) at airport.*
- (ii) from fuel farm fuel is supplied either through hydrants or bowsers into plane.*
- (iii) fuel farm belongs to oil companies and hydrant system also belongs to oil companies.*
- (iv) land has been leased to respective oil companies for fuel farm for which lease rental is being charged.*
- (v) MIAL understands ownership of fuel remains with respective oil companies till it reaches aircraft. In the entire supply chain no role is being played by MIAL other than lessor of the land for which lease rentals are being charged.*

*Steps involved in supply chain are enclosed as Annexure 6.*

*MIAL has no contract with any airline concerning supply of fuel, nor MIAL has ever communicated to any of the airlines concerning supply of the fuel and FTC. MIAL has never envisaged that FTC is pass through to airlines by oil companies. Hence as far as understanding of MIAL is concerned fuel price being charged by oil companies is prerogative of oil companies.*

*The Authority, in case of CSI Airport, is not regulating supply of fuel treating it not as service but sale of goods. It is worth notice even into plane services are not being regulated at CSIA considering the same as point of supply of goods where ownership of goods get transferred to airlines once product reaches the aircraft.*

*In other airports the ownership of fuel farm is separated from suppliers and charges are being regulated by the Authority both for fuel farm and into plane service.*

*In case of concession fee from into plane service, the Authority has held that revenue share received by airport operator is Non Aeronautical revenue. The treatment of FTC has to be similar to the treatment of revenue from grant of concession to companies involved with into plane services.*

*The fuel throughput charges levied by airport operators on the oil companies is towards consideration for commercial opportunity and access to trading platform provided to oil companies for carrying on their business of fuel sale/supply and refuelling services to airlines at airport premises. Therefore, the fixation of fuel throughput charges does not lend itself to the tariff determination process contemplated under the AERA Act.*

*In paragraph 41 of Document 9082, it is clearly mentioned by ICAO that the level of FTC may reflect the value of concession granted to fuel suppliers. It further says if any facility is provided, in such case, any portion of charge for such facilities should reflect cost. Corollary of which is that pure concession fee is not related to cost.*

*Classification of FTC as non-aeronautical revenues has been clearly stated in ICAO Document No. 9562 - "Airports Economic Manual". Paragraph 3.40 and 3.49 of "Part B: Accounting" in "Chapter 3: Airport Financial Management" of Document 9562 clearly categorise Aviation fuel and oil concessions (including throughput charges) as the first item under the "Revenue from Non-aeronautical Activities" and not under "Revenue from air traffic operations", which is aeronautical revenue. The distinction is also unambiguously brought out in paragraphs 4.46, 4.49 and 4.50 of Document 9562 under "Part C: Determining the Costs Attributable to Concessions and Other Non-Aeronautical Activities" wherein it is specifically stated that "4.49 The policy reference given in paragraph 4.46 noted that the full development of revenues from non-aeronautical activities is encouraged,*

*except for concession directly associated with the operation of air transport services such as fuel, in-flight catering and ground handling.*

*Consequently, when the airport costs attributable to such activities are being determined, more precision may be required than in the case of other concessionary activities, and they would not necessarily be expected to make significant contributions towards cost not recovered through charges on air traffic or on other non-aeronautical activities.*

*However, they still remain non-aeronautical activities, and insofar as ICAO cost-recovery policies are concerned, they are not subject to the same limitations as is recommended be applied to charges on air traffic...” Chapter 6 of Document No. 9562 specifically deals with Development and Management of non-aeronautical activities. Under Section B – ‘non-aeronautical activities’ – of the same Document, types of concessions which are most frequently found at international airports are mentioned. Table 6-1 & paragraph 6.5 of Document No. 9562 list such concessions and it is pertinent to mention that concession granted to aviation fuel suppliers has been listed as item no 1. Same intention is also reflected in paragraphs 6.32, 6.33 and 6.34 of Document 9562.*

*As per the form used by ICAO Contracting States to report financial data of airports (i.e. Form J), “Aviation fuel and oil – Include all concession fees, including any throughput charges, payable by oil companies for the right to sell aviation fuel and lubricants at the airport” is included as a concession (Item 3), i.e. non-aeronautical revenues.”*

**22.41.** In response to IATA comments, MIAL stated as under,

*“Hypothetically, if FTC is not charged then other aeronautical charges would increase since the target revenue requirement will remain unchanged. It may be noted that MIAL continues to contend that FTC is non-aeronautical revenue.”*

**22.42.** In response to IOCL comment on revision of FTC on prospective basis, MIAL stated as under,

*“IOCL and other oil companies entered into a well informed agreement where price mechanism is adequately defined. Hence, liability of oil companies to pay concession fee, loosely worded as throughput charge, is clearly defined. While raising the invoices MIAL has clearly indicated about the increased fee payable by oil companies which was withheld for want of the Authority approval. Hence any request to for charges prospective effect is not justified.”*

**d MIAL’s own Comments on Issues pertaining to Treatment of revenue from Fuel Throughput Charges**

**22.43.** MIAL has commented upon the issue as under,

*“Section 2 (a) (vi) of the AERA Act by limiting the scope of "aeronautical services" only to the extent of "services provided for supplying fuel" (and not to privileges of access to the airport by the fuel supplier) is in consonance with the ICAO Document No.9082 wherein the “revenues from non-aeronautical sources” is defined to include concession granted to oil companies to supply aviation fuel. The privilege/concession of grant of access to airport does not involve the provision of any services. The charge for such grant of concession/ privilege falls under revenue from non-aeronautical sources. Extract from Appendix 3 - Glossary of Terms in Document 9082 (Eighth Edition – 2009) of International Civil Aviation Organization (ICAO) titled “ICAO’s Policies on Charges for Airports and Air Navigation Services” is reproduced below:*

*“Revenues from non-aeronautical sources - Any revenues received by an airport in consideration for the various commercial arrangements it makes in relation to the granting of concessions, the rental or leasing of premises and land, and free-zone operations, even though such arrangements may in fact apply to activities which may themselves be considered to be of an aeronautical character (for example, concessions granted to oil companies to supply aviation fuel and lubricants and the rental of terminal building space or premises to air carriers). Also intended to be included are the gross*

*revenues, less any sales tax or other taxes, earned by shops or services operated by the airport itself.”*

*If supply chain of fuel is examined at CSI airport, it is found that (i) fuel is brought by oil companies to respective fuel farm (s) at airport, (ii) from fuel farm fuel is supplied either through hydrants or bowsers into plane. (iii) fuel farm belongs to oil companies and hydrant system also belongs to oil companies. (iv) land has been leased to respective oil companies for fuel farm for which lease rental is being charged. (v) we understand ownership of fuel remains with respective oil companies till it reaches aircraft. In the entire supply chain no role is being played by MIAL other than lessor of the land for which lease rentals are being charged.*

*Steps involved in supply chain are enclosed as Annexure 8.*

*MIAL has no contract with any airline concerning supply of fuel, nor MIAL has ever communicated to any of the airlines concerning supply of the fuel and FTC. MIAL has never envisaged that FTC is pass through to airlines by oil companies. Hence as far as understanding of MIAL is concerned fuel price being charged by oil companies is prerogative of oil companies.*

*AERA, in case of CSI Airport, is not regulating supply of fuel treating it not as service but sale of goods. It is worth notice even into plane services are not being regulated at CSIA considering the same as point of supply of goods where ownership of goods get transferred to airlines once product reaches the aircraft.*

*In other airports the ownership of fuel farm is separated from suppliers and charges are being regulated by AERA both for fuel farm and into plane service.*

*In case of concession fee from into plane service, AERA has held that revenue share received by airport operator is Non Aeronautical revenue. The treatment of FTC has to be similar to the treatment of revenue from grant of concession to companies involved with into plane services.*



*We are extremely surprised, looking into the fact mentioned above, how throughput charges paid by oil companies to MIAL are aeronautical in nature.*

*The fuel throughput charges levied by airport operators on the oil companies is towards consideration for commercial opportunity and access to trading platform provided to oil companies for carrying on their business of fuel sale/supply and refuelling services to airlines at airport premises. Therefore, the fixation of fuel throughput charges does not lend itself to the tariff determination process contemplated under the AERA Act.*

*In paragraph 41 of Document 9082, it is clearly mentioned by ICAO that the level of FTC may reflect the value of concession granted to fuel suppliers. It further says if any facility is provided, in such case, any portion of charge for such facilities should reflect cost. Corollary of which is that pure concession fee is not related to cost.*

*Classification of FTC as non-aeronautical revenues has been clearly stated in ICAO Document No. 9562 - "Airports Economic Manual". Paragraph 3.40 and 3.49 of "Part B: Accounting" in "Chapter 3: Airport Financial Management" of Document 9562 clearly categorise Aviation fuel and oil concessions (including throughput charges) as the first item under the "Revenue from Non-aeronautical Activities" and not under "Revenue from air traffic operations", which is aeronautical revenue. The distinction is also unambiguously brought out in paragraphs 4.46, 4.49 and 4.50 of Document 9562 under "Part C: Determining the Costs Attributable to Concessions and Other Non-*

*Aeronautical Activities" wherein it is specifically stated that "4.49 The policy reference given in paragraph 4.46 noted that the full development of revenues from nonaeronautical activities is encouraged, except for concession directly associated with the operation of air transport services such as fuel, in-flight catering and ground handling.*

*Consequently, when the airport costs attributable to such activities are being determined, more precision may be required than in the case of other*

*concessionary activities, and they would not necessarily be expected to make significant contributions towards cost not recovered through charges on air traffic or on other non-aeronautical activities.*

*However, they still remain non-aeronautical activities, and insofar as ICAO cost recovery policies are concerned, they are not subject to the same limitations as is recommended be applied to charges on air traffic...” Chapter 6 of Document No. 9562 specifically deals with Development and Management of non-aeronautical activities. Under Section B – ‘non-aeronautical activities’ – of the same Document, types of concessions which are most frequently found at international airports are mentioned. Table 6-1 & paragraph 6.5 of Document No. 9562 list such concessions and it is pertinent to mention that concession granted to aviation fuel suppliers has been listed as item no 1. Same intention is also reflected in paragraphs 6.32, 6.33 and 6.34 of Document 9562.*

*As per the form used by ICAO Contracting States to report financial data of airports (i.e. Form J), “Aviation fuel and oil – Include all concession fees, including any throughput charges, payable by oil companies for the right to sell aviation fuel and lubricants at the airport” is included as a concession (Item 3), i.e. non-aeronautical revenues.*

*The Authority in Tentative Decision No. 29 (c) has decided to consider escalation in FTC at CPI (or 7% whichever is less). We would like to point out that that as per contract with Oil Marketing Companies, the escalation in FTC is linked to Wholesale Price Index and not CPI. We request the Authority to kindly make the necessary corrections.*

*We request the Authority to consider Fuel Throughput Charges as revenues from non-aeronautical service.”*

**e Authority’s Examination of the Issues pertaining to Treatment of revenue from Fuel Throughput Charges**

**22.44.** The Authority has carefully examined the comments made by the stakeholders in respect of the Authority’s position on the treatment of revenue from FTC, presented in the Consultation Paper 22/2012-13 dated 11.10.2012 and MIAL’s response to these comments.

The Authority has noted that while the Airlines and their representative bodies (IATA, FIA, BAR-India) have suggested either abolishing the FTC itself or disallowing any increase in FTC as there is no cost basis for the same. On the other hand, the Airports and their representative bodies (APAO) have requested the Authority to consider revenue from FTC as non-aeronautical revenue. The Authority further noted that the oil companies (IOCL and HPCL) have requested for making the increase in FTC a prospective measure and not a retrospective measure. The Authority has examined all aspects related to implementation of these suggestions, as presented below:

**22.45.** MIAL has placed reliance on the ICAO guidelines and particularly the “ICAO’s Policies on Charges for Airports and Air Navigation Services” Doc 9082, Ninth Edition-2012. The Authority has held a view that “supplying fuel to the aircraft at an airport” is defined as an aeronautical service. Hence in the Indian context, revenue from Fuel Throughput that is an integral and inalienable part of the fuel supply chain i.e. Fuel Throughput Charge is aeronautical revenue. Since the Authority has considered this revenue as aeronautical, it has taken the same into account, while calculating the Hypothetical RAB (though MIAL submission did not include FTC in Hypothetical RAB).

**22.46.** When the wordings in the AERA Act are unambiguous, there is no need to go to the legislative intent for its interpretation. However, the legislative intent further emphasizes that the legislature apprehended a scope for monopolistic practice developing in respect of determination throughput charges, recommended that it be brought in the ambit of AERA, government accepted the recommendation and accordingly defined supply of fuel to aircraft as an aeronautical service.

**22.47. Legislative intent:** This view of the Authority is also supported by the legislative intent while framing the AERA Act. AERA Bill was introduced in the Lok Sabha on September 5, 2007. While examining the AERA bill, the Department related Standing Committee in its report submitted to the Parliament on April 17, 2008 made, inter alia two recommendations as under:

*“The AERA Bill should be amended to include ‘non-aeronautical services.*

*The fuel supply infrastructure at the airports should be brought under the purview of AERA”*

22.47.1. The Ministry accepted the Committee's recommendation on fuel supply infrastructure at airports. The government noted that the Companies pay a throughput charge to the airport operator at mutually negotiated rates. The Ministry was of the view that for greater competition in favour of the airlines and for optimal utilization of ground infrastructure, a common fuel supply infrastructure needs to be developed at airports through which Oil Companies can supply ATF to the airports. This common system would be in the control of the airport operator and as such **there is a scope of monopolistic practice developing in respect of determination throughput charges.** (emphasis added) Hence it should be brought in the ambit of AERA.<sup>20</sup>

22.47.2. On the other hand the government did not accept the recommendation to include non-aeronautical services on the ground that normally there are competing outlets in respect of most non-aeronautical services, which are thus, not monopolistic in nature. The government, however introduced sub-clause 13(1)(a)(v) viz. "revenue received from services other than the aeronautical services" as one of the factors to be taken into account while determining the aeronautical charges.

22.47.3. The legislative intent of treating fuel throughput charge as aeronautical and hence to be brought in the ambit of AERA is thus clear.

**22.48.** MIAL has however regarded FTC as non-aeronautical revenues based on its reading of the ICAO guidelines and effectively wants the Authority to go by ICAO guidelines in preference to the provisions of the ACT. In its other submissions MIAL has expected the Authority to follow the provisions of SSA/OMDA. Schedule 5 of OMDA gives a list of aeronautical services and includes "common hydrant infrastructure for aircraft fueling by authorized service providers." However for FTC MIAL has chosen to rely on what, in the analysis of the Authority, is a partial reading of ICAO guidelines and interpretation. While the Authority continues to hold the primacy of the AERA Act over other instruments etc., the Authority also analyses to the ICAO guidelines in this behalf.

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<sup>20</sup> "Government Approves Amendments to AERA Bill, 2007" Press Note of Press Information bureau of India, ID: 42051, Aug 29, 2008.

**22.49.** In its Glossary to Terms in ICAO Doc 9082, ICAO has defined ICAO defines “Fuel “throughput” charges as “A concession fee levied by an airport on aviation fuel sold at the airport.” ICAO defines a concession as “The right to operate a certain commercial activity at an airport, commonly on an exclusive basis and usually at a specified location.” The Authority notes that the words “commercial activity” appearing in the definition of “concession” do not mean that a concession is necessarily a non-aeronautical activity. Furthermore, ICAO guidelines expect the concession to be operated “usually at a specified location”. This requirement should normally connote a specified physical area or premises from where the said commercial activity of concession is normally operated.

**22.50.** The word “facility” also occurs at numerous places in the glossary of terms in ICAO’s guidelines (Doc 9082). For example, **pre-funding** is defined as “Financing of an airport or air navigation **facility** project through charges levied on users prior to completion of the **facility** concerned”. Similarly **privatization** is defined as “Transfer of full or majority ownership of **facilities** and services to the private sector. (Other examples are the definitions of commercialization, differential charges, modulated charges, multinational facility or service)

**22.51.** The significance of the word “**facilities**” will be apparent later upon further analyzing the guidance of the ICAO with respect to level of FTC where it clearly states that “the level of fuel throughput charges should be related to the *cost of the facilities provided, if any.*” The relevant portion pertaining to what ICAO terms as “Fuel Concession Fee” pertaining to FTC is reproduced below:

*“Where fuel “throughput” charges are imposed, they should be recognized by airport entities as being concession charges of an aeronautical nature. Fuel concessionaires should not add them automatically to the price of fuel to aircraft operators, although they may properly include them as a component of their costs in negotiating fuel supply prices with aircraft operators. The level of fuel “throughput” charges may reflect the value of the concessions granted to fuel suppliers and should be related to the cost of the facilities provided, if any. Alternatively, consideration may be given, where feasible, to replacing fuel “throughput charges” by fixed concession fees reflecting the value of the concession and related to the costs of the facilities provided, if any. Where imposed, any such charges or fees should*

*be assessed by airport operators in such a manner as to avoid discriminatory effects, either direct or indirect, for both fuel suppliers and aircraft operators and to avoid their becoming an obstacle to the progress of civil aviation.”*

**22.52.** The Authority notes that the above ICAO guidance has the following distinct components:

22.52.1. Where fuel “throughput” charges are imposed, they should be recognized by airport entities as being concession charges of an aeronautical nature. In Authority’s view, if the nature of FTC is aeronautical, the revenues arising therefrom should be reckoned as aeronautical revenue. This is also fully consistent with the definition of fuel supply being defined as an aeronautical service under the AERA Act.

22.52.2. **Fuel concessionaires should not add them automatically to the price of fuel to aircraft operators. This** pertains primarily to the relationship between the oil companies and airlines. Though the imposition of FTC by airport operator directly impacts the airlines, the Authority has seen no evidence that the airlines are consulted by the airport operator before entering into FTC contracts with oil companies. Hence the important stakeholder viz. the airlines, whose finances will be impacted by FTC do not appear to have been consulted. The Authority notes that consultation with stakeholders is a fundamental ingredient in ICAO guidance. It appears to the Authority that while placing reliance on ICAO guidelines on this issue, MIAL does not appear to have adhered to the requirement of consultation. That apart, this issue has also been earlier commented upon by the Australian competition and Consumer Commission as under<sup>21</sup>:

*“ACCC also notes that “BAC and WAC seek to justify introduction of the levies on the basis of the validity of contractual arrangements. The question of the validity of contractual arrangements between the airport operators and leaseholders is a matter for the relevant parties not the Commission. The validity of contracts is a separate*

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<sup>21</sup> "Fuel Throughput Levies", Report Pursuant to the Commission’s Monitoring Functions Under The Prices Surveillance Act 1983 December 1998

*issue from the relationship of fuel throughput levies to costs or reductions in charges elsewhere”*

22.52.3. **The level of fuel “throughput” charges may reflect the value of the concessions granted to fuel suppliers and should** (emphasis added to connote a mandatory nature of this requirement and to emphasise the simultaneity in fulfilling both the conditions) **be related to the cost of the facilities provided, if any.** The two requirements of value of the concession and cost relatedness appear to be required to be simultaneously adhered to in FTC. MIAL has provided no evidence to the Authority that the level of FTC bears any relationship to the value of the concessions granted to the fuel suppliers. ICAO guidance also requires that the FTC be related to cost of the facility provided, if any. The Authority notes that MIAL does not appear to have provided any “facility” in terms of land or building or machinery to the fuel supplier in so far as FTC is concerned. MIAL thus also does not appear to have adhered to fulfilling simultaneously these two requirements contained in ICAO’s guidance that MIAL seeks to rely upon to argue its case for treating FTC as non-aeronautical revenue.

22.52.4. Alternatively, consideration may be given, where feasible, to replacing fuel “throughput charges” by fixed concession fees reflecting the value of the concession and related to the costs of the facilities provided, if any. ICAO has given this alternative of a fixed concession fee (presumably a lump sum fee) and even here, the two simultaneous requirement imposed by ICAO is the “value of concession” and “cost relatedness”, both of which do not seem to have been adhered to by MIAL. Furthermore, MIAL has not given any evidence to the Authority if it has considered the alternative of a fixed concession fee and that has for valid reasons rejected the same.

22.52.5. Where imposed, any such charges or fees should be assessed by airport operators in such a manner as to avoid discriminatory effects, either direct or indirect, for both fuel suppliers and aircraft operators and to avoid their becoming an obstacle to the progress of civil aviation. ICAO requires the airport operator to assess the fees in the manner indicated in the guidance. MIAL has not given any evidence to the Authority (for Authority’s review) during this process about the

nature of its such assessment, if at all undertaken by MIAL, the discriminatory effects if any on fuel suppliers and aircraft operators and equally importantly, an assessment that levying these charges by MIAL will not become an obstacle to the progress of civil aviation.

**22.53.** Apart from the specific requirements in respect to FTC, Consultation and cost relatedness are basic fundamentals in ICAOs guidance. It would thus appear to the Authority that MIAL has not adhered to the detailed guidance of ICAO, neither in letter or in spirit with regard to determining the level of FTC.

**22.54.** The above analysis notwithstanding, Authority has also examined the other part of ICAO's guidance, which according to MIAL is supposed to show that FTC is non-aeronautical revenue. The relevant entry for this purpose is the definition of "*Revenues from non-aeronautical sources*" given as:

*"Any revenues received by an airport in consideration for the various commercial arrangements it makes in relation to the granting of concessions, the rental or leasing of premises and land, and "free-zone" operations, even though such arrangements may in fact apply to activities that may themselves be considered to be of an aeronautical character (for example, concessions granted to oil companies to supply aviation fuel and lubricants and the rental of terminal building space or premises to aircraft operators). Also intended to be included are the gross revenues, less any sales tax or other taxes, earned by shops or services operated by the airport itself."*

**22.55.** The two examples given by ICAO relates to (i) concessions granted to oil companies to supply aviation fuel and lubricants and (ii) the rental of terminal building space or premises to aircraft operators. This example when read with the ICAO's requirement that the "level of fuel "throughput" charges may reflect the value of the concessions granted to fuel suppliers and should be related to the cost of the facilities provided, if any" clearly mean that if and only *if any facilities* are made available by the airport operator to the oil companies, the question of airport operator having to have incurred some costs attributable thereto will arise. It should reasonably and logically follow that such "facilities" can only be in the nature of space or equipment or built up premises. This interpretation appears to be



in consonance with both the definition of “concession” in ICAO as well as the other example contained in the definition that of the aircraft operators viz. “the rental of terminal building space or premises to aircraft operators”. Hence it can be harmoniously interpreted to mean that FTC can be levied only when some facilities (if any) are provided by the airport operator to the oil companies. If MIAL provides such facilities, it can, according to the ICAO guidelines charge concession fee (FTC) so that the commercial activity of fuel supply can be operated by the concessionaire at the said specified location. MIAL has not provided any “facilities” to the oil companies (except the permission to enter the airport). It could therefore also be argued that **even within the ambit of ICAO guidelines, MIAL’s action of charging FTC is not in accordance with these guidelines.**

**22.56.** The Authority’s analysis shows that taking only one of the two examples contained in the definition of non-aeronautical revenues (given in the Glossary of Terms) in ICAO’s guidelines to conclude that FTC is non-aeronautical revenue will be partial reading and hence not be appropriate. The underlying fundamentals as given in the main body of the guidelines need also to be taken into account. MIAL has time and again drawn strength from ICAO guidance to classify FTC as non-aeronautical revenue so that only 30% thereof is reckoned towards aeronautical charges in CSIA at Mumbai.

**22.57.** The Authority’s analysis above would seem to indicate that quite apart from the MIAL’s classification of the FTC as non-aeronautical, MIAL has not followed the different requirements of ICAO guidelines while charging the FTC. Accordingly it can be argued that MIAL should not charge the same.

**22.58.** The Authority has also noted the comments of MIAL in which it has stated that the role of MIAL in supply of fuel to the aircraft is limited to ‘land that has been leased to respective oil companies for fuel farm for which lease rental is being charged’. The Authority had already stated in its analysis of revenues from the cargo service that if an airport operator is not providing a particular aeronautical service directly but through concessionaires or outsourced to a third party, a plausible view can be taken that the airport operator has caused such an aeronautical service to be provided by the concessionaire and that the receipts accruing to the airport operator from such third party concessionaires should also be classified as aeronautical revenue. However, to keep the revenue stream practicable and recognizing that the third party concessionaire is the actual service provider,

the Authority had taken the approach of treating such revenues as non-aeronautical revenues in the hands of the airport operator. This is the approach Authority has followed for service providers of into plane services. Likewise in the instant case if, as claimed by MIAL, land of the airport has been leased to the respective oil companies, the lease rental that the oil companies would pay to MIAL would be classified as non-aeronautical revenue. However, while regulating the charges of such fuel farm, the lease rental would form a component of the cost, reasonableness of which would also be reviewed by the Authority. Such a rental would, therefore, need to have a valuation of the land and that has been leased out to the oil companies in accordance with the normal valuation methods. It would, thus, be clear that MIAL has permitted the oil companies to conduct commercial activities at the specified location at the facility defined by the location of the land leased by it to the oil companies for the fuel farm. Accordingly, these revenues are classified as non-aeronautical revenues. There is need for cost relatedness in ICAO Guidelines as claimed by MIAL itself. The Authority finds that fuel throughput charge appears to be in addition to such lease rentals. Unless it is treated that the service of permitting the oil to be brought into airport premises to be put in the oil farms of the respective oil companies is a service given by MIAL itself and the cost in giving a service is ascertained, it is not possible to determine the appropriate level of fuel throughput charge. At any rate it will be an aeronautical service outside the ICAO Guidelines for revenues from non-aeronautical sources. The authority proposes to revisit this issue in the next control period.

**22.59.** The Authority is not regulating the price of aviation fuel. However, it is unable to accept the MIAL's statement that AERA is not regulating supply of fuel. According to the AERA Act, "for supplying fuel to the aircraft at an airport" is an 'aeronautical service'. Hence, AERA is mandated to regulate any service provided for toward supply of fuel. The cost of the aviation turbine fuel that the oil companies charge to the airlines is, however, not regulated by AERA. It is also incorrect to say that AERA is not regulating the into plane services. The charges of into plane service providers are regulated by AERA as can be seen by its tariff determination in respect of into plane service providers in respect of Bengaluru and Delhi airports. CSI had stated that there are no separate into plane service providers in Mumbai airport and that the oil companies are directly supplying fuel to the aircraft. The question, therefore, of regulating the charge of separate third party into plane service

providers had not arisen in case of Mumbai airport. To the extent that the oil companies are engaged both in the sale of goods as well as providing service of supply of fuel into the plane, the Authority may go into this issue in due course. The Authority, however, reiterates that it regards fuel throughput charge wherever charged as an integral part of the service of supplying fuel to the aircraft and treats this as an aeronautical revenue. The Authority also notes that in Schedule 6 of OMDA which defines, for the purpose of OMDA, non-aeronautical services, no mention appears of any element of service like supply of fuel. However, as per Schedule 5, the entry regarding supply of fuel is a common hydrant infrastructure for aircraft fueling services by authorized providers.

**22.60.** The Authority has noted that the ruling by the European Court of Justice in 2003 in the case of Hannover airport Vs. Lufthansa as has been brought to the notice of the Authority by IATA. According to the European Court of Justice, access to the ground handling market at community airports precludes managing body of an airport from making access to the ground handling market in the airport subject to payment by the supplier of ground handling services or service handler of an access fee is consideration for the grant of a commercial opportunity. The European Court of Justice has, however, held that the airport managing body can collect the fee for the use of airport installations in accordance with the certain criteria. The lease rentals that CSI has stated that it charges to the oil companies are, thus, in line with ICAO Guidelines as well as the ratio of judgement of the European Court of Justice. The Authority has noted that IATA's submission that after this ruling every airport in EU had subsequently withdrawn market access fee for fuel supply.

**22.61.** IATA has also stated that the oil companies are forced to enter into what IATA has termed as 'lop sided agreements' as they 'have no alternative but to sign if they are to continue doing business at the airport'. IATA has also referred to such an arrangement 'as a result of the overwhelming market power of the airport'.

**22.62.** The lease rentals would be expected to be fixed per annum based on the cost, evaluation of the land, etc. Fuel throughput charge, however, is charged on per KL basis and does not appear to have any relation to the cost of the facility, namely, land provided. MIAL has termed it as market access fee.

**22.63.** APAO has supported the fuel throughput charges on the basis of value of the concession given to the oil companies. The Authority does not find any evidence that MIAL has placed before it for this conclusion.

**22.64.** The Authority has noted the observation of the Austrian Competition and Consumer Commission which held that imposition of a fuel throughput levy is an 'abuse of market power' and that there was a strong case that such airports have market power in the market for refueling service. It also notes that ACC had not found contractual agreements as valid reasons to justify introduction of the levies and had felt that 'the question of the validity of the contractual agreements between airport operator and lease holders is a matter for the relevant parties, not the Commission'. The validity of contracts is a separate issue from the relationship of fuel throughput levies to cause or reduction in charges elsewhere. It noted that the issue of reduction in charges elsewhere that is a part of regulatory regime in Austria does not arise in the Indian context. In view of the comments of the different stakeholders, the Authority proposes to revisit the issue of appropriate level of fuel throughput charge in the next control period. The Authority has already decided to treat fuel throughput charge as an aeronautical revenue. It has also decided to continue with the contractual agreements that airport operator has entered with the oil companies only for the current control period. The Authority may revisit the question of the level of the fuel through put charge (as aeronautical revenue) in the next control period.

**22.65.** BAR (India), in its comments, has pointed out that fuel throughput charge is a contract between two parties (airport operator and the Oil companies) both of which, according to BAR(India) do not bear the financial burden in as much as oil companies pass the same to the airlines and the airport operator is a net gainer. This submission is contrary to MIAL submission that 'MIAL have never envisaged that fuel throughput charge is a pass through to airlines by oil companies'. Hence, as far as understanding of MIAL is concerned, fuel price being charged by oil companies is prerogative of oil companies. As can be seen and according to BAR (India)'s submission on the factual position, as it understands, this understanding of MIAL appears to be flawed in that. The oil companies, according to BAR (India), appear to be passing the fuel throughput charge to the airlines. MIAL has also stated that it has no contract with any airlines concerning supply of fuel nor has MIAL ever communicated to any of the airlines concerning supply of the fuel and fuel throughput

charge. This corroborates BAR (India)'s submission that the stakeholders namely, airlines, who according to it, bears the entire cost of fuel throughput charge has no role in the contract between airport operator and the oil companies.

**22.66.** The Authority also notes that fuel throughput charge, as an aeronautical charge, is fully reckoned towards determination of aeronautical tariffs and to that extent would lower the burden on the passengers especially with respect to UDF. The Authority has noted elsewhere that the quantum of fuel throughput charge is not in consequential and is about 15% of the aeronautical revenues at CSI.

**22.67.** The Authority has however been maintaining that FTC is a part of aeronautical service under the Act, its revenue will be aeronautical revenue and accordingly would proceed to determine FTC in accordance with the mandate of its Act. The Authority also notes that FTC constitutes around 15% of aeronautical revenue till 31.03.2012. This percentage is likely to remain same for the year 2012-13 (For e.g. During years 2009-10, 2010-11 and 2011-12, the total aeronautical revenue of CSIA, Mumbai was Rs. 480 crores, Rs. 490 crores and Rs. 511 crores and revenue from FTC was Rs. 73 crores, Rs 80 crores and Rs 82 crores respectively). The level of FTC is not cost related and has practically negligible costs of realization. The financial implications of treating it as non-aeronautical and not aeronautical are substantial. If FTC is treated as aeronautical revenue (as the Authority has on analysis proposed) the entire FTC would be reckoned towards aeronautical tariff charges, without regarding the 38.7% revenue share that MIAL would give to AAI as per the mutually agreed contract. If, however, FTC is to be treated as non-aeronautical revenue, only 30% thereof would be reckoned towards aeronautical tariffs and after paying the same revenue share to AAI, it would still be left with 31.3% of FTC. The financial advantage to MIAL in treating FTC as non-aeronautical revenue would therefore come to 70.0% (= 38.7%+31.3%) of FTC or nearly Rs. 165 crores during the first three years and expected amount of nearly Rs. 150 crores in the next two years (total of Rs. 315 crores for the current Control Period). It therefore appears to the Authority that the arguments of the airport operator to treat FTC as non-aeronautical revenue are rooted more on financial implication rather than any other underlying deeper conceptual classification thereof.

**22.68. FTC in other international Jurisdictions:** Comments from stakeholders like IATA, FIA etc. have brought to the notice of the Authority the position regards FTC in other regulatory

regimes and particularly in Australia, EU. The Authority has noted these different positions in that generally according to these submissions, the trend appears to be towards abolishing FTC. The Authority notes that in EU jurisdiction, Fuel and oil handling comprising of *“the organization and execution of fuelling and defuelling operations, including the storage of fuel and the control of the quality and quantity of fuel deliveries and the replenishing of oil and other fluids”* is a part of LIST OF GROUNDHANDLING SERVICES<sup>22</sup>. The Authority is also informed that according to a certain judicial pronouncement, FTC is not permitted in EU and has been dispensed with. The Authority is informed that the FTC stands abolished at Brisbane and Perth airports in Australia. According to report *“INTERNATIONAL AERONAUTICAL USER CHARGES”*, by Amedeo R, Odoni, Flight Transportation Laboratory, Massachusetts Institute of Technology, February 1985,<sup>23</sup> *“airports like Copenhagen, Casablanca, Buenos Aires, Manila, Tenerife and Caracas have recognized fuel charges as aeronautical revenues”*<sup>24</sup>. In 1969, the Danish Government decided to abolish fuel throughput charges for international flights from Danish state-owned airports. In 1971, the charges were abolished for domestic flights as well. The revenue formerly derived from the fuel charge was substituted by an appropriate increase in landing rates<sup>25</sup>. *The replacement of fuel throughput charges by an increase in landing rates was welcomed by the airlines.”*

**22.69.** The Authority also notes that the Australian competition and Consumer Commission had analysed the issue of levy of Fuel Throughput levies proposed or levied by Brisbane and Perth airports<sup>26</sup>. As noted by the ACCC, *“Airport operators levy aircraft refueling charges under lease and licence agreements with oil companies. The current arrangements were negotiated and put in place by the Federal Airports Corporation (FAC) before the airports were privatised. They include provisions for fuel throughput levies, but these were not activated* (emphasis supplied). Since then BAC has introduced a levy of 0.4 cents per litre (in July 1998), while WAC has announced that it will introduce a levy of 0.5 cents at the International Terminal to commence in June 1999. The levies will generate additional

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<sup>22</sup> See for example; Law and Policy on Airport Competition In Europe: Procuring a New Paradigm of Choice" by Jeffrey Goh, CRI, Mar 2000

<sup>23</sup> <http://dspace.mit.edu/handle/1721.1/68096>

<sup>24</sup> Fuel Throughput Charges as Concession Fees." Paper presented by Denmark at the 1981 ICAO Conference on Airport and Route Facility Economics held in Montreal , Canada

<sup>25</sup> "Replacement of Fuel Charges by Other Sources of Revenue." Paper presented by Denmark at the 1981 ICAO Conference on Airport and Route Facility Economics held in Montreal , Canada.

<sup>26</sup> "Fuel Throughput Levies", Report Pursuant to the Commission's Monitoring Functions Under The Prices Surveillance Act 1983 December 1998

revenues of around \$2.0 to \$2.5 million annually for BAC, and more than \$0.7 million annually for WAC” The ACCC gave its findings on the following five questions:

Issue addressed	Findings of ACCC
<p>The extent of any increase in the price of refuelling services and airport profits due to increases in refuelling charges.</p>	<p>Introduction of fuel throughput levies will significantly increase the price of refuelling services at airports where they are introduced.</p> <p>The introduction of a fuel throughput levy at Brisbane and Perth airports is likely to result in some or all of that levy being passed on to the airlines refuelling at those ports.</p>
<p>Whether the introduction of fuel throughput levies can be justified through:</p> <ul style="list-style-type: none"> <li>a) increases in costs; and/or</li> <li>b) Any offsetting reductions in other charges.</li> </ul>	<p>The absence of increased costs or offsetting reductions in charges is an important step in assessing whether the airport operator is in a position to take advantage of market power that it might have in setting prices.</p> <p>The report concludes that the fuel throughput levies introduced by BAC and proposed by WAC are not justified in terms of increases in costs or through offsetting reductions in other charges</p>
<p>Whether the imposition of a fuel throughput levy is an “abuse of market power” of the type referred to in the Treasurer’s statement at the time of the monitoring direction.</p>	<p>The ACCC considered a number of issues, inter alia, substitution possibilities – land sites; and substitution possibilities – refuelling at other airports. It concluded that</p> <p>There is a strong case that large airports have market power in the market for refuelling services</p> <p>There is a strong case that by introducing fuel throughput levies airport operators have taken advantage of market power that they have in the provision of aircraft refuelling services.</p>

Issue addressed	Findings of ACCC
Whether such charges should trigger consideration of stricter forms of prices oversight, consistent with the Treasurer’s statement, and forms that may take.	<p>In this report the Commission argues that there is strong evidence that operators, through the introduction of fuel throughput levies, are taking advantage of market power. Secondly, the report argues that the imposition of fuel throughput levies has a significant impact on the cost of refuelling services. Lastly it is noted that the introduction of fuel throughput levies at two airports could have a significant precedent effect at other airports.</p> <p>It therefore recommended that:</p> <p>The Commission recommends that stricter forms of prices oversight should be considered in relation to aircraft refuelling services</p>

**22.70.** ACCC also noted that “neither BAC nor WAC attempted in their submissions to relate the imposition of fuel throughput levies to increases in costs of providing refuelling services. Data from BAC and WAC indicates that those airport operators recovered more from aircraft refuelling charges than the costs associated with provision of those services *before* introduction of the levy. The Commission has not been made aware of any other increases in costs since then or any cost increases anticipated in the future. BAC and WAC have not identified any offsetting reductions in other charges”

**22.71.** After considering various options for a stricter form of price oversight (on FTC), the ACCC concluded “*that it is appropriate to recommend the inclusion of refuelling services provided by airport operators within a price cap.....*”. In making its recommendation the Commission considers that fuel throughput levies have the potential to compromise the Government’s stated objectives in establishing the prices oversight arrangements applying to leased airports as expressed in the Pricing Policy Paper:

*“Pricing oversight arrangements at airports post-leasing have been designed to achieve an appropriate balance between public interest and private commercial objectives.*

*Pricing oversight arrangements are intended to promote operation of the airports in as an efficient and commercial a manner as possible. Pricing is*



*fundamental to the efficient use of airport infrastructure. It is in the interests of airport users in particular, and the national economy in general, that commercially-driven decision be made about maintaining existing airport infrastructure, and building new infrastructure.*

*The arrangements should also aim to protect airport users from any potential abuse of market power by airport operators<sup>27</sup>”*

Finally, ACCC recommended that “**refueling services are included within a CPI-X price cap.**”

**22.72.** The Authority considers these international trends and pronouncements both important and relevant particularly in the context of the ICAO’s guidance on “best practices” that it defines as “Practices that, over time, have proven cost-effective, efficient and successful in bringing quality products and services to the marketplace”. MIAL professes to subscribe to ICAO’s guidelines (as it interprets) with regard to FTC. Accordingly if it regards the international trend towards abolition of FTC as representing a best practice, it may consider abolishing the same. The Authority has however been consistent in its stand on international jurisdictions regarding economic regulation of airports, be it on the issue of FTC or regulatory till or for that matter pre-funding of new airport facilities. It is cognizant of the different trends and approaches in different regions and countries. The Authority has consistently maintained that after taking into account such trends, it will need to perform the function of economic regulation in the Indian context, considering the extant legal provisions and what according to the Authority best serves (and balances) the reasonable (albeit often conflicting) interests of the different stakeholders.

**22.73. On Market Power and passing of FTC by oil companies to airlines:** On the limited issue of whether CSIA can be said to have market power, the Authority has also noted an observation by the ACCC in connection with AIRPORTS & AVIATION OUTLOOK ‘99 (Aug 9, 1999), Privatisation review. ACCC has commented:<sup>28</sup>

*“The Commission is, however, concerned that the good results achieved in the price cap reconciliation and quality of service monitoring may be off-set by price hikes in some areas which are not covered by the price cap but*

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<sup>27</sup> Page 2 of the Pricing Policy Paper, Department of Transport and Regional Development, November 1996.

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<http://www.accc.gov.au/content/item.phtml?itemId=179158&nodeId=10e3a8180d851742487f9ec33ccf4489&fn=Privatisation+Review.pdf>

*where the airport operator may have a substantial degree of market power.*

*The Commission would not like to see price decreases for aeronautical services eroded by unjustified price increases in such areas. In fact, the economic regulatory framework directs the Commission to be wary of attempts by airport operators to exploit market power situations.”*

**22.74.** Productivity Commission (PC) in its report No. 19, 2002 has likewise also concluded that airports have moderate to high market power in aircraft refuelling services.<sup>29</sup>. In this report PC observes that “Aircraft refuelling facilities at larger core-regulated airports are built and operated by oil companies as a joint user hydrant installation (JUHI) on land provided by the airport operator. Thus, airport operators directly provide only one element of the refuelling service — the land. It is the lease of airport land to oil companies that raises issues of market power..... For larger airports, there appear to be limited off-airport alternatives for refueling”

**22.75.** For the Authority, the fuel throughput charges are aeronautical in nature and according to the AERA Act need to be regulated by the Authority. It thus regards revenue arising therefrom in the hands of the airport operator as aeronautical revenue. The Authority notes that in the case of another aeronautical service viz. that of cargo handling, MIAL had relied on Schedule 6 of OMDA to contend that revenue from cargo service even when provided by the airport operator should be regarded as non-aeronautical service (and hence only 30% of its revenue be reckoned towards aeronautical charges. Fuel supply (that generates FTC in the hands of the airport operator) is not mentioned in Schedule 6 of OMDA but in Schedule 5 defining aeronautical services. MIAL is now contending that FTC is non-aeronautical revenue by its interpretation of the ICAO guidelines. As will be seen from Authority’s analysis of ICAO’s guidelines (Doc 9082 of 2012, ninth edition), such a levy like FTC needs to be for provision of a “facility” (e.g. land etc.) and also has to be cost-related. MIAL has not given any evidence of either.

**22.76. Passing on FTC to airlines:** The Authority has come across the “Position Paper on Fuel Throughput Levies Applied by Brisbane Airport Corporation Limited and Westralia

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<sup>29</sup> Productivity Commission (PC) 2002, Price Regulation of Airport Services, Report no. 19, AusInfo, Canberra, p. xxv.

Airport Corporation” by the Board of Airlines Representatives Australia (BARA) dated 24<sup>th</sup> Sept 2003. BARA states that it *“strongly opposes the continued imposition of fuel throughput levies by Brisbane Airport Corporation Limited (BACL) and Westralia Airports Corporation (WAC). While these levies are imposed on oil companies, the costs are passed onto airlines and the travelling public.”* It appears that MIALs understanding on this issue is flawed.

**22.77.** BARA has also pointed out the background of the FTC before the price controls on aeronautical services and after the Commonwealth Government removed them as under:

*“In 1998 BACL and WAC sought to justify imposing fuel throughput levies on the basis of the CPI-X price cap on aeronautical services and low returns on aeronautical assets. They have also argued the levies are necessary to fund upgrades at Brisbane and Perth airports. Since this time, the Commonwealth Government has removed price controls on aeronautical charges. Both BACL and WAC have implemented very significant increases in landing and terminal charges. In the view of the airport operators, these increases are justified based on the rates of return previously determined by the Australian Competition and Consumer Commission (ACCC) as being appropriate for airport operators.*

*Given the public statements of BACL and WAC, it is therefore disappointing that the airport operators have chosen not to ignore throughput levies now that they have been afforded greater flexibility in their pricing regime. It is notable that in correspondence to **BARA, BACL has now sought to argue that fuel throughput levies are purely a legal issue between themselves and the oil companies** (emphasis added)... It is notable that in correspondence to BARA, BACL has now sought to argue that fuel throughput levies are purely a legal issue between themselves and the oil companies.”*

**22.78.** It would appear that the airport operators had regarded FTC as an aeronautical charge before the price controls were removed and sought its inclusion in the CPI-X regulatory framework but changed its position after the price controls on aeronautical charges were removed.

**22.79.** On the point of whether FTC levies are purely a legal issue between oil companies and airport operator, BARA in its newsletter “Airline View”, Oct 2003, further stated that

*“However, BARA holds the strong view that the fuel throughput levy is an airline matter. The cost of the fuel throughput levy is passed directly onto airlines each month in invoices from oil companies.”*

**22.80.** The Authority has also noted the position of FTC in other countries like UK, Asia, New Zealand etc. given by BARA in its *“Position Paper on Fuel Throughput Levies Applied by Brisbane Airport Corporation Limited and Westralia Airport Corporation), Sept 24, 2003”*.

**22.81.** NACIL in its submissions on AERA Consultation Paper 6/2010-11 Revision of fuel throughput charges by airport operators with effect from 1st April, 2010 *“The Airlines are unaware of the finer details of the commercial agreements between the AAI and oil companies as they do not have access to the same.”*

**The Authority therefore feels that its proposal of treating FTC as an aeronautical charge and revenue is consistent with the legal provisions, its legal mandate and regulatory responsibility and does not find any reason to alter it.**

**Decision No. XVIII. Regarding Treatment of revenue from Fuel Throughput Charges**

**XVIII.a.** The Authority decides that Fuel Throughput Charges are charges in respect of provision of aeronautical service namely, supply of fuel to the aircraft, hence it is an aeronautical charge and is to be determined by the Authority under Section 13 (1) (a) of the AERA Act.

**XVIII.b.** The Authority decides to consider revenue from Fuel Throughput Charges as aeronautical revenue.

**XVIII.c.** The Authority decides to consider the revision in Fuel Throughput Charges in line with the agreements with the oil marketing companies and consider the escalation at CPI or 7%, whichever is less.

## 23. Treatment of revenue from CUTE Counter Charges

### a Authority's position on Issues pertaining to Treatment of revenue from CUTE Counter Charges in the Consultation Paper

23.1. MIAL had, in their tariff proposal, considered revenue from the Common User Terminal Equipment (CUTE) Counter Charges as non-aeronautical revenue.

23.2. Further, MIAL submitted that there are two streams of revenue accruing to MIAL on account of CUTE Counters.

23.2.1. Payment made by the airlines to MIAL as charges per counter per month.

23.2.2. Concession fee paid by SITA to MIAL, where SITA is providing the software services in respect of CUTE Counters.

23.3. MIAL had, vide their submission dated 11.10.2011, submitted that the revenue from CUTE Concession is projected based on the contracts and estimated passengers. Further, vide their submission dated 08.08.2012, MIAL submitted following details on the CUTE counter charges:

#### a) Domestic Terminal:

*"Details of Cute Counter charges from domestic terminal are as under:"*

Counter Type	No of counters	Rates pm (Rs.)	Revenue from FY 12 (Rs in crs)
Counter – NACIL	22	5000	0.13
Counter – Other Airlines	73	6500	0.57
Mobile counters	14	2500	0.04
Total	109		0.74

#### b) International Terminal:

*"Cute counter revenue from International Operations is collected on per ATM basis. Therefore increase in it is expected to be in line with ATM growth.*

*Cute counter charges from Domestic and International operations are projected to be as under:*

	FY 12	FY 13	FY 14
Counter charges Domestic	0.74	0.74	0.74
Counter charges International	3.63	3.75	3.85
Total counter charges	4.37	4.49	4.59
ATM – International growth rate		3.2%	3.2%

*Note: - Cute counter charges are included under the head Terminal Building Rent in the model.”*

**23.4.** MIAL further confirmed that MIAL had not incurred any Capex in respect of CUTE concession given to SITA.

**23.5.** MIAL, vide submission dated 13.09.2012, submitted that,

*“MIAL receives counter charges (Rental charges) from the airlines for the counters utilised by them for checking/ processing of passengers. MIAL only provides bare counters. Necessary hardware and software is directly procured by the airlines from outsourced service provider. No capital expenditure has been incurred by MIAL towards Hardware or software and no service is being provided by the airport operator to airlines/ passengers. This charge is like any other rentals, hence of non-aeronautical nature. Therefore it should be considered as Non Aeronautical for the purpose of computing cross subsidy.”*

**23.6.** The Authority sought details regarding the arrangement of service in respect of provision of CUTE Counter service. MIAL submitted that payment being made by the airlines to MIAL is in the nature of rent for the counters occupied by them, hence it has been included in Terminal Building Rent in the MYTP model as a part of Terminal Building Rent and this should be considered as non-aeronautical revenue and the payment being made by SITA to MIAL is a concession fee, which is collected on a per ATM basis. On account of this payment being in the form of a concession, this should be considered as non-aeronautical revenue.

**23.7.** The Authority observed that in terms of arrangement of service, MIAL had provided bare counters to the airlines and receives charges directly from the airlines on per counter basis. The Authority further observed that SITA has been concessioned the CUTE Counter service and accordingly provides the same to the airlines in form of software and hardware service related to CUTE Counters. In accordance with the arrangement of service, the Authority is of the view that while payment being made by SITA to MIAL is a concession fee, the payment made by airlines is a direct payment to MIAL and does not involve any concession.

**23.8.** Further as per the AAI Ground Handling Regulations 2007, Cute Counter Services could be considered as “Passenger and Baggage Handling at the Airport Terminal” under Para 1.2 of Schedule 2 of the regulations.

**23.9.** In view of the above, MIAL’s proposal of the payment made by SITA to MIAL, being a concession fee to be considered as non-aeronautical revenue is acceptable to the Authority. However, MIAL’s proposal of the payment made by airlines being a direct payment to MIAL to be considered as non-aeronautical revenue does not appear acceptable to the Authority. In line with this view, this direct payment from airlines to MIAL has been proposed to be considered as aeronautical revenue by the Authority. However, this direct payment, before the start of the current control period i.e., before 01.04.2009, is proposed to be considered as non-aeronautical revenue as the same was being governed by OMDA and SSA at that point of time.

**23.10.** *The Authority had proposed to consider the CUTE counter services as aeronautical service and the payment made by airlines being a direct payment to MIAL as aeronautical revenue.*

**23.11.** The impact of considering CUTE Counter services as Aeronautical services on X factor as indicated in the consultation paper would be as under:

**Table 105: Sensitivity – Impact on X factor from considering CUTE Counter services as Aeronautical services**

Parameter	X Factor as per the Base Model	X Factor after change in assumptions
Considering CUTE Counter services as Aeronautical services	-873.36%	-869.99%

**23.12.** Keeping in view the tentative decisions proposed by the Authority in the Consultation paper No.22/2012-13 dated 11.10.2012, the following revenues from Revenue Share Assets had been considered for the purpose of determination of X:

**Table 106: Revenues from Revenue Share Assets for the purpose of determination of X**

Revenue Share Assets (in Rs crores)	FY10	FY11	FY12	FY13	FY14
<b>Retail Licences Revenue</b>					
F&B	22.0	25.7	30.1	34.8	39.4

Revenue Share Assets (in Rs crores)	FY10	FY11	FY12	FY13	FY14
Flight Kitchen	10.5	16.2	22.8	24.1	25.3
Retail concession	11.0	24.6	39.4	43.6	69.6
Foreign exchange	23.4	26.9	39.1	41.0	42.9
Communication	20.5	37.8	36.5	40.0	27.6
Car Rentals & Taxi Service	5.3	6.8	8.8	10.2	16.8
Duty Free Shops	60.5	45.7	45.8	53.2	75.2
Hotel in T1C	-	-	-	-	-
Advertising Income	35.7	46.0	56.4	62.1	72.6
Car Parking	13.3	12.1	12.8	13.8	7.8
Ground Handling	26.9	39.4	52.8	53.3	55.9
Aircraft refuelling	-	-	-	-	-
Others	7.9	7.2	8.6	10.0	11.3
<b>Total Retail Licences Revenue</b>	<b>237.0</b>	<b>288.4</b>	<b>353.1</b>	<b>385.9</b>	<b>444.2</b>
<b>Rent &amp; Services Revenue</b>					
Land Rent & Lease	18.1	27.7	37.1	32.4	34.0
Hanger Rent	4.4	4.4	4.4	8.0	8.6
Terminal Bld Rent	11.7	15.0	23.2	21.4	23.5
Lounges	20.5	20.1	22.4	26.7	29.5
Cargo Bld Rent	-	-	-	-	-
<b>Total Rent &amp; Services</b>	<b>17.2</b>	<b>36.5</b>	<b>17.5</b>	<b>15.5</b>	<b>16.8</b>
<b>Cargo Revenue</b>					
<b>Total Cargo &amp; Courier Revenues</b>	<b>200.9</b>	<b>292.1</b>	<b>338.6</b>	<b>255.9</b>	<b>206.1</b>
Total Revenue from Revenue Share Assets	509.8	684.3	796.2	745.9	762.8
Less: Revenue from Other than Revenue Share Assets (ie. Non Transfer Assets)	4.8	5.1	5.7	6.1	6.4
<b>Total Revenue from Revenue Share Assets for the purpose of Determination of 'X'</b>	<b>505.1</b>	<b>679.2</b>	<b>790.5</b>	<b>739.8</b>	<b>756.4</b>

**b Stakeholder Comments on Issues pertaining to Treatment of revenue from CUTE Counter Charges**

**23.13.** On the issue of CUTE Counter Charges, IATA stated that

*“IATA agrees with the treatment of CUTE Counter service as aeronautical service. This is consistent with the AERA Act as CUTE Counter service is a type of ground handling service related to passengers at an airport.*

*IATA maintains that since CUTE Counter service is an aeronautical service, the revenue derived by the airport for provision of this service (whether directly or concessioned out) should be treated as aeronautical revenue. This includes the concession fee paid by SITA to MIAL.”*

**23.14.** On the issue of CUTE Counter Charges, APAO stated that

*“In the case of CUTE counters, MIAL only provides space to airlines on a rental basis. In both cases, revenue earned by MIAL should be treated as non-aeronautical revenue.”*



**c MIAL’s Response to Stakeholder comments on Issues pertaining to Treatment of revenue from CUTE Counter Charges**

**23.15.** MIAL has responded to IATA comments on this issue of treatment of revenue from CUTE Counter Charges as under,

*MIAL is providing counter space to airlines in return for a rental. Rental income has been treated by the Authority as non-aeronautical revenue irrespective of the end use of the space.*

*The Airlines pay this charge and use the counter for checking/processing of passengers. MIAL only provides bare counters. MIAL has not incurred any capital expenditure towards CUTE counters. The hardware and software deployed at the CUTE counters is procured by the airlines directly, hence no service is being provided by MIAL to the counter users.*

*CUTE services are being provided by SITA under a concession granted by MIAL. MIAL is not providing any service and has no agreement with airlines. Hence, contention of IATA is misconceived.*

**d MIAL’s own comments on Issues pertaining to Treatment of revenue from CUTE Counter Charges**

**23.16.** On the issue of CUTE Counter Charges, MIAL stated that

*“MIAL is providing counter space to airlines in return for a rental. Rental income has been treated by the Authority as non-aeronautical revenue irrespective of the end use of the space.*

*The Airlines pay this charge and use the counter for checking/processing of passengers. MIAL only provides bare counters. MIAL has not incurred any capital expenditure towards CUTE counters. The hardware and software deployed at the CUTE counters is procured by the airlines directly, hence no service is being provided by MIAL to the counter users.*

*However, if the Authority decides to still treat revenue from CUTE counters as aeronautical revenue, then, without admitting by MIAL, a similar treatment needs to be extended for the period preceding the start of the*

*current regulatory control period i.e. period before 1 April 2009. As a consequence, HRAB would have to be suitably adjusted to include income from CUTE counter as aeronautical revenue for FY 2009.”*

**23.17.** MIAL further requested the Authority to consider payments made by airlines in the form of CUTE counter charges as non-aeronautical revenues.

**23.18.** MIAL further stated that

*“However, in case, the Authority still decides to treat CUTE counter services as aeronautical, as a principle of consistency, without MIAL admitting, a similar treatment to CUTE counter revenues should be extended for the period before 1 April 2009 while calculating Hypothetical RAB.”*

**e Authority’s Examination of Issues pertaining to Treatment of revenue from CUTE Counter Charges**

**23.19.** The Authority has examined the comment made by IATA and the response by MIAL to IATA’s comment on issues pertaining to treatment of CUTE Counter charges. The Authority has provided detailed reasoning in its Consultation Paper 22/2012-13 dated 11.10.2012 on the treatment to be accorded to the revenue streams to MIAL in respect of CUTE Counter services.

**23.20.** The Authority had mentioned in the Consultation Paper that in terms of arrangement of service, MIAL have provided bare counters to the airlines and receives charges directly from the airlines on per counter basis. The Authority had also observed that SITA has been concessioned the CUTE Counter service and accordingly provides the same to the airlines in form of software and hardware service related to CUTE Counters. MIAL in its comments has mentioned that the payment received by MIAL from the airlines is of the nature of rental and that the Authority should consider this rental towards non-aeronautical revenue. The Authority does not agree with MIAL’s proposition and feels that provision of the counters is an integral part of the provision of service in respect of CUTE.

**23.21.** The Authority has analysed in detail its reasons for treating revenue from an aeronautical service when provided by MIAL itself as aeronautical revenue (vide discussions under the treatment of revenue from cargo services). Having noted the Government’s letter No.AV.24032/04/2012-AD dated 10.09.2012 that the revenue from services of cargo and ground handling in Delhi and Mumbai Airports be regarded as non-aeronautical revenue in

the hands of the respective Airport Operators, irrespective of whether these services are provided by the Airport Operator itself or concessioned out to third parties, the Authority has calculated the X-factor accordingly.

**23.22.** In view of the above, the Authority decides to consider the payment made by SITA to MIAL in respect of CUTE Counter service as a concession fee and thus a non-aeronautical revenue. However the payment made by airlines to MIAL in respect of CUTE Counter service as a direct payment is in respect of aeronautical service of ground handling provided by MIAL.

**23.23.** As regards the consideration of revenue from CUTE Counter service towards Hypothetical RAB, the Authority, in its Consultation Paper 22 /2012-13 dated 11.10.2012, had stated that the direct payment made by the airlines to MIAL, before the start of the current Control Period i.e., before 01.04.2009, would be governed by OMDA and SSA at that point of time. As OMDA defines Ground Handling service as a non-aeronautical service and the CUTE Counter service relates to handling of passengers and baggages (Ground Handling), CUTE Counter service, as per OMDA, is to be considered as non-aeronautical service. This position of the Authority has also been discussed in its Consultation Paper 32 / 2011-12 dated 03.01.2012 on determination of aeronautical tariff in respect of Delhi International Airport. Accordingly the Authority decides to consider revenue from CUTE Counter service as non-aeronautical revenue for the purpose of determination of Hypothetical RAB.

**Decision No. XIX. Regarding Treatment of revenue from CUTE Counter Charges**

**XIX.a.** The Authority decides to treat the charges levied by MIAL in respect of CUTE Counter charges as a charge for provision of aeronautical service, namely ground handling service and accordingly is to be determined by the Authority, under Section 13(1)(a) of the AERA Act.

**XIX.b.** The Authority calculates the X-Factor based on the Government's letter No.AV.24032/04/2012-AD dated 10.09.2012 that the revenue from services of cargo and ground handling in Delhi and Mumbai Airports be regarded as non-aeronautical revenue in the hands of the respective Airport Operators,

**irrespective of whether these services are provided by the Airport Operator itself or concessioned out to third parties.**

**XIX.c. The Authority decides to consider the payment (revenue share) made by SITA to MIAL in respect of CUTE Counters as non-aeronautical revenue.**

**XIX.d. As OMDA defines Ground Handling service as a non-aeronautical service and the CUTE Counter service relates to handling of passengers and baggages (Ground Handling), CUTE Counter service, as per OMDA, is to be considered as non-aeronautical service and the Authority, therefore, decides to consider revenues received by MIAL during 2008-09 from CUTE Counter service as non-aeronautical revenue for the purpose of determination of Hypothetical RAB in accordance with the provisions of OMDA.**

## **24. Treatment of Parking Charges for General Aviation Aircraft**

### **a Authority's position on Issues pertaining to Treatment of Parking Charges for General Aviation Aircraft in the Consultation Paper**

**24.1.** MIAL had vide their letter dated 11.05.2011 and 18.06.2011 separately filed a proposal to increase parking charges for General Aviation Aircraft for approval by the Authority. The Authority had, vide letter No. AERA/20010/MIAL-GA/2009-10/840 dated 07.07.2011, stated that the Authority is unable to consider the matter in a piecemeal manner and advised MIAL to file Multi Year Tariff Proposal (hereafter referred to as "MYTP") for CSIA, Mumbai and to include the said proposal for parking charges as part of MYTP. The correspondences pertaining to parking charges for General Aviation Aircraft were annexed to the Consultation Paper No.22/2012-13 dated 11.10.2012.

**24.2.** In the meanwhile, the Authority was informed of the charging of parking penalty by MIAL on private plane owners. These charges have been levied by MIAL w.e.f. 01.07.2012 on private aircraft registered outside Mumbai and parked at the CSI Airport beyond an agreed number of days. The Authority also received a number of representations from companies owning business jets protesting against exorbitant penalties for extended use of the parking bays at the CSI Airport.

**24.3.** The Authority sought from MIAL a factual report for the Authority's consideration. MIAL, vide their letter dated 19.07.2012 and 04.08.2012 have inter-alia, submitted that to ensure safety at CSI airport, MIAL had to resort to introduction of Penal charges to discourage unauthorised stay of non-Mumbai based General Aviation aircraft at CSIA in violation of allocated slots. MIAL further submitted that it is not a parking charge and enclosed a copy of letter issued by them to defaulters explaining the reasons for introduction of penalty and right of Airport Operator to do so. MIAL, in the same submission, also stated the following:

*"(a) There has been no increase in the parking charges by MIAL for any aircraft at CSIA and the same is levied as per the provisions of the State Support Agreement.*

*(b) Only GA aircraft having CSIA as the "usual station" in Certificate of Registration (CoR) are free to be parked at CSIA without any restriction.*

*(c) GA aircraft which do not have CSIA as “usual station” are allotted slots for arrival & departure at CSIA and parking charges are levied as per prescribed rates for the approved slot period.*

*(d) Non CSIA based GA aircraft need to depart from CSIA as per allotted slot. Any stay at CSIA beyond the approved slot by such aircraft is not parking but unauthorized occupation.*

*(e) The DGCA, in the past, have raised issues with respect to overcrowding by GA aircraft and has made adverse observations in the surveillance inspection carried out by DGCA for renewal of Aerodrome License of CSIA.*

*(f) It may be noted that there has been repeated violation of slots by non CSIA based aircraft in the past resulting in unauthorized occupation.*

*(g) MIAL is levying penal charges w.e.f. 01.07.2012 for unauthorized occupation due to violation of slots by non CSIA based GA aircraft. The penal charges are being levied as a deterrent to avoid unauthorized occupation.*

*(h) The above is solely intended to decongest and enhance safety at the busy airport.”*

**24.4.** MIAL had, vide their submission dated 23.08.2012, submitted a note on levy of penal charges on GA Aircrafts. Presenting the reasons and scheme for levy of such charges, MIAL submitted that they have undertaken a consultative procedure for implementation of penal charges.

**24.5.** The Authority took note of the above submissions and observed that under the AERA Act, as per Section 2(a), definition of “aeronautical service” includes:

*“...(ii) for the landing, housing or parking of an aircraft or any other ground facility offered in connection with aircraft operations at an airport;”*

**24.6.** As regards the representations made by companies protesting against the exorbitant penalties for extended use of the parking bays at the CSI Airport, the submissions of MIAL indicate that apparently the aircrafts are occupying aircraft parking space/bays beyond the normal time span of 48 hours permitted by the Airport Operator.

**24.7.** However, it can be said that the normal parking slots for these aircrafts are not at Mumbai but at other airports like Nagpur, Chennai etc. The DGCA Certificate mentions these other airports as “usual station” for these aircrafts. Hence, the act of parking of such aircrafts at MIAL is in violation of the licence/certification conditions. Such occupation of parking area amounts to the act of parking of aircraft at the airport and hence any charge for the same would qualify to be a charge for using the aircraft parking facility at the airport.

**24.8.** As per Section 13(1) (a) of the AERA Act, the Authority is required to determine aeronautical charges at a major airport and hence, parking charges that can be levied at a major airport have to be determined by the Authority – including at CSI airport – the airport being a major airport. Such parking charges are for a service that is defined as, “aeronautical service”. Merely calling them as “penalty charges” would not alter the basic character of the parking service (beyond the stipulated time) from being an aeronautical service.

**24.9.** The Authority also observed that the companies protesting against the exorbitant penalties have stated that there is enough space for parking of aircrafts at CSI airport Mumbai while MIAL is making a claim to the contrary. As per the information before the Authority, apparently the GA aircrafts are permitted a parking for 48 hours at the CSI Airport, Mumbai. Further, it has also been stated by these companies that the GA aircraft may not be able to take off due to various reasons – including because of grounding – due to technical snag / MRO requirements and that the maintenance and repair of aircraft takes many days and during that period the GA aircraft operators are being charged such increased parking charges.

**24.10.** As already brought out vide para 24.1 above, the Authority had advised MIAL to submit a detailed proposal in support of their request for increasing the parking charges for General Aviation Aircrafts. MIAL had included the Schedule of Penal Charges (presented below) in their ATP as Schedule 1 of their submission dated 27.08.2012.

*“Schedule of Penal Charges for unauthorized stay beyond the slot allotted in case of General Aviation (including non-scheduled operators) Aircraft not having usual station at CSIA.*

**Table 107: Schedule of enhanced parking charges for GA Aircrafts beyond the slot allotted and not having usual station at CSIA**

Sl. No.	Aircraft Type	Enhanced Charges Per Hour (Rs.)
1.	Airbus 319 -115	15000

Sl. No.	Aircraft Type	Enhanced Charges Per Hour (Rs.)
2.	ERJ 190 -100 ECJ Lineage 1000	11000
3.	Global Express XRS B0700 -1A -10	9000
4.	Gulfstream G V	8000
5.	Global 5000 Model B0700 -IA11	8000
6.	Falcon 900 EX	4500
7.	Challenger CL 600 -2B16 (CL-604	4500
8.	Challenger 605	4500
9.	Falcon 2000 EX Easy	4000
10.	BD100-1A10 Challenger 300	4000
11.	Hawker Beechcraft 4000	4000
12.	Falcon 2000	3000
13.	Gulfstream -200	3000
14.	Hawker 800XP	3000
15.	Hawker 850XP	3000
16.	HS7	3000
17.	HS125 700 D	2500
18.	Gulfstream G-100 (Astra SPX)	2000
19.	Learjet 60 XR	2000
20.	Cessna Citation 560 XL5	2000
21.	Beech 1900-D	1600
22.	Cessna Citation 550 Bravo	1400
23.	Hawker 400 XP-(400A)	1400
24.	Beechcraft Super King Air B300	1400
25.	Cessna 525A	1200
26.	Cessna Citation 556	1200
27.	Super King Air B 200	1200
28.	Premier 1A 390	1200
29.	PIAGGIO P-180 Avanti II	1000
30.	Pilatus PC12/45	1000
31.	Beechcraft King Air C-90B	1000
32.	King Air C-90 A	1000
33.	Beechcraft Super King Air B200	1000

*Note: -Any Aircraft Type not listed above will be subject to penal charges as may be applicable to nearest equivalent Aircraft Type listed above.”*

**24.11. The Authority had proposed to treat parking for General Aviation (including parking beyond the stipulated time) as aeronautical service and such parking charges as aeronautical revenues.**

**24.12. The Authority had also proposed to consider the parking charges proposed by MIAL for General Aviation as part of tariff / rate card.**

**b Stakeholder Comments on Issues pertaining to Treatment of Parking Charges for General Aviation Aircraft**

**24.13. Zee News Limited in its submission stated that**



*"We submit that penalty levied by MIAL upon private aircraft operators who are parking their aircrafts at CSIA beyond the stipulated time of 48 hours is irrational, exorbitant, without any basis and having any authority of law. Under the AERA Act, it is the AERA who is authorized by statute to decide the parking charges, which is part of aeronautical services. The parking of aircrafts at CSIA by private aircraft operators, who has their usual station at different place, beyond the stipulated time are fully covered under Section 2A of the AERA Act. Hence it is AERA only who can decide the rates/charges for parking of aircrafts which have:*

- a) Permission for parking their aircraft(s) at CSIA as their usual station.*
- b) For parking the aircrafts beyond the stipulated time and not having permission to park at CSIA as their usual station.*

*The parking charges levied by MIAL in the garb of penalty on private aircraft operators, who are parking at CSIA beyond the stipulated time due to various reasons such as maintenance of aircrafts at Mumbai or due to technical reasons if the aircraft cannot be flown from CSIA, are without the approval of AERA is exorbitant, irrational and unjustified."*

**24.14.** Zee News Limited further stated that

*"MIAL has sufficient space at CSIA to allow parking private aircrafts whose usual station is not Mumbai, but some other places. It is submitted that there are space available at Lima parking bay or towards international cargo side. MIAL can allot space to private aircraft operators who are frequently using the CSIA for flying their aircrafts to meet out their requirements. The parking charges as levied and mentioned not having any authority of law and / or in contravention of the provisions or the AERA Act. The penalty charges levied by MIAL are in many folds then the prevailing tariffs charges approved by AERA. Hence, AERA should intervene and decide the tariff charges in rational and justified manner after considering various factors as per the provision of the AERA Act."*

**24.15.** In addition to that Zee News Limited also stated that

*"The parking charges charged by MIAL should be rational and any increase in tariff on parking charges should not be more than 25% to 50% of the existing rates and should not be many folds as proposed by MIAL otherwise huge financial burden will be imposed on the private aircraft operators and make their aircraft operation financially unviable."*

**24.16.** Zee News Limited requested that AERA should intervene and fix the charges for parking the aircraft beyond the stipulated duration for the reasons mentioned above and set aside the penalty levied by MIAL without having any authority and the same is in contravention of the provisions of AERA Act.

**24.17.** On the issue of Penal Charges, Ashley Aviation in its submission stated that

*"The schedule of enhanced parking charges (Penal Charges) for NSOP Aircraft at Mumbai Airport is astronomically high and without established economic base and without approval of AERA. To do the charter business we (NSOP) are the great contributor in raising revenue to the Govt Exchequer and requested to be treated fairly equal. Preference should also be meted out to us for parking facility being the important but small part of Aviation Industry. Ferrying the aircraft from other station to Mumbai OR Delhi for charter is very expensive and no charter client are willing to pay this extra cost and operator can not bear this cost. This is another important aspect which requires AERA consideration to enable NSOP to sustain and AERA should lay down certain parameters where the cost is minimized and does not burden the operator. NSOP should also be permitted to grow with major player with viable and reasonable economic treatment and should not be left at the mercy of the Airport Operator to fix, Determine, penalize the way they want."*

**24.18.** Jupiter Aviation in its submission stated that

*"While approving slots for landing & parking MIAL clearly states that Aircraft shall be parked at Old Airport and parking at Old Airport is non-standard and at Owner's risk. It seems MIAL while not taking any responsibility, wants to assert its business case and levying high penal*

*charges, and overlooking the most important basic aspects of the Business Aviation operators.”*

**c MIAL Response to Stakeholder Comments on Issues pertaining to Treatment of Parking Charges for General Aviation Aircraft**

**24.19.** MIAL responded to the Zee News Limited comments and stated as under

*“The contentions of Zee Entertainment Enterprises Limited (ZEE) are invalid, as under various provisions of OMDA, MIAL is responsible to ensure safety of operations at CSIA. Hence, it is imperative that cases of any unauthorised stay (resulting into trespass) of aircraft leading to safety issues and collision between aircraft have to be dealt with seriously, which fully justifies imposition of any deterrent measure such as penal charges to ensure safety of aircraft operations at CSI Airport (CSIA). These are not parking charges rather it is penal charges for trespass”*

**24.20.** MIAL further stated that

*“*

- a First of all if delay in departure is due to valid reasons, no penal charges are being imposed. Hence, allegation is baseless and factually wrong. Further, it is reiterated that this is not a parking charge.*
- b Penal charges are levied for parking beyond stipulated period of 48 / 72 hrs for domestic / international flights respectively.*
- c Whenever slots are violated by aircraft, they are requested by MIAL to depart from CSIA due to shortage of parking space. Several e-mails are also sent to the concerned aircraft operators in this regard. However, it was observed that despite repeated request to depart from CSIA, aircraft continued to overstay at CSIA thereby overcrowding and creating congestion at the old airport apron.*
- d As it is impossible to force an aircraft to depart even after allotted slot has been violated, it was necessary that aircraft overstaying beyond such time be suitably penalised to act as a deterrent against violation of the allotted slot.*

- e With a view to ensure safety at CSIA, MIAL had to introduce Penal charges (with effect from 1<sup>st</sup> July 2012) to discourage unauthorised stay (trespass) of non-CSIA based GA aircraft at CSIA. The need for such penalty is more of operational safety requirement than as a source of revenue generation. It is solely intended to decongest and enhance safety at CSIA.*
- f In the following cases aircraft are not being levied penal charges:*
- 1 Aircraft coming to CSIA for maintenance and parking inside the hangars of maintenance agencies. This is subject to the verification of the claim.*
  - 2 Aircraft getting delayed on account of any emergency situation (e.g. aircraft suddenly becoming unserviceable). This is subject to authentication of the unserviceability by DGCA.*
  - 3 Aircraft required to stay at CSIA due to any unforeseen situation such as bad weather etc.”*

**24.21.** MIAL further stated that

*“CSIA is a highly land constrained airport with acute shortage of parking stands. GA aircraft operate from old airport apron of CSIA. There is no other place for parking of GA aircraft. The contentions of ZEE that space is available at Apron Lima or international cargo is incorrect and not based on facts. This fact is well known to all the aircraft operators. Relevant facts are as follows:*

- a Apron “L” was conceived by AAI prior to MIAL taking over operation and management of CSIA on 3rd May 2006. Construction of this apron was completed by MIAL as part of the Mandatory Capital Projects and was commissioned in November 2008.*
- b Although Apron “L”, which is located to the south east of CSIA, has parking place for 10 Code “C” aircraft, yet this Apron cannot be used for parking of GA aircraft due to the following reasons:*

- (i) Runway 09/27 is the primary runway at CSIA and used all the time. Departing aircraft from this apron has to cross the active runway before reaching the holding point of Runway 27.
- (ii) Similarly arriving aircraft after landing on Runway 27 will have to cross the active runway to reach the parking area Apron "L".
- (iii) Crossing of active runway will increase Runway Occupancy Time (ROT) significantly and affect the overall efficiency of operations at CSIA adversely which is highly undesirable, rather impossible, looking into capacity constraints at CSIA."

24.22. On the issue of penal charges, MIAL responded that

*"The need for imposition of such penal charge is purely an operational safety requirement and definitely not a source of revenue generation. It is solely intended to decongest CSIA and enhance safety at the busy airport. There has been no increase in parking charges by MIAL for any aircraft at CSIA and the same is being levied as per the provisions of the State support Agreement.*

*We would like to highlight that post introduction of penal charges, there has been a substantial reduction in overcrowding at old airport apron of CSIA as can be seen from the statistics produced below:*

<b>S. No.</b>	<b>Particulars</b>	<b>As on 1<sup>st</sup> July'12</b>	<b>Average in December'12</b>	<b>Reduction</b>
i)	Number of aircraft under maintenance but still parked outside the hangars	13	Less than 1	99%
ii)	Number of non CSIA based GA aircraft at CSIA after violating slot	21	3	86%

*It may be observed from the table above that already a discipline has set in and purpose for which penal charges were imposed seems to have been achieved, which makes it imperative to continue penal provisions, in order*

*to maintain safe and disciplined operations at CSIA. It may also be mentioned that post introduction of penal charges, there has been significant reduction in aircraft collision incidents at old airport apron of CSIA and in the last 4 months there has been no such incident in that apron. It may be kindly observed that imposition of penal charges was without any wrong motive. It is not a charge for usual parking rather it is a charge for unauthorised stay (trespass) and cannot be termed as parking charge. Lastly, if aircraft operation adheres to slots there will be no penal charge. Hence, the stakeholder, while objecting to penal charges, has not come with clear hands.”*

**24.23.** MIAL further responded that

“

- a The contentions of Ashley Aviation Limited (Ashley) are incorrect, as under various provisions of OMDA, MIAL is responsible to ensure safety of operations at CSIA. Hence, it is imperative that cases of any unauthorised stay of aircraft leading to safety issues and collision between aircraft are dealt with seriously, which fully justifies imposition of any deterrent measure such as penal charges to ensure safety of aircraft operations at CSI Airport (CSIA).*
- b The penal charges are intended to act as a deterrent against unauthorised occupation by aircraft at CSIA as the unauthorised stay was leading to many safety issues. Hence MIAL had to introduce Penal charges (with effect from 1st July 2012) to discourage unauthorised stay of non-CSIA based GA aircraft at CSIA and to ensure safety of aircraft operations. We reiterate that this is not a parking charge but a penalty charge, which may please be noted.*
- c The need for such penalty is more of operational safety requirement and not intended to generate revenue for MIAL. It is solely intended to decongest and enhance safety at the busy airport.*

- d There has been no increase in parking charges by MIAL for any aircraft at CSIA and the same is being levied as per the provisions of the State support Agreement.*
- e Ashley's has stated that except Mumbai airport, no other airport have this type of penalty. While making such a statement, they have conveniently ignored the fact that CSIA is the most land constrained airport in India which is currently undergoing a redevelopment programme wherein parts of the operational area have to be taken up for reconstruction and the net land available for operational use is barely sufficient to continue the operations. CSIA has acute shortage of parking stands unlike any other airports in India and therefore, it is imperative for all concerned to use the available land in an orderly manner to ensure optimum utilisation of the resources.*
- f Aircraft having CSIA as the "usual station" in their C of R are allowed to be parked at CSIA without any restriction.*
- g Aircraft not having CSIA as the "usual station" in their C of R flying to CSIA for a ferry flight are required to apply for arrival and departure slot at CSIA. Domestic flights are allowed slots of up to 48 hours and international flights are allowed slots of up to 72 hours by MIAL. These slots are allotted as per request of aircraft operator.*
- h There is not even a single instance of an aircraft being refused an arrival slot at CSIA. The above rules are being applied to all aircraft without any discrimination and equal treatment is given to all aircraft.*
- i Aircraft not having CSIA as the "usual station" in their C of R but flying to CSIA for maintenance are allotted slots for the entire period of maintenance, such aircraft are required to park inside the maintenance hangars for maintenance.*

*j Only aircraft with usual station at Mumbai and with prior parking approval are allowed to be parked at CSIA, Mumbai. No provision to distinguish between NSOP and private aircraft exists.”*

**d MIAL’s own comments on Issues pertaining to Treatment of Parking Charges for General Aviation Aircraft**

**24.24.** MIAL in its submission stated that

*“Only those GA aircrafts which have CSIA as the “usual station” in Certificate of Registration (CoR) are free to be parked at CSIA without any restriction. GA aircrafts which do not have CSIA as “usual station” are allotted slots for arrival and departure at CSIA and parking charges are levied as per prescribed rates for the approved slot period.*

*The unauthorized use of land tantamounts to trespass. Since aircraft cannot be forcibly removed from airport due to practical difficulties, aircraft remain there physically till removed by aircraft operator. Trespass cannot be treated as parking. Consequently any penalty imposed on trespassing cannot be treated as parking charges*

*MIAL’s Submission:*

*We request the authority to consider penalty for trespass as non aero in nature.”*

**e Authority’s Examination of Issues pertaining to Treatment of Parking Charges for General Aviation Aircraft**

**24.25.** The Authority notes that the stakeholders have raised the issue of the “penal charges” levied by MIAL on GA aircrafts parked at Mumbai airport beyond a certain time period. It has been stated that such charges levied by MIAL are astronomical, higher, without established economic base, irrational, exorbitant etc.

**24.26.** In this regard, the Authority observes that this is a tariff rate card item. The Authority had considered the nature of these charges in the para 24.1 above to 24.10 above. As stated therein, these so called “Penal Charges” are in fact charges towards parking of the aircrafts at CSIA, Mumbai beyond a specified time limit. Thus, they fall under the category of charges for the aeronautical service namely “Parking of an aircraft at an



airport”. In view of the foregoing, parking charge is an aeronautical charge. These parking charges, it is observed, cannot be removed only on the basis that they are high.

**24.27.** As regards, the level of these charges, the Authority considered the reasoning behind the same. It noted that the aircraft of the general aviation/business aviation (GA / BA) category are issued Certificate of Registration (C of R) by the DGCA. This certificate contains what is termed as, “usual station” and an entry of a particular airport is put against the usual station. The Authority sought clarification from DGCA regarding the meaning and interpretation of usual station. DGCA vide its letter DAW/MISC/2012 AI(1) dated 31.10.2012 clarified as under,

*“As desired the information related to Usual Station is given below for your kind perusal and necessary action.*

<b>SN</b>	<b>Question</b>	<b>Answer</b>
1	<i>The meaning and significance of “Usual Station of aircraft” as noted in the Certificate of registration (CofR) of an aircraft. Does it imply that the aircraft is required to be parked only at the usual station?</i>	<i>Usual Station as noted in the C of R implies where the aircraft is normally parked at a particular airfield. However, since aircraft fly to different airports in the country/abroad, these can be parked at airfields permitted by the respective airport operators.</i>
2	<i>How is the “usual station” allotted at the time of Registration of aircraft?</i>	<i>Earlier, usual station used to be allotted based on request made by owner / operator at the time of registration of an aircraft, Normally, Usual Station used to be the airfield where the aircraft was parked for its maintenance. However, 2008 onwards, Usual Station is being allocated based on permission granted by of airport operator.</i>
3	<i>In case an aircraft is parked at an airport other than this ‘usual station’. Will it amount to violation of the ‘usual station’ clause of the CofR? Does DGCA monitor the violation of this “usual Station” recorded in the CofR and is there any penal clauses invoked for such violation?</i>	<i>As per existing regulations, there is no violation regarding usual station clause of CofR for aircraft parked at other airports that usual Station. DGCA, therefore, does not monitor the parking of such aircraft. It is the prerogative of the airport operator to monitor such aircraft to avoid decongestion at an airport.</i>

*This is for your information on the matter. “*

**24.28.** Based on the clarification, the Authority observed that an aircraft belonging to GA / BA category is expected to be parked, in normal course, at the usual station specified in its CofR. The Authority also took details of the aircrafts from whom MIAL had collected higher parking charges. The details as provided by MIAL are as under

**Table 108: Details of Additional Parking Charges for G A Aircraft - For the period 1st July 2012 to 7th December 12 (Beyond the permitted period)**

Month	Amount (INR)	Total Hours (Beyond the permitted period)
Jul-12	7,344,600	2,242
Aug-12	15,013,538	5,999
Sep-12	5,891,600	2,485
Oct-12	5,062,162	1,895
Nov-12	4,960,900	1,718
Dec-12	631,600	224
	<b>38,904,400</b>	<b>14,563</b>

**Table 109: Parking charges (for overstay) for G A aircraft - For the period 1st July 2012 to 31 July 12**

Name of the Aircraft Owner	Usual Station	Duration of parking at MIAL (hrs beyond the permitted period)
Modern Road Makers	Indore	181
Religare Aviation Ltd	Delhi	24
Religare Aviation Ltd	Delhi	24
Invision Air Services Pvt Ltd	Nagpur	46
Air One Aviation Pvt Ltd	Lucknow	67
Kestrel Aviation Pvt Ltd	Nanded	77
Force Motors Ltd	Pune	74
Business Jets India Pvt Ltd	Bangalore	90
Modern Road Makers	Indore	75

Span Air	Delhi	9
Mspl Ltd Corporate Office	Koppal	15
Kestrel Aviation Pvt Ltd	Delhi	152
Reliance Commercial Dealers Ltd	Vadodara	40
Reliance Trans And Travels Lim	Vadodara	194
Zee Entertainment Enterprises	Nagpur	197
Invision Air Services Pvt Ltd	Nagpur	16
Reliance Commercial Dealers Ltd	Vadodara	192
Wellspun Logistics Ltd	Kandla	89
Modern Road Makers	Indore	66
Abhijeet Projects Ltd	Nagpur	1
Acass Canada	Foreign Regn.	11
Poonawala Aviation Pvt Ltd	Pune	70
Bhushan Aviation Pvt Ltd	Delhi	24
Norm American Air Charter	Foreign Regn.	2
Religare Aviation Ltd	Delhi	127
Modern Road Makers	Indore	12
Aviators India Pvt Ltd	Bangalore	64
Kestrel Aviation Pvt Ltd	Delhi	25
Reliance Commercial Dealers Ltd	Vadodara	72
Airmid Aviation Services	Aurangabad	206

**Table 110: Parking charges (for overstay) for G A aircraft - For the period 1st August 2012 to 31st August 12**

<b>Name</b>	<b>Usual station</b>	<b>Duration of parking at MIAL (hrs beyond the permitted period)</b>
Air One Aviation Pvt Ltd	Lucknow	31
Religare Aviation Ltd	Delhi	28
Karnavati Aviation Pvt Ltd	Ahmedabad	1
M/S SAIB	Foreign Regn.	21
Wellspun Logistics Ltd	Kandla	26
First Future Air Service Pvt Ltd	Pune	2
Zest Aviation Private Ltd	Nagpur	21
Zee Entertainment Enterprises	Nagpur	68
Simm Samm Airways Pvt Ltd	Surat	221
Bhushan Airways	Delhi	15
Bhushan Airways	Delhi	13
Bhushan Airways	Delhi	2
Religare Aviation Ltd	Delhi	17
Airmid Aviation Services	Aurangabad	511
Airmid Aviation Services	Aurangabad	12
Indo Pacific Aviation Pvt Ltd	Delhi	3
M/S SAIB	Foreign Regn.	26
Acass Canada	Foreign Regn.	20
Airmid Aviation Services	Aurangabad	17
Reliance Commercial Dealers Ltd	Vadodara	171
Wellspun Logistics Ltd	Kandla	42
Zee Entertainment Enterprises	Nagpur	27
L&T Aviation Services Pvt Ltd	Chennai	114
Zee Entertainment Enterprises	Nagpur	3
Air Charter Services Pvt Ltd	Delhi	15
A. R. Airways (P) Ltd	Delhi	928
Govt. Of Chhattisgarh	Raipur	58

<b>Name</b>	<b>Usual station</b>	<b>Duration of parking at MIAL (hrs beyond the permitted period)</b>
Reliance Commercial Dealers Ltd	Vadodara	23
Krishnapatnam Port Company	Hyderabad	15
Invision Air Services Pvt Ltd	Nagpur	11
Gmr Aviation (P) Ltd	Bangalore	3
Venkateshwara Hatcheries Ltd	Pune	104
Airmid Aviation Services	Aurangabad	6
Religare Aviation Ltd	Delhi	69
Kestrel Aviation Pvt Ltd	Nagpur	1
Religare Aviation Ltd	Delhi	15
Zee Entertainment Enterprises	Nagpur	54
Kestrel Aviation Pvt Ltd	Nagpur	5
Mahindra And Mahindra Ltd	Ahmedabad	747
Steel Authority Of India	Bokaro	68
Kestrel Aviation Pvt Ltd	Nagpur	26
Business Jets India Pvt Ltd	Bangalore	30
Business Jets India Pvt Ltd	Bangalore	16
Wellspun Logistics Ltd	Kandla	26
Ashley Aviation Ltd	Vadodara	1,127
Simm Samm Airways Pvt Ltd	Surat	131
Air One Aviation Pvt Ltd	Lucknow	13
Religare Aviation Ltd	Delhi	18
Vm Aviation Private Ltd	Chennai	6
Rotana Jet Aviation	Foreign Regn.	2
Wellspun Logistics Ltd	Kandla	40
Religare Aviation Ltd	Delhi	2
Wellspun Logistics Ltd	Kandla	21
Span Air	Delhi	24
Mega Corporation Ltd	Delhi	2
Religare Aviation Ltd	Delhi	23

<b>Name</b>	<b>Usual station</b>	<b>Duration of parking at MIAL (hrs beyond the permitted period)</b>
Invision Air Services Pvt Ltd	Nagpur	2
First Future Air Service Pvt Ltd	Pune	3
Gmr Aviation (P) Ltd.	Bangalore	14
Mahindra And Mahindra Ltd	Ahmedabad	32
Poonawala Aviation Pvt. Ltd	Pune	19
Simm Samm Airways Pvt Ltd	Surat	70
A. R. Airways (P) Ltd	Delhi	21
A. R. Airways (P) Ltd	Delhi	21
Jet Aviation Business Jet(Hk)	Foreign Regn.	1
East India Hotel Ltd	Delhi	22
Reliance Commercial Dealers Ltd	Vadodara	13
Business Jets India Pvt Ltd	Bangalore	120
Air Charter Services Pvt Ltd	Delhi	14
A. R. Airways (P) Ltd	Delhi	20
L&T Aviation Services Pvt Ltd	Chennai	32
MSPL Ltd Corporate Office	Koppal	2
Acass Canada	Foreign Regn.	1
Religare Aviation Ltd	Delhi	17
Religare Aviation Ltd	Delhi	22
Embraer Brasiberia	Foreign Regn.	11
Invision Air Services Pvt Ltd	Nagpur	19
Abhijeet Projects Ltd	Nagpur	17
First Future Air Service Pvt Ltd	Pune	5
Bajaj Auto Ltd	Pune	17
Reliance Commercial Dealers Ltd	Vadodara	111
Air Charter Services Pvt Ltd	Delhi	14
Airmid Aviation Services	Aurangabad	127
Lakshmi Mills Co. Ltd.	Coimbatore	19
Business Jets India Pvt Ltd	Bangalore	39

Name	Usual station	Duration of parking at MIAL (hrs beyond the permitted period)
Bhaskar Exxoils Pvt Ltd	Bhopal	84
Religare Aviation Ltd	Delhi	1
First Future Air Service Pvt Ltd	Pune	19
Acass Canada	Foreign Regn.	29
		<b>5,999</b>

**Table 111: Parking charges (for overstay) for G A aircraft - For the period 1st September 2012 to 30th September 12**

Name	Usual station	Duration of parking at MIAL (hrs beyond the permitted period)
Invision Air Services Pvt Ltd	Nagpur	13
First Future Air Service Pvt Ltd	Pune	3
Reliance Commercial Dealers Ltd	Vadodara	21
Indo Pacific Aviation Pvt Ltd	Delhi	2
Gmr Aviation (P) Ltd	Bangalore	10
Kirloskar Oil Engg Ltd	Pune	1
Airmid Aviation Services	Aurangabad	8
First Future Air Service Pvt Ltd	Pune	18
Reliance Commercial Dealers Ltd	Vadodara	15
Reliance Commercial Dealers Ltd	Vadodara	17
Gmr Aviation (P) Ltd	Bangalore	3
Simm Samm Airways Pvt Ltd	Surat	137
Religare Aviation Ltd	Delhi	38
Taurian Iron And Steel Co Pvt Ltd	Gondia	117
Zee Entertainment Enterprises	Nagpur	2
Mspl Ltd Corporate Office	Koppal	2
Acass Canada	Foreign Regn.	42
Business Jets India Pvt Ltd	Bangalore	98
Reliance Commercial Dealers Ltd	Vadodara	70

<b>Name</b>	<b>Usual station</b>	<b>Duration of parking at MIAL (hrs beyond the permitted period)</b>
Simm Samm Airways Pvt Ltd	Surat	41
East India Hotel Ltd	Delhi	11
Invision Air Services Pvt Ltd	Nagpur	24
Venkateshwara Hatcheries Ltd	Pune	11
Reliance Commercial Dealers Ltd	Vadodara	27
Modern Road Makers	Indore	2
Airmid Aviation Services	Aurangabad	127
Air One Aviation Pvt Ltd	Lucknow	29
Zee Entertainment Enterprises	Nagpur	1
Mega Corporation Ltd	Delhi	23
Business Jets India Pvt Ltd	Bangalore	42
L&T Aviation Services Pvt Ltd	Chennai	11
Force Motors Ltd	Pune	2
Invision Air Services Pvt Ltd	Nagpur	28
Modern Road Makers	Indore	16
First Future Air Service Pvt Ltd	Pune	1
First Future Air Service Pvt Ltd	Pune	1
Reliance Commercial Dealers Ltd	Vadodara	21
Govt Of Jammu And Kashmir	Delhi	89
Religare Aviation Ltd	Delhi	68
Business Jets India Pvt Ltd	Bangalore	26
Modern Road Makers	Indore	16
Mega Corporation Ltd	Delhi	69
Abhijeet Projects Ltd	Nagpur	96
Taurian Iron And Steel Co Pvt Ltd	Gondia	10
L&T Aviation Services Pvt Ltd	Chennai	1
Acass Canada	Foreign Regn.	1
Kirloskar Oil Engg Ltd	Pune	25
Business Jets India Pvt Ltd	Bangalore	19



<b>Name</b>	<b>Usual station</b>	<b>Duration of parking at MIAL (hrs beyond the permitted period)</b>
Pinnacle Air Pvt Ltd	Amritsar	78
Kestrel Aviation Pvt Ltd	Delhi	295
Eon Aviation Pvt Ltd	Bangalore	63
Business Jets India Pvt Ltd	Bangalore	59
Modern Road Makers	Indore	40
Force Motors Ltd	Pune	12
Mega Corporation Ltd	Delhi	89
Vm Aviation Private Ltd	Chennai	1
Venkateshwara Hatcheries Ltd	Pune	8
First Future Air Service Pvt Ltd	Pune	1
Turbo Aviation Pvt Ltd	Vijaywada	57
Reliance Commercial Dealers Ltd	Vadodara	20
First Future Air Service Pvt Ltd	Pune	4
Mega Corporation Ltd	Delhi	20
Zest Aviation Private Ltd	Nagpur	3
Twc Aviation	Foreign Regn.	2
Kestrel Aviation Pvt Ltd	Delhi	56
First Future Air Service Pvt Ltd	Pune	2
Tvs Motors Co. Ltd	Bangalore	1
Vm Aviation Private Ltd	Chennai	6
First Future Air Service Pvt L	Pune	1
Coromondal Travel Ltd	Chennai	34
First Future Air Service Pvt L	Pune	2
Src Aviation Pvt Ltd	Delhi	9
Mspl Ltd Corporate Office	Koppal	2
Business Jets India Pvt Ltd	Bangalore	138
Premium Jet	Foreign Regn.	24
Air One Aviation Pvt Ltd	Lucknow	3
		<b>2,485</b>

**Table 112: Parking charges (for overstay) for G A aircraft - For the period 1st October 2012 to 31st October 12**

<b>Name</b>	<b>Usual station</b>	<b>Duration of parking at MIAL (hrs beyond the permitted period)</b>
Religare Aviation Ltd	Delhi	48
Mahindra And Mahindra Ltd	Ahmedabad	11
Kestrel Aviation Pvt Ltd	Delhi	55
Mega Corporation Ltd	Delhi	28
Mega Corporation Ltd	Delhi	2
Acass Canada	Foreign Regn.	24
Business Jets India Pvt Ltd	Banglore	45
Eon Aviation Pvt Ltd	Banglore	77
A. R. Airways (P) Ltd	Delhi	164
First Future Air Service Pvt Ltd	Pune	3
Mahindra And Mahindra Ltd	Ahmedabad	21
Religare Aviation Ltd	Delhi	3
Bhushan Aviation Pvt Ltd	Delhi	1
Beijing Capital	Foreign Regn.	18
Pinnacle Air Pvt Ltd	Amritsar	24
Pinnacle Air Pvt Ltd	Amritsar	24
Pinnacle Air Pvt Ltd	Amritsar	24
Kestrel Aviation Pvt Ltd	Delhi	47
Kestrel Aviation Pvt Ltd	Delhi	47
Pinnacle Air Pvt Ltd	Amritsar	-24
Pinnacle Air Pvt Ltd	Amritsar	-24
Kestrel Aviation Pvt Ltd	Delhi	-47
Simm Samm Airways Pvt Ltd	Surat	227
Reliance Commercial Dealers Ltd	Vadodara	41
Business Jets India Pvt Ltd	Banglore	25
Caterhamjet Malaysia	Foreign Regn.	2

<b>Name</b>	<b>Usual station</b>	<b>Duration of parking at MIAL (hrs beyond the permitted period)</b>
Pinnacle Air Pvt Ltd	Amritsar	-0
Business Jets India Pvt Ltd	Banglore	2
Air Charter Services Pvt Ltd	Delhi	2
L&T Aviation Services Pvt Ltd	Chennai	1
Reliance Commercial Dealers Ltd	Vadodara	15
Air Charter Services Pvt Ltd	Delhi	2
Mega Corporation Ltd	Delhi	2
Air One Aviation Pvt Ltd	Lucknow	9
Mega Corporation Ltd	Delhi	68
Pinnacle Air Pvt Ltd	Amritsar	-9
Empire Aviation	Foreign Regn.	11
Simm Samm Airways Pvt Ltd	Surat	8
Pinnacle Air Pvt Ltd	Amritsar	13
First Future Air Service Pvt Ltd	Pune	9
Abhijeet Projects Ltd	Nagpur	41
Air One Aviation Pvt Ltd	Lucknow	4
Modern Road Makers	Indore	177
Executive Sky Fleet	Foreign Regn.	4
L&T Aviation Services Pvt Ltd	Chennai	14
Startbucks Corp	Foreign Regn.	14
Adani Exports Ltd	Ahmedabad	1
Reliance Commercial Dealers Ltd	Vadodara	16
Empire Aviation	Foreign Regn.	8
Reliance Commercial Dealers Ltd	Vadodara	-16
Simm Samm Airways Pvt Ltd	Surat	23
East India Hotel Ltd	Delhi	1
Acass Canada	Foreign Regn.	9
Franklin Templet	Foreign Regn.	17
D Carey - Usa	Foreign Regn.	3

<b>Name</b>	<b>Usual station</b>	<b>Duration of parking at MIAL (hrs beyond the permitted period)</b>
Bharat Hotels	Delhi	15
Business Jets India Pvt Ltd	BANGLORE	18
Mahindra And Mahindra Ltd	AHMEDABAD	36
Invision Air Services Pvt Ltd	Nagpur	36
Empire Aviation	Foreign Regn.	34
National Remote Sensing Centre	Hyderabad	83
Zee Entertainment Enterprises	Nagpur	10
Reliance Commercial Dealers Ltd	Vadodara	17
Sobha Puravan Kara Avitn Pvt Ltd	Chennai	3
Wellspun Logistics Ltd	Kandla	24
Invision Air Services Pvt Ltd	Nagpur	67
Kestrel Aviation Pvt Ltd	Delhi	16
Business Jets India Pvt Ltd	Banglore	17
Invision Air Services Pvt Ltd	Nagpur	2
Air One Aviation Pvt Ltd	Lucknow	1
Abhijeet Projects Ltd	Nagpur	47
Rotana Jet Aviation	Foreign Regn.	-2
Simm Samm Airways Pvt Ltd	Surat	130
Mspl Ltd Corporate Office	Koppal	21
Air Charter Services Pvt Ltd	Delhi	1
Gmr Aviation (P) Ltd.	Banglore	3
Air Charter Services Pvt Ltd	Delhi	1
		<b>1,895</b>

**Table 113: Parking charges (for overstay) for G A aircraft - For the period 1st November 2012 to 30 November 12**

<b>Name</b>	<b>Usual station</b>	<b>Duration of parking at MIAL (hrs beyond the permitted period)</b>
Modern Road Makers	Indore	147

<b>Name</b>	<b>Usual station</b>	<b>Duration of parking at MIAL (hrs beyond the permitted period)</b>
Mega Corporation Ltd	Delhi	14
Wellspun Logistics Ltd	Kandala	8
Zee Entertainment Enterprises	Nagpur	20
Reliance Commercial Dealers Ltd	Vadodara	29
Invision Air Services Pvt Ltd	Nagpur	26
Forum 1	Delhi	20
Span Air	Delhi	20
Span Air	Delhi	11
Span Air	Delhi	-20
Forum 1	Delhi	-20
Airmid Aviation Services	Aurangabad	78
East India Hotel Ltd	Delhi	49
Airmid Aviation Services	Aurangabad	-127
Kestrel Aviation Pvt Ltd	Delhi	86
Simm Samm Airways Pvt Ltd	Surat	14
Modern Road Makers	Indore	3
Eon Aviation Pvt Ltd	Bangalore	13
A. R. Airways (P) Ltd	Delhi	-21
Reliance Commercial Dealers Ltd	Vadodara	69
Business Jets India Pvt Ltd	Bangalore	3
Shamanur Sugars Ltd	Bangalore	2
A. R. Airways (P) Ltd	Delhi	-1
M Jets Thailand	Foreign Regn.	13
Air One Aviation Pvt Ltd	Lucknow	82
Mega Corporation Ltd	Delhi	16
Turbo Aviation Pvt Ltd	Vijaywada	6
First Future Air Service Pvt Ltd	Pune	3
Mega Corporation Ltd	Delhi	15
Modern Road Makers	Indore	48

<b>Name</b>	<b>Usual station</b>	<b>Duration of parking at MIAL (hrs beyond the permitted period)</b>
Business Jets India Pvt Ltd	Bangalore	16
Bajaj Auto Ltd	Pune	2
First Future Air Service Pvt Ltd	Pune	4
Reliance Commercial Dealers Ltd	Vadodara	16
Air One Aviation Pvt Ltd	Lucknow	44
Acass Canada	Foreign Regn.	28
Acass Canada	Foreign Regn.	28
Acass Canada	Foreign Regn.	-28
First Future Air Service Pvt Ltd	Pune	15
Taurian Iron And Steel Co Pvt	Gondia	16
Invision Air Services Pvt Ltd	Nagpur	27
Zee Entertainment Enterprises	Nagpur	14
Eon Aviation Pvt Ltd	Bangalore	13
Invision Air Services Pvt Ltd	Nagpur	18
Zest Aviation Private Ltd	Ahmedabad	4
East India Hotel Ltd	Delhi	19
Modern Road Makers	Indore	161
Zee Entertainment Enterprises	Nagpur	2
Simm Samm Airways Pvt Ltd	Surat	230
Simm Samm Airways Pvt Ltd	Surat	-48
Reliance Commercial Dealers Ltd	Vadodara	122
First Future Air Service Pvt Ltd	Pune	8
Empire Aviation	Foreign Regn.	14
Simm Samm Airways Pvt Ltd	Surat	43
Taurian Iron And Steel Co Pvt Ltd	Gondia	32
Mspl Ltd Corporate Office	Koppal	3
Jupiter Aviation Services Pvt Ltd	Bangalore	54
Kestrel Aviation Pvt Ltd	Delhi	6
Empire Aviation	Foreign Regn.	7

Name	Usual station	Duration of parking at MIAL (hrs beyond the permitted period)
Invision Air Services Pvt Ltd	Nagpur	33
Bhaskar Exxoils Pvt Ltd	Bhopal	3
Wellspun Logistics Ltd	Kandala	18
Modern Road Makers	Indore	161
Kestrel Aviation Pvt Ltd	Delhi	27
		<b>1,718</b>

**Table 114: Parking charges (for overstay) for G A aircraft - For the period 1st December 2012 to 7th December 12**

Name	Usual station	Duration of parking at MIAL (hrs beyond the permitted period)
Jindal Steel And Power Ltd	Delhi	2
Eon Aviation Pvt Ltd	Bangalore	16
Invision Air Services Pvt Ltd	Nagpur	31
Air One Aviation Pvt Ltd	Lucknow	8
Mspl Ltd Corporate Office	Koppal	1
Kestrel Aviation Pvt Ltd	Delhi	39
Invision Air Services Pvt Ltd	Nagpur	7
Airmid Aviation Services	Aurangabad	30
Modern Road Makers	Indore	45
East India Hotel Ltd	Delhi	21
Avitors India Pvt Ltd	Bangalore	2
Quick Flight Ltd	Vadodara	22
		<b>224</b>

**24.29.** MIAL has also informed to the Authority that once GA / BA aircraft lands, it has 48 hrs window (at normal parking charges) to remain parked at CSIA, Mumbai whereafter it is expected to take off and not remain parked at CSIA, Mumbai. The Authority also understands that before DGCA grants C of R for such aircrafts (which are of the NSOP (Non Scheduled Operator's Permit) category), the aircraft owner is required to obtain permission / no objection from the airport where the owner is proposing to park the aircraft in normal course. Based on such permission by the airport operator, DGCA puts the entry of usual station in the C of R. MIAL has also informed that owing to the congested nature of the

available aircraft parking space, MIAL has not been giving permissions for GA / BA aircrafts (except what are already given or those enjoying what are called Grand Father Rights).

**24.30.** It appears to the Authority, therefore, that normal expectation of parking at the usual station has not been adhered to by the aircraft owners. The Business Aircraft Operators Association (BAOA) have given various representations and the Authority had also held personal discussions with them to properly understand and appreciate the issues involved. One of the issues raised by BAOA was that the contention of MIAL regarding shortage of parking space is not correct and that MIAL can develop additional parking space for this purpose. The Authority regards this as a separate matter, which needs to be looked into by MIAL, separately. BAOA had also represented that many times the concerned aircraft is required to be parked beyond 48 hours window on account of maintenance or any emergency. The Authority recognizes that for such unforeseen or one-off events, it is unfeasible or difficult to prescribe any generally applicable guidelines. However, MIAL has assured the Authority that it will constitute a separate Committee to look into these cases to address the problems as may be put before such a Committee. BAOA also represented that such private aircrafts that can generally be said to belong to business/industrial houses are required to be stationed at Mumbai so that the management/personnel of such business/industrial houses can have the benefit of availability of such an aircraft at a short notice and that they are not put to inconvenience. The Authority recognizes the need for giving a fillip to the business/general aviation. It also recognizes that this is a growing sector whose rate of growth is expected to accelerate with the growth in the Indian Economy. It is, however, unable to agree with the viewpoint that having committed to have the C of R on the basis of certain pre-specified usual station, the aircraft owner would, thereafter, expect the aircraft to remain parked at CSIA, Mumbai for time extending beyond the 48 hours window. Purely from economic perspective, the Authority would regard that the parking charges for such extra days be commensurable with the costs associated of alternative, namely, parking the aircraft at usual station. The Authority, therefore, does not regard the rates unreasonable, as proposed by MIAL, for parking such aircrafts beyond 48 hours window. BAOA had also suggested that rates beyond the 48 hours window can be reasonable multiple of the normal charges. BAOA also gave analogy of normal parking vs. premium parking charges of cars in this behalf. The



Authority does not regard the charges of premium parking as similar to parking of a GA / BA aircraft beyond 48 hours window. The premium parking in Authority's view is generally based on the location of the vehicle in a premium parking lot (generally much closer to the terminal building than normal parking). However, this is not the case with the GA / BA aircraft parked beyond the 48 hours window.

**24.31.** MIAL had also informed that the revenue that it has collected from additional parking charges has been of the order of Rs. 1 crore after its levy of additional charge w.e.f. July, 2012. MIAL has noticed substantial drop in the number of aircrafts of the GA / BA category that continue to be parked beyond the 48 hours window. Hence, MIAL expects that going forward the revenue from parking of aircrafts beyond 48 hours may further drop down. MIAL has also stated that DGCA had adversely commented on the congestion leading to safety issues in one of its inspections. MIAL has, therefore, argued that its decision to levy higher parking charge on GA / BA aircrafts beyond 48 hours window is not based on revenue considerations (i.e., of augmenting revenue) but are based on the consideration towards removing congestion on this count.

**24.32.** The Authority notes that these parking charges were levied by MIAL from July, 2012 when the same were not approved by the Authority. However, the Authority has now included them as an item in the tariff rate card for Mumbai airport.

**24.33.** In the meantime, BAOA filed an application under Section 18(1) of the AERA Act before the AERAAT in the matter of parking charges by MIAL. The Tribunal vide its order dated 7.12.2012 ordered as below:

*"List the matter on 11th January, 2013.*

*In the meantime, status quo as per the AAI Circular be maintained."*

**24.34.** Thereafter, the Tribunal, vide its order dated 13.12.2012 ordered as under:

*"Considering the overall circumstances, the overstaying tendency of the general aviation aircrafts, safety of the airports as well as of the passengers, and the necessity of an early decision regarding the powers of MIAL to enhance the parking charges or, as the case may be, inflicting penalties for overstaying, we are of the opinion that the AERA should decide the matter finally as early as possible but not beyond 15th January, 2013. In case, it is not possible to keep that schedule, then AERA would at*

*least consider passing some interim orders. We advise AERA to adhere to the time schedule as strictly as possible. We, however, clarify that this Order should not be read as an expression for necessity of passing of an order otherwise.*

*In view of the safety issues involved in the matter, we hope that the proper authorities would take appropriate action to avoid overcrowding of aircrafts. If the necessity is felt on account of any safety issue, the MIAL has the liberty to move for interim orders.”*

**24.35.** Thus, as per this Order the Authority was directed by Tribunal to determine the rates for parking of GA/BA aircrafts at MIAL beyond the permitted free time by 15.1.2013. The Authority has noted this direction.

**24.36.** BAOA had, in one of the meetings with the Authority, also submitted that sometimes their aircrafts can not go back to the Usual Station because night landing facilities are not available at their particular Usual Stations. However the Authority upon enquiry found that the period of parking available (at normal parking charges) for such aircrafts at CSI Airport, Mumbai is 48 hours and the Authority, in view of this fact, considers that this may not add undue hardship to the GA operators and on that ground is not tenable.

**24.37.** The Authority has therefore decided to approve the General Aviation charges for parking the aircrafts beyond the normal period of 48 hours with effect from 01.07.2012 subject to any stay or decision of Appellate Authority.

**Decision No. XX. Regarding Treatment of Parking Charges for General Aviation Aircraft**

**XX.a. The Authority decides that charges for parking of General Aviation aircrafts (including charges for parking beyond the stipulated time) are charges in respect of provision of aeronautical service namely, parking of aircraft at an airport, hence it is an aeronautical charge and is to be determined by the Authority under the Section 13 (1) (a) of the AERA Act.**

**XX.b. The Authority decides to consider revenue from charges for parking of General Aviation aircrafts (including charges for parking beyond the stipulated time) as aeronautical revenue.**

**XX.c. The Authority decides to approve the General Aviation charges for parking the aircrafts beyond the normal period of 48 hours with effect from 01.07.2012 subject to any stay or decision of Appellate Authority.**

**XX.d. The Authority determines the charges for parking of General Aviation aircrafts for parking beyond the stipulated time as part of tariff / rate card.**

## **25. Traffic Forecast**

**25.1.** In respect of the Passenger Traffic and Air Traffic Movements at CSIA, MIAL had made following submission:

*“CSI is amongst the busiest Airport in India which saw a passenger traffic of 29.07 million in FY 10-11. Currently, 37 international carriers and 7 domestic carriers connect to 44 international destinations and 43 domestic destinations from CSIA.*

*A detailed report on the traffic forecast has been prepared for CSIA by its Statistical Department to provide an estimate of future demand for air traffic at CSIA from FY 2011-12 to FY 2013-14.*

*Forecast of traffic, both passengers and cargo, is solely based on possibility of increase in ATMs and increase in load factor. Because of capacity constraints, MIAL so far is refusing slots to domestic airlines in each slot allocation meeting. Higher number of ATMs cannot be achieved, unless slots can be given to airlines, especially domestic airlines, though there is a possibility of a higher load factor.*

*Immediate constraints in capacity are increasing numbers of ATM during peak hours. It may be noted that peak hour currently itself is a period of 18 hours. Balance hours are such that there is no demand from domestic Airlines. Even for international operations, this lean period is not preferable, and there is no demand, not only for passengers but also for freighters.*

*Only way to achieve traffic of 40 million by increasing ATM's, increasing in aircraft size and substantial increase in load factor. However load factor above 90% has not been considered as practically, load factor above 90% throughout the year is not achievable. Secondly with 100% load factor there will be corresponding drop in cargo volumes.”*

**25.2.** MIAL had, vide submission dated 11.10.2011, submitted the Air Traffic Forecast for CSIA. MIAL in their Air Traffic Forecast stated that air traffic forecast is done for two

scenarios, unconstrained growth scenario and constrained growth scenario mainly due to runway capacity constraint.

**25.3.** MIAL, further stated that under the unconstrained growth scenario, passengers traffic are projected based on the historical 10-years CAGR at CSIA i.e. 11.1 % and 5.8% for domestic and international passengers respectively. ATMs are estimated by dividing the projected passengers per air traffic movements for passenger flights (PAX/PATM). MIAL stated that the historical 3-years CAGR on PAX/PATM is used as it shows some consistency in the growth and reflects the current situation. MIAL submitted that under unconstrained growth CSIA’s capacity of 40 million passengers would have been reached in FY15

**25.4.** MIAL had also submitted that under the constrained growth scenario, the average passenger and ATMs growth will be 6.0% and 3.6% respectively (as against 9.5% and 8.6% in the unconstrained growth scenario) for 3 years up to FY14. MIAL submitted that under constrained growth CSIA’s capacity of 40 million passengers will be reached in FY19.

The Projected traffic with constrained growth scenario submitted by MIAL is summarised below:

*Passenger Forecasts:*

<i>In Million Pax &amp; % growth</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
<i>Domestic</i>	<i>21.78</i>	<i>23.24</i>	<i>24.57</i>
<i>Growth</i>	<i>8.93%</i>	<i>6.68%</i>	<i>5.73%</i>
<i>International</i>	<i>9.49</i>	<i>9.81</i>	<i>10.10</i>
<i>Growth</i>	<i>4.53%</i>	<i>3.42%</i>	<i>2.92%</i>
<i>Total</i>	<i>31.27</i>	<i>33.05</i>	<i>34.67</i>
<i>Growth</i>	<i>7.56%</i>	<i>5.69%</i>	<i>4.90%</i>

*ATM Forecasts:*

<i>In '000 ATM &amp; % growth</i>	<i>FY 12</i>	<i>FY 13</i>	<i>FY 14</i>
<i>PAX ATM Domestic</i>	<i>180</i>	<i>186</i>	<i>190</i>
<i>Growth</i>	<i>5.50%</i>	<i>3.31%</i>	<i>2.40%</i>
<i>PAX ATM International</i>	<i>67</i>	<i>69</i>	<i>71</i>
<i>Growth</i>	<i>4.57%</i>	<i>3.46%</i>	<i>2.96%</i>
<i>Total</i>	<i>247</i>	<i>255</i>	<i>261</i>
<i>Growth</i>	<i>5.24%</i>	<i>3.35%</i>	<i>2.55%</i>

**25.5.** MIAL had, vide their submission dated 23.11.2011, further submitted that

*“With regard to Traffic Forecast based on restricted growth in ATMs due to restrictions on runway capacity it is submitted that CAA, while determining tariff for Gatwick and Heathrow airports for the current quinquenium (In its*

decision dated 11 March 2008 on "Economic Regulation of Heathrow and Gatwick Airports 2008-13) has also considered runway capacity as a constraint for determining the additional slots for ATM projections and has, accordingly, considered availability of slots for new ATMs during restricted hours only if the same are vacated by existing airline users. While in case of Heathrow, it has specifically observed that " ...By contrast Heathrow's runway capacity will not allow further growth of movements ..." (para 4.23), in case of Gatwick it has held that:

"4.43 Gatwick currently operates at close to its runway capacity through much of the day, so it is reasonable to assume that many slots vacated by transatlantic or charter flights will be used by other services...

4.46 Given the relatively constrained nature of the Gatwick runway in peak weeks, CAA's forecasts assume that every slot vacated by a transatlantic service is used for a replacement service, but no previously unused slots are utilized (ie. the number of annual air transport movements lost is exactly matched by the number of backfill movements)...."

.... Thus, there are regulatory precedents where runway capacity has been considered as a major constraint, which limits the forecast number of ATMs. Further, increase in passengers is then determined with constrained ATMs and projected PAX/ATM or load factor, which was 70% for domestic/short haul and 77% for long haul flights at Heathrow. Similarly, MIAL has considered runway capacity as the limiting factor for projecting ATM growth rate at CSIA and passenger increase has been considered with corresponding increase in PAX/ATM or load factor (about 75% for domestic and 69% for international in FY 11). MIAL has, therefore, considered the growth in ATMs in each of the hourly slots during lean period as per long term trend, whereas the ATMs have been restricted when total ATMs/hour due to such growth in ATMs reaches the runway capacity of 36 ATMs/hour. The restriction in ATMs is reflected by corresponding restriction on number of passengers. "

**25.6.** Further, vide letter dated 26.06.2012, MIAL submitted that they have revised the Air traffic based on actual numbers for FY12. For calculation of growth rates, base years (2010-11) are shifted by one year to include actual traffic numbers for FY 12. MIAL also submitted an updated Traffic Forecast Report along with their 26.06.2012 submission. A comparison of earlier projections upto FY 14 with actual /revised projection, as submitted by MIAL, is reproduced below:

*Passenger Forecasts:*

In Million Pax & % growth	FY 12		FY 13 Projection		FY 14 Projection	
	Projected	Actual	Earlier	Revised	Earlier	Revised
Domestic	21.78	21.04	23.24	22.61	24.57	23.92
Growth	8.9%	5.24%	6.68%	7.44%	5.73%	5.81%
International	9.49	9.71	9.81	10.10	10.10	10.44
Growth	4.53%	6.92%	3.42%	4.04%	2.92%	3.41%
Total	31.27	30.74	33.05	32.71	34.67	34.37
Growth	7.56%	5.76%	5.69%	6.37%	4.90%	5.07%

*ATM Forecasts:*

In 000 ATM & % growth	FY 12		FY 13 Projection		FY 14 Projection	
	Projected	Actual	Earlier	Revised	Earlier	Revised
PAX ATM Domestic	183	179	190	187	195	193
Growth	5.55%	3.06%	3.40%	4.43%	2.51%	2.88%
PAX ATM International	72	72	74	75	76	76
Growth	4.35%	5.14%	3.21%	3.25%	2.78%	2.64%
Total	255	251	264	263	271	269
Growth	5.21%	3.65%	3.35%	4.09%	2.59%	2.81%

*Revised Cargo Forecasts: (MIAL Concessionaire from July 2012)*

In Million Pax & % growth	FY 12		FY 13 Projection		FY 14 Projection	
	Projected	Actual	Earlier	Revised	Earlier	Revised
Domestic	24.44	41.65	26.05	44.24	27.63	46.53
Growth	8.38%	84.75%	6.61%	6.20%	6.06%	5.2%
International	340.50	369.78	360.72	393.35	380.97	415.63
Growth	7.17%	16.39%	5.94%	6.35%	5.61%	5.69%
Total	364.93	411.43	386.77	437.49	408.60	462.16
Growth	7.25%	20.92%	5.98%	6.00%	5.64%	5.64%

**25.7.** Regarding Cargo Forecast, MIAL have made following submission:

*“Cargo infrastructure at CSIA is highly constrained. All out efforts are being made to improve overall efficiency to improve service levels. Since there will not be any marked increase in full freighters since slots are not available during desired time and with increase in load factor of passengers, there will be adverse impact on tonnage of belly cargo. Accordingly, growth in cargo volume is considered at 2% as a result of improvement in efficiency and any slot allocation for full freighters during lean period.”*

**25.8.** The cargo tonnage to be handled by MIAL / concessionaire during FY 12, FY 13 and FY 14 as submitted by MIAL is reproduced below:

**Table 115: Cargo tonnage to be handled by MIAL as per MIAL submission**

(000 MT)	FY10	FY11	FY12	FY13	FY14
	Actuals		Projections		
Total Cargo	250	340	347	354	361

**25.9.** MIAL had, vide their submission dated 23.11.2011, further submitted that

*“Hon'ble Authority had observed that the cargo volume forecast with only 2% growth p.a. appears to be on lower side as the assumption that there will not be any increase in freighter ATMs does not seem to be realistic. Further, increase in passenger load factor may not reduce in-line/belly cargo as assumed by MIAL, particularly for international flights. MIAL has, accordingly, considered the suggestions made by the Hon'ble Authority, revisited the assumptions and revised its cargo forecast based on past trend of total cargo volume and freighter ATM growth at CSIA subject to the runway constraint of 36 ATMs/hour at CSIA.”*

**25.10.** The summary of revised Cargo forecast as submitted by MIAL is reproduced below:

**Table 116: Summary of revised cargo forecast**

In MT & % Growth	FY 11	FY 12	FY 13	FY 14
Domestic	22,546	24,435	26,050	27,628
Growth		8.4%	6.6%	6.1%
International	317,715	340,500	360,725	380,974
Growth		7.2%	5.9%	5.6%
Total	340,260	364,935	386,775	408,602
Growth		7.3%	6.0%	5.6%

**25.11.** MIAL had, vide their submission dated 23.11.2011, further submitted that



*“MIAL would like to submit that although it has revised the cargo forecast as per long term past trend for the purposes of this filing, it strongly feels that the same has high positive bias as current trends of cargo volume show a declining and even negative growth rate in recent months. MIAL, therefore, requests Hon'ble Authority to carry out a true up of the tariff based on actual variations in the traffic in subsequent years from the forecast considered herein.”*

**25.12.** MIAL had, vide their letter dated 11.09.2012, submitted the comparison of the actual growth rates in air traffic till August 2012 with the projected growth rate for FY 13. MIAL further submitted as under,

*“.....however the actual traffic for FY 13 (upto August, 2012) is much lower than projected. Rather passenger, ATM and cargo traffic for the current year upto August, 2012 has reduced by 4.12%, 2.92% and 3.78% respectively compared to previous year, leave aside any growth.”*

**25.13.** Based on the above submissions, MIAL requested the Authority for 100% truing-up of the traffic in light of current market scenario.

**25.14.** Further, vide their submission dated 13.09.2012, MIAL requested the Authority to true up the cargo revenue considered in the projections for the purpose of cross-subsidy. MIAL stated as under,

*“.... MIAL had requested the Authority for 100% true up of the traffic (ATM, Pax and Cargo) considering significant de-growth in the actual traffic numbers vs. forecast, upto Aug 12. It may be noted that MIAL has considered these growth projections for cargo tonnage as well while projecting tonnage to be handled by MIAL/concessionaire after outsourcing of Domestic and International cargo, based upon which likely revenue/revenue share to be received from concessionaire was worked out. Since cargo revenues are part of revenue from Revenue Share Assets as per the provisions of SSA, 30% of the revenue accruing to MIAL has been considered for the purpose of cross subsidy. We request the Authority to true up the cargo revenue considered in the projections for the purpose of*

*cross subsidy after taking into account actual cargo tonnage handled by MIAL/concessionaire.”*

**25.15.** The Authority held discussions with AAI on the assumptions made by MIAL in their traffic projections. Based on the discussions with AAI, the Authority noted the following:

25.15.1. MIAL, during discussions, indicated that they face the constraint in growth of air traffic primarily on account of runway capacity. MIAL attribute the constraint of runway capacity to supporting ground infrastructure on the air side. The supporting ground infrastructure on the air side is with respect to, primarily, having a parallel taxiway, one for the arriving planes and the other for the departing planes. Mumbai is a single runway configuration with cross intersecting runway as a standby alternative. Hence this configuration is not as efficient as a two parallel runway airport.

25.15.2. As of today, Mumbai airport has only one taxiway. During discussion with AAI, it was confirmed that on the ground, there is no possibility of building a second taxiway. AAI indicated that if at all the second taxiway is somehow to be constructed, this would entail demolition of about half the parking or a fair portion of the new integrated terminal under construction. Hence building a second parallel taxiway is not a viable option. This constraint of having a single runway configuration with a single taxiway is therefore permanent and would continue to be so even after the completion of the integrated terminal building in August, 2014. This, therefore, is a constraining factor to limit the ATM growth.

25.15.3. AAI also indicated that provided the second parallel taxiway could have been built, there were other attendant ground infrastructure like rapid exit, etc. which would have augmented the number of ATM per hour. According to AAI, in the absence of the possibility of the second taxiway, any improvements like above, namely, rapid exit, etc. may result into marginal improvement.

25.15.4. AAI also indicated that apart from the works being undertaken by MIAL, AAI on its part is also putting in place certain measures to augment the ATM per hour, this include improvement procedures, flow management techniques, reduced separations without compromising safety, etc.

25.15.5. On balance, with the works initiated by MIAL and AAI put together, there would be an improvement in the peak ATM per hour up to around 45-46.

25.15.6. AAI has estimated a growth rate of 9.4% (average) split into 11% for domestic passengers and 6% for international passengers (AAI has prepared this forecast for the purposes of 12th Plan and the reference date of making this forecast is January, 2012). Taking the growth for passengers for 2011-12 over the previous year, it is found that it has been 5.8%. Further the growth rate for first 5 months of FY 2013 has been negative. The diversions from the forecast to the actual can be attributed to many economic factors like general stagnation/downturn in the European economy as well as certain deceleration in the Indian economy.

**25.16.** The Authority had noted that there is general volatility observed in the air traffic at CSI Airport, Mumbai. Further the balance number of years in the current control period is 1.25. Thus no medium term / long term traffic forecast is required to be made anyways.

**25.17.** In view of the above, the Authority had in the consultation paper inclined to accept the MIAL submission on traffic projections subject to truing-up. The projection as considered by MIAL is as under:

**Table 117: Traffic Projection considered by MIAL**

	FY13	FY14
Passenger		
Domestic	7.44%	5.81%
International	4.04%	3.41%
ATM		
Domestic	4.43%	2.88%
International	3.25%	2.64%
Cargo		
Domestic	6.20%	5.20%
International	6.35%	5.69%

**25.18.** *The Authority had proposed to use the actuals for FY 2009-10, 2010-11 and 2011-12 and to use the MIAL forecast for forecasting Passenger, ATM and Cargo traffic for the years 2012-13 and 2013-14 [with the year 2011-12 as the base year].*

**25.19.** *The Authority had proposed not to have any symmetrical band around the forecast number for the purpose of truing up.*

**25.20. The Authority had also proposed to make 100% correction (truing up), of the traffic, the effect of which would be given in the next control period commencing from 1st April, 2014.**

**25.21.** In light of the fact that the Authority has not received any comment from either the Stakeholders or MIAL in respect of the traffic forecast, it decides to continue with its earlier position on the matter.

**Decision No. XXI. Regarding Traffic Forecast**

**XXI.a.** The Authority decides to use the actual traffic figures for FY 2009-10, 2010-11 and 2011-12 and to consider the forecast for Passenger, ATM and Cargo traffic for the years 2012-13 and 2013-14 (with the year 2011-12 as the base year) as per Table 117.

**Truing Up: 8. Correction / Truing up for Traffic Forecast**

**8.a.** The Authority decides not to have any symmetrical band around the forecast number for the purpose of truing up.

**8.b.** The Authority also decides to make 100% correction (truing up), of the traffic, the effect of which would be given in the next control period commencing from 01.04.2014.

## 26. Calculation of CPI –X

26.1. MIAL had, vide their submission dated 11.10.2011, stated that

*“The escalation factor (CPI-X) for tariff increase is to be calculated by solving the equation given in the SSA. CPI is to be based on average for annual inflation rate as measured by change in the All India CPI (Industrial Workers) over the regulatory period. Thus, while determining X factor and maximum average Aeronautical charge at the beginning of first regulatory period, the value of CPI would be an assumed value, which would need to be corrected annually for actual value for each year while keeping the value of X same as determined earlier. As two and a half years of regulatory period have already elapsed, MIAL have assumed a one-time tariff increase to be effective from 01/12/2011 for the remaining control period.”*

### Observations on Calculation of CPI-X

26.2. In considering MIAL’s submissions and formulating tentative views on the issue, following aspects need to be reviewed:

- Treatment of aeronautical charges in the shared till inflation – X price cap model as per the SSA.
- Illustrative Numerical Example of the Price Cap Approach for X factor determination in the SSA.

*According to Schedule 1 of the SSA*

*“The maximum average aeronautical charge (price cap) in a particular year ‘i’ for a particular category of aeronautical revenue ‘j’, is then calculated according to the following formula:*

$$AC_i = AC_{i-1} \times (1 + CPI - X)$$

*where CPI = average annual inflation rate as measured by change in the All India Consumer Price Index (Industrial Workers) over the regulatory period”*

26.3. Further, in the illustration provided in Schedule 1 of the SSA, X factor is determined along with considering inflationary increases together.

26.4. In view of the above, the Authority had felt that the approach proposed by MIAL for the calculation of CPI – X appeared to be acceptable.

**26.5.** MIAL, in their MYTP submission, had calculated 'CPI-X' factor at 664.40% based on their interpretation and assumption regarding various parameters of the building blocks which go into the calculation and particularly that of methodology indicated in Schedule 1 of the State Support Agreement. Thereafter on 20.08.2012, MIAL gave additional submission stating that they had not factored in the fact that there will have to be automatic inflationary increase w.e.f. 01.04.2013.

**26.6.** This 'CPI-X' factor of 664.40% was calculated based on the assumption that the tariffs proposed by MIAL would be effective w.e.f. 01.07.2012. MIAL had further stated that if inflation is factored in so that the tariffs are revised based on 'CPI-X' w.e.f. 01.04.2013, the 'CPI-X' factor works out to 628%. Since the exercise of tariff determination is underway, the question of making tariffs applicable w.e.f. 01.07.2012 now does not arise. Hence, MIAL made an additional submission vide their letter dated 13.09.2012 stating that if the tariffs are made applicable w.e.f. 01.01.2013, then the 'CPI-X' factor would work out to 875% (since the time remaining to get Target Revenue over the entire control period has become smaller).

**26.7.** According to Authority's calculations, if the increased development fee proposed to be collected at the rate of Rs. 200/- per departing domestic passenger and Rs. 1300/- per departing international passenger is factored into calculations (and that the increased DF would be applicable from 01.01.2013) the 'CPI-X' factor comes to 882%. Considering an inflation of 8.94%, as proposed by MIAL, the X-factor will work out to 873%.

**26.8.** *The Authority had proposed to follow the formulation specified in the SSA and to calculate the "X" factor by solving the system of equations mentioned therein.*

**26.9.** In light of no comments being made by either the Stakeholders or MIAL in respect of the above position of the Authority, it decides to continue with this position.

**Decision No. XXII. Regarding Calculation of CPI –X**

**XXII.a.** **The Authority decides to follow the formulation specified in the SSA and to calculate the "X" factor by solving the system of equations mentioned therein.**

## 27. Inflation

### a Authority's position on Issues pertaining to Inflation in the Consultation Paper

27.1. MIAL had submitted that in the current filing, they have considered inflation as a 5 year CAGR of Consumer Price Index for Industrial Workers (CPI-IW) as specified in Schedule of SSA, which was estimated to be 8.94%.

27.2. The Authority observed that this inflationary increase has been applied on those operating expenditure heads and non-aeronautical revenue heads, whose projections are linked to inflation as well as in the calculation of CPI - X.

27.3. The Authority, in line with its DIAL Tariff Determination Order, had tentatively decided to adopt the same approach for estimating the CPI-IW inflation to be considered for tariff determination under this MYTP. Accordingly the Authority had proposed to have reference to Survey of Professional Forecasters on Macroeconomic Indicators by RBI.

27.4. The Authority noted that the CPI-IW for the first quarter (Q1) of FY 2013 has been 10.10%. Further as per the Results of the Survey of Professional Forecasters on Macroeconomic Indicators – 20th Round (Q1:2012-13) by RBI, median quarterly forecast for CPI-IW inflation is as under:

**Table 118: Quarterly Median Forecast for CPI-IW by RBI**

Median Forecast for CPI-IW Inflation: Quarterly	
	CPI-IW
Q2:12-13	9.5
Q3:12-13	9.1
Q4:12-13	8.9
Q1:13-14	7.8

27.5. The long term median forecast under the Results of the Survey of Professional Forecasters on Macroeconomic Indicators – 20th Round (Q1:2012-13) by RBI for inflation is as under:

**Table 119: Long Term Median Forecasts for Inflation by RBI**

Long Term Median Forecasts for Inflation		
Growth rate in %	Next Five Years	Next Ten Years
CPI-IW	7.3	6.8

**27.6.** In view of the fact that the effective period for which the increased tariff would be applicable in case of MIAL in the current control period is around one year and three months, the Authority considered it appropriate to extrapolate the CPI-IW forecast for first quarter of FY 2014 over the remaining quarters of FY 2014 instead of considering a five year forecast.

**27.7.** Forecast of CPI-IW, based on the above approach, for the balance years of the current Control Period can be summarised as under

**Table 120: Forecast of CPI-IW for the Control Period considered by the Authority**

CPI-IW ( in %)		
	FY 2012-13	FY 2013-14
Q1	10.10	7.8
Q2	9.5	7.8
Q3	9.1	7.8
Q4	8.9	7.8
Average	9.4	7.8

**27.8.** *The Authority had proposed to consider CPI-IW inflation of 9.40% for FY 2013 and 7.80% for FY 2014 for the present tariff determination.*

**27.9.** *The Authority had also proposed to true-up the CPI-IW inflation index (Considered for the current exercise of tariff determination) for actual CPI-IW inflation index as may occur for FY 2012-13 and FY 2013-14 and will give effect to the same at the beginning of the next control period.*

**27.10.** The impact of considering CPI-IW inflation of 9.40% for FY13 and 7.80% for FY14 on the value of X is as under:

**Table 121: Sensitivity – Impact on X factor from considering CPI-IW as per 27.10**

Parameter	X Factor as per the Base Model	X Factor after change in assumptions
Considering CPI-IW inflation of 9.40% for FY13 and 7.80% for FY14	-873.36%	-881.09%



## **b Stakeholder Comments on Issues pertaining to Inflation**

**27.11.** On the issue of inflation, FIA has raised a question that *“Can the expenditure be delinked from inflation to adjust the Target Revenue?”*. FIA further stated that

*“Aeronautical charges are determined from Target Revenue. Further O&M cost is one of the component for computing Target Revenue. A perusal of CP No.22/2012-13 indicates that for the purpose of forecasting major operating expenses, Authority has considered CPI inflation, details of which are as follows:*

*(a) Employee cost: as mentioned in para 17.9 (of CP 22/2012-13) annual increase includes inflation.*

*(b) Electricity cost: as mentioned in para 17.19 (of CP 22/2012-13) annual tariff includes inflation as per 5 years CAGR of CPI.*

*(c) Administrative cost: as mentioned in para 17.46 (of CP 22/2012-13) projections are based on inflationary increase of 8.94% p.a*

*Further from para 22 of CP 22/2012-13 it appears that MIAL is also considering the CPI inflation for purpose of determining average aeronautical charge*

*CPI inflation has been considered for determining average aeronautical charge and operating expense is one of the components to determine aeronautical charge. Therefore, in order to avoid multifold impact of inflation Authority should consider delinking expenditure from inflation.”*

## **c MIAL’s Response to Stakeholder comments on Issues pertaining to Inflation**

**27.12.** MIAL has responded to FIA comments on this issue as under,

*“The context and the intent of the query is not clear. However, it is to be noted that determination of Target Revenue, which includes O&M expenditure as a building block, has been done as per SSA.....*

*.....The comment is not correct. Inflation has been allowed only once and not at multiple levels while calculating different building blocks of target revenue requirements. To increase the tariff by CPI-X is only a means / mechanism to collect already determined target revenue.”*

**d MIAL's own comments on Issues pertaining to Inflation**

**27.13.** MIAL has not provided its own comments on the issue.

**e Authority's Examination of Issues pertaining to Inflation**

**27.14.** The Authority has examined the comments made by FIA and the response from MIAL to FIA's comment. FIA has stated that *"CPI inflation has been considered for determining average aeronautical charge and operating expense is one of the components to determine aeronautical charge. Therefore, in order to avoid multifold impact of inflation Authority should consider delinking expenditure from inflation."* The Authority understands from the FIA comment that since inflation is already provided for in the formulation of "CPI – X" for the purpose of determination of aeronautical tariff, inflationary impact should not be considered in determination of operation expenses, as it leads to a multifold impact of inflation on the tariff determination.

**27.15.** The Authority regards that the formulation of "CPI – X" is provided for in Schedule 1 of SSA for the purpose of determination of aeronautical tariff and has been followed accordingly in the tariff model in respect of CSI Airport, Mumbai. Further SSA prescribes an equation for determination of Target Revenue, which has Target Revenue on one side and various building blocks on the other side. The Authority feels that for the purpose of a meaningful calculation of Target Revenue, all the building blocks should be considered on same basis (either nominal or real).

**27.16.** The SSA prescribes use of nominal post-tax WACC for application on RAB. This use of nominal post-tax WACC indicates that even the other building blocks for determination of Target Revenue would need to be determined on nominal basis i.e. on inflation-adjusted basis. Accordingly the determination of operating expenses as well as determination of non-aeronautical revenue has been undertaken on nominal basis for consideration towards determination of aeronautical tariff.

**27.17.** The Authority is thus of the view that the use of nominal operating expenses and nominal non-aeronautical revenue for the purpose of determination of aeronautical tariff is in consonance with SSA.

**Decision No. XXIII. Regarding Inflation**

**XXIII.a. The Authority decides to consider CPI-IW inflation of 9.40% for FY 2013 and 7.80% for FY 2014 for the present tariff determination.**

**Truing Up: 9. Correction / Truing up for Inflation**

**9.a. The Authority decides to true-up the CPI-IW inflation index (Considered for the current exercise of tariff determination) for actual CPI-IW inflation index, as may occur, for FY 2012-13 and FY 2013-14 and will give effect to the same at the beginning of the next control period.**

## 28. Sensitivity Analysis & Calculation of X-factor

**28.1.** MIAL had in their submissions given in the MYTP, arrived at 'CPI-X' factor of 664%. While arriving at this number, they had made various assumptions regarding the building block elements like cost of equity, hypothetical RAB, and a number of other parameters. The Authority had reviewed the assumptions and, as mentioned above, arrived at its own values for different parameters and these comparisons were reflected in the in the Consultation Paper 22/2012-13 dated 11.10.2012.

**28.2.** The MIAL's calculations of 'CPI-X' factor of 664% was based on the revised proposed tariffs being implemented with effect from 1<sup>st</sup> July, 2012. In view of the Authority's proposal to consider 01.01.2013 as the effective date of tariff hike and discussion presented in para 1.36, the base value of X-Factor considered by the Authority is (-)873.36%. The impact on X-factor of various proposed views of the Authority had been presented in Table 124 of the Consultation Paper 22/2012-13 dated 11.10.2012.

**28.3.** This Sensitivity is given in the following Impact Table. The base case relates to X-factor calculated as on 01.01.2013 and based on MIAL submissions on various building blocks. X-factor in the base case works out to (-)873.36%. This is then compared to X-factor calculated for each of the building blocks according to the Authority's analysis.

**Table 122: Summary of Sensitivity – Impact on X-Factor against the Base Case as per MIAL submissions, frozen model and increase effective from 1st Jan 2013: (-) 873.36%**

<b>Building Blocks</b>	<b>Sensitivity Parameter</b>	<b>Result of sensitivity</b>
Non-Aero Revenue	Treatment of Cute Counter Charges (Considering Cute Counter Charges as AERO)	(-)869.99%
Non-Aero Revenue	Revenue from Cargo service considered as Aeronautical Revenue (When provided by the Airport Operator) and Demurrage considered as part of Cargo revenue	(-)739.15%
Non-Aero Revenue	FTC considered as Aeronautical service and Revenue from FTC considered as Aeronautical revenue	(-)908.38%
RAB	Project cost disallowances and non-inclusions	(-)867.65%
	Retirement compensation to be expensed out	(-)829.15%
Hypothetical RAB	30% of Non Aero not to be included in Hypothetical RAB	(-)446.38%
	54 crs of exceptional item to be included in the expenses for calculation of Hypothetical RAB	(-)750.26%
	Authority WACC to be used for Hypothetical RAB instead of Bid WACC	(-)919.73%
Cost of Equity	Cost of Refundable Security Deposit considered as 0%	(-)812.16%

Building Blocks	Sensitivity Parameter	Result of sensitivity
	Cost of Equity at 16% and Cost of Refundable Security Deposit considered as 0%	(-)587.37%
	Not considering AAI Upfront fee as part of Equity	(-)854.37%
Cost of Debt	Future cost of debt considered at actual weighted average cost of debt till FY 12	(-)857.07%
Change in Quantum of Means of Finance	Considering cash and depreciation as Internal Resource Generation instead of MIAL proposed internal accruals	(-)719.32%
US Dollar Rate	Considering US Dollar Rate based on last 6 months average of INR-USD exchange (=54.03)	(-)872.65%
Corporate Tax	Corporate Tax as on Projected Aero Revenue instead of MIAL proposed tax calculation	(-)795.42%
Inflation	Inflation for FY 13 taken as 9.40% and for FY 14 taken as 7.80% as per RBI forecasts	(-)881.09%
<b>Summary of all sensitivity (Cumulative Impact on X-factor) effective from 01.01.2013</b>		(-)66.24%
<b>Summary of all sensitivity (Cumulative Impact on X-factor) effective from 01.01.2013 - All the building blocks have been considered in line with the tentative views of the Authority on each one of them but treating cargo revenue as non-aeronautical revenue for the entire control period, in accordance with the Government's interpretation (Refer para 20 and Decision No. XVII)</b>		(-)151.56%

28.4. The Authority had accordingly calculated the target revenue with respect to the 'X' factor as of 1<sup>st</sup> January, 2013 at (-)151.56% as compared to (-)873.36% given by MIAL in Table 123 below.

**Table 123: Target Revenue Calculation for the current control period as considered in Consultation Paper (For revision of tariff w.e.f. 01.01.2013)**

(Rs in crores)	2009-10	2010-11	2011-12	2012-13	2013-14
Regulatory Base	1,713.21	2,069.56	2,429.85	3,213.14	5,994.63
WACC	10.77%	10.77%	10.77%	10.77%	10.77%
Return on Capital Employed	184.50	222.88	261.68	346.03	645.57
OM - Efficient Operation & Maintenance cost	394.49	186.18	320.54	565.25	639.39
Depreciation	89.35	126.07	149.57	183.98	322.03
Corporate Tax	-	32.61	3.71	-	50.33
Share of Revenue from Revenue Share Assets	151.52	203.76	237.15	221.94	226.92
<b>Target Revenue</b>	<b>516.82</b>	<b>363.99</b>	<b>498.35</b>	<b>873.32</b>	<b>1,430.40</b>
<b>Discounted Target Revenues @10.77%</b>	<b>466.57</b>	<b>296.65</b>	<b>366.67</b>	<b>580.09</b>	<b>857.75</b>
<b>Total Present Value of Target Revenues</b>	<b>2567.75</b>				
<b>Actual Aero Revenues</b>	<b>479.82</b>	<b>490.34</b>	<b>511.53</b>	<b>745.19</b>	<b>1,440.13</b>

<b>Discounted Actual Revenues@10.77%</b>	433.17	399.63	376.37	494.99	863.59
<b>Total Present Value of Actual Revenues</b>	2567.75				

**28.5. The Authority had proposed to use the X-factor at (-)151.56% in the current determination of tariff for aeronautical services in respect of CSI Airport, Mumbai for the current control period.**

**28.6. The Authority also proposed to true-up the above X-factor, based on truing-up of other parameters impacting on the calculation of the said X-factor, at the end of the current control period and its effect would be considered in the next control period.**

**28.7.** The Consultation Paper envisaged the effective date of tariff revision w.e.f. 01.01.2013 and had calculated the X-factor at (-) 151.56%. With the various adjustments and decisions made by the Authority, as outlined in this Order, this X-factor would have come down to (-) 143.92%, had the effective date remained constant at 01.01.2013. However, since the effective date has been decided as 01.02.2013, the X-factor corresponding to the revised effective date of 01.02.2013 has been calculated by the Authority at (-) 154.89%. Based on this X-factor, the tariff card has been submitted by MIAL and is attached to this Order as approved aeronautical tariffs w.e.f. 01.02.2013.

**28.8.** The Authority presents the calculation of Target Revenue in the Table below:

**Table 124: Target Revenue Calculation for the current control period as considered in the Present Order (For Revision of tariff w.e.f. 01.02.2013)**

(Rs in crores)	2009-10	2010-11	2011-12	2012-13	2013-14
Regulatory Base	1,942.40	2,263.66	2,587.57	3,112.16	5,491.42
WACC	11.45%	11.45%	11.45%	11.45%	11.45%
Return on Capital Employed	222.34	259.11	296.19	356.24	628.59
OM - Efficient Operation & Maintenance cost	394.49	191.95	325.31	507.92	605.19
Depreciation	98.11	134.44	157.08	171.20	279.61
Corporate Tax	-	-	-	-	-
Share of Revenue from Revenue Share Assets	152.54	205.02	238.46	223.23	228.51
<b>Target Revenue</b>	<b>562.41</b>	<b>380.48</b>	<b>540.12</b>	<b>812.13</b>	<b>1,284.88</b>
<b>Discounted Target Revenues @11.45%</b>	<b>504.64</b>	<b>306.34</b>	<b>390.20</b>	<b>526.45</b>	<b>747.35</b>
<b>Total Present Value of Target Revenues</b>	<b>2,474.98</b>				
<b>Actual Aero Revenues</b>	<b>476.44</b>	<b>486.11</b>	<b>507.16</b>	<b>686.28</b>	<b>1,452.49</b>
<b>Discounted Actual Revenues@11.45%</b>	<b>427.50</b>	<b>391.38</b>	<b>366.39</b>	<b>444.87</b>	<b>844.84</b>

Total Present Value of Actual Revenues	2,474.98				
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**Decision No. XXIV. Regarding Sensitivity Analysis & Calculation of X-factor**

**XXIV.a. The Authority determines the X-factor at (-)154.89% for the determination of tariff for aeronautical services in respect of CSI Airport, Mumbai for the current Control Period.**

**Truing Up: 10. Correction / Truing up for Sensitivity Analysis & Calculation of X-factor**

**10.a. The Authority also decides to true-up the above X-factor, based on truing-up of other parameters impacting the calculation of the said X-factor (including adjustment to Hypothetical RAB Decision no. VI.a.iii), at the end of the current control period and its effect will be considered in the next control period.**

## **29. Issue of 10% increase in the aeronautical tariff**

### **a Authority's position on Issues pertaining to Issue of 10% increase in the aeronautical tariff in the Consultation Paper**

**29.1.** This issue has been discussed in detail in the para 1.9 to 1.22 above. As brought out in the section relating to sensitivity analysis, the draft determination had resulted in X factor of (-)151.56%, which resulted in a one-time increase of 160.96% (on account of CPI-X) in the airport charges on 1<sup>st</sup> January 2013, over and above the 10% increase (which MIAL received in March' 2009) in Base Airport Charges.

**29.2.** In view of the proposed increase in tariff, the Authority further felt that the issue of allowing a 10% year-on-year increase in Base Airport Charges, as claimed by MIAL, had become an issue of academic interest only.

**29.3.** *The Authority had concluded that its approach of determination of aeronautical tariff was in consonance with the covenants of the SSA.*

### **b Stakeholder Comments on Issues pertaining to Issue of 10% increase in the aeronautical tariff**

**29.4.** The Authority has not received any comments from the stakeholders on the issue of 10% increase in aeronautical tariff.

### **c MIAL's Response to Stakeholder comments on Issues pertaining to Issue of 10% increase in the aeronautical tariff**

**29.5.** Not Applicable

### **d MIAL's own comments on Issues pertaining to Issue of 10% increase in the aeronautical tariff**

**29.6.** On the issue of 10% increase in annual tariffs, MIAL referred to the SSA and reproduced clause 2 of the Schedule 6 of SSA as under

*"From the commencement of the fourth (4<sup>th</sup>) year after the Effective Date and for every year thereafter for the remainder of the Term, Economic Regulatory Authority / GOI (as the case may be) will set the Aeronautical Charges in accordance with Clause 3.1.1 read with Schedule 1 appended to this Agreement, subject always to the condition that, at the least, a*



*permitted nominal increase of ten (10) percent of the Base Airport Charges will be available to the JVC for the purposes of calculating Aeronautical Charges in any year after the commencement of the fourth year and for the remainder of the Term.”*

**29.7.** MIAL further stated that based on its understanding and interpretation of Clauses 1 and 2 of Schedule 6 of the SSA, the tariffs shall not fall below the nominal increase of 10% over Base Airport Charges implemented w.e.f 1 January 2009 for any year during the concession period from the 4<sup>th</sup> year onward.

**29.8.** MIAL requested the authority to ensure that at any point of time aero tariff will never be below base airport charges plus 10%.

**e Authority’s Examination of Issues pertaining to Issue of 10% increase in the aeronautical tariff**

**29.9.** The Authority has carefully examined MIAL’s comments on the issue pertaining to 10% increase in aeronautical tariff. It is observed that no fresh grounds or new facts have been brought on record by MIAL. Therefore, the Authority finds no grounds to review the position already taken by it in the Consultation Paper 22/2012-13 dated 11.10.2012. In any case the Authority’s present Order is fully in consonance with the requirement of retaining the quantum of 10% increase over the Base Airport Charges as read under Para 1 and 2 of Schedule 6 of the SSA.

**Decision No. XXV. Regarding Issue of 10% increase in the aeronautical tariff**

**XXV.a. The Authority concludes that its approach of determination of aeronautical tariff in the present Order is in consonance with the covenants of the SSA.**

## **30. Quality of Service**

### **a Authority's position on Issues pertaining to Quality of Service in the Consultation Paper**

**30.1.** As per section 13 (1) (d) of the Act, the Authority shall monitor 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.

**30.2.** Besides these functions relating to monitoring of set performances standards the Authority is required to determine tariff, inter alia taking into consideration Section 13 (1) (a)(ii) “ ...the service provided, its quality and other relevant factors;.....”

**30.3.** Therefore, in the scheme of the Act, the Authority has two mandates relating to quality of service – first, to consider the quality of service for determination of tariff and secondly, to monitor the set performance standards relating to quality of service. These are two distinct functions - one relates to determination of tariff whereas another relates to monitoring of set performance standards.

**30.4.** As per Principal no.7 of Schedule 1 of SSA- “in undertaking its role AERA will monitor, pre-set performance in respect to service quality performance as defined in the Operations Management Development Agreement (OMDA) and revised from time to time.”

**30.5.** It is submitted that OMDA already lays down detailed quality parameters / requirements.

**30.6.** Chapter IX of OMDA deals with Service Quality requirements. It prescribes both Objective and Subjective Service Quality requirements.

**30.7.** Clause 9.1.2 of OMDA prescribes that the JVC shall, within the time frame mentioned therein, achieve the Objective Service Quality Requirements set out in Schedule 3. It is also provided in the above clause of OMDA that the JVC shall on a quarterly basis, measure compliance of Objective Service Quality Requirements in accordance with Schedule 3 and provide compliance reports to AAI in a timely manner.

**30.8.** Further, it is provided in the above clause of OMDA that:

*“At any time after the JVC is obligated to achieve and maintain a particular Objective Service Quality Requirement, in the event that the immediately succeeding quarterly report show that the Airport (or any part thereof) is*

*rated below the respective Objective Service Quality Requirement, the JVC will achieve the particular Objective Service Quality Requirement within 30 days of the last submitted quarterly report. Should the JVC fail to achieve the above, or if the Airport (or any part thereof) continues to perform below the targets mentioned in Schedule 3, the JVC shall pay to the AAI 0.5% of the monthly Revenue (prior to default) for every month, that the standards are below any of the Objective Service Quality Requirements, for each such performance area, as liquidated damages provided however that the total liquidated damages payable hereunder shall not exceed 1.5% of the monthly Revenue (prior to default)."*

**30.9.** Clause 9.1.3 of OMDA prescribes Subjective Service Quality requirements (set out in Schedule 4). The clause prescribes that the JVC shall, commencing from the first anniversary of Effective Date, and thereafter every quarter, participate in the IATA/ACI AETRA passenger survey.

**30.10.** The clause 9.1.3 of OMDA further prescribes that the JVC shall ensure that, at the completion of the implementation of Stage 2 of the Initial Development Plan, the JVC achieves a rating of 3.75 in the IATA/ACI AETRA passenger survey or greater and maintains the same throughout the Term.

**30.11.** Further, it is also provided in the above clause of OMDA that:

*"The JVC shall at all times during the Term hereof make best endeavours to ensure improvement of the Airport in the IATA/ACI AETRA passenger surveys. After the completion of Stage 1, the Airport target rating shall be 3.5; provided however that after the completion of Stage 2, the Airport target rating shall be 3.75. The target rating of 3.5 on the IATA/ACI AETRA passenger surveys after the completion of Stage 1, and 3.75 after the completion of Stage 2, as furnished in the report as per sub-clause (b) above, is hereinafter referred to as "Target Rating". At any time after the completion of Stage 1 or Stage 2, in the event that two successive quarterly IATA/ACI AETRA passenger surveys show that the Airport is rated below the applicable Target Rating, then the JVC shall pay to the AAI 2.5% of the monthly Revenue (prior to default) for every month that the standards are*

*below the Target Rating by more than 0.1 points and 1.25% of the monthly Revenue (prior to default) for every month in the event the standards are below the Target Rating by less than 0.1 points, as liquidated damages; provided however that the maximum period that liquidated damages shall be paid hereunder shall not exceed a period of 6 months."*

**30.12.** The Authority had issued its Airport Order in the matter of Regulatory Philosophy and Approach in Economic Regulation of Airport Operators. Before the issue of the above said order, the Authority had issued a Consultation Paper seeking responses from the stakeholders on the Regulatory Philosophy and Approach in Economic Regulation of Airport Operators. Stakeholders raised some concerns relating to quality of service among other issues.

**30.13.** In clause 12 of the Airport Order, the Authority specified that it had considered concerns raised by the stakeholders and decided, inter alia, as under:

- i) The Authority will consider the provisions and consequently the effect of concession agreements for the concerned airports while / at the time of determining tariffs for the first tariff cycle.*
- ii) The Authority has also considered the concerns raised with respect to equal weights being assigned for each objective service quality measure for the purpose of calculating rebates on aeronautical charges. The Authority considers the argument in favour of specifying different weights for different objective service quality measures, taking into consideration its importance to users and efficient airport service delivery, as reasonable on purist grounds. But, the Authority believes that the relative importance of different objective service quality measures is best judged by users of such services and the Authority would like to adopt a user agreed system of relative weights in future regulatory periods / tariff determination cycles. However, for the first tariff determination (control) period, in absence of such informed judgement from users, the Authority is specifying equal weights for each objective service quality parameter for rebate calculation purposes. Accordingly, the*

*Authority hereby specifies that under-performance with respect to specified benchmark for each objective service quality measure will have a monthly rebate incidence of 0.25% of aeronautical revenue, subject to an overall cap of 1.5%.*

- iii) With respect to subjective service quality parameters, concession agreements for DIAL, MIAL, BIAL and GHIAL specify a target rating of 3.5 on passenger satisfaction survey for subjective service quality assessment, but not for individual items. The Authority is now adopting an overall benchmark of 3.5 on the Airports Council International's Airport Service Quality (ACI ASQ) survey for subjective quality of service assessment to be undertaken by all major airports.*
- iv) Further, the Authority believes that in order to progressively ensure better service quality performance within the control period, it would be appropriate to prescribe a higher overall benchmark for fourth and fifth years of the first control period. Accordingly it has decided that the overall benchmark for subjective quality requirements for the fourth and fifth year of the first control period shall be 3.75 on the ACIASQ survey.*
- v) The Airport Operators, however, will be required to periodically (quarterly) report their performance on the overall measure as well as with respect to each subjective service quality parameter in the survey through quarterly quality of service reporting.*
- vi) The Authority hereby specifies that under-performance with respect to specified benchmark for subjective service quality criteria will result in a monthly rebate incidence of 2.5% of aeronautical revenue.*
- vii) The Authority has also considered the issue of specifying a transition period for implementation of the scheme of quality of service measurement and determination of any rebates as relevant for major airports. Such transition period as may be required for each*

*major airport shall be considered and specified at the time of respective tariff determinations based on review of the extant quality of service monitoring arrangements and procedures at each major airport, requirements under the respective concession agreements, etc. The Authority believes that in any case a maximum transition period of 1 year from the date of tariff determination would be a reasonable time for Airport Operators to appropriately align their processes / procedures and make any other required interventions.*

*viii) Airport Operators would be required to develop a comprehensive performance measurement plan to operationalise the same. The proposed performance measurement plan would need to be submitted by Airport Operators along with tariff proposals for review and approval of the Authority. The performance measurement plan: would also be required to be updated annually for changes in monitoring-related aspects like busiest hour of the day, etc. Such an implementation framework will accordingly address the requirement to specify seasonality and periodicity of monitoring, etc.*

**30.14.** Under clause 17 of the Airport Order, the Authority further specified as under:

- a) While the Authority will discharge its other functions under the Act with respect to monitoring the set performance standards as may be specified by the Central Government (Section 13 (1) (d) of the Act), it will, in accordance with the provisions of Section 13(1)(a)(ii) of the Act, take into consideration the quality of service provided by Airport Operators on specified parameters and measures while determining tariffs.*
- b) The Authority will require the specific service parameters to be measured at major airports. It hereby adopts a mechanism that will consider reduced tariffs for under-performance vis-a-vis specified*

*benchmarks on quality of service to adequately protect the interest of users.*

- c) *Under such a mechanism, the calculated level of rebate for a year will be passed on to users of airport services in the form of reduced tariffs in the following year(s).*

**30.15.** An argument which can be raised against the rebate mechanism could be that since OMDA itself provides for penalty mechanism in the event of default in respect of quality parameters, a separate rebate mechanism as part of tariff would tantamount to penalising the default twice.

**30.16.** *The Authority had in the in the Consultation Paper 22/2012-13 dated 11.10.2012 proposed, as specified by the Government, to monitor the performance standards as laid down in the OMDA. Since OMDA provisions have a provision of liquidated damages to be paid to AAI, should the quality of service not be achieved, the Authority had proposed that for the current control period it would not impose rebate mechanism in addition to the liquidated damages mechanism in OMDA.*

#### **b Stakeholder Comments on Issues pertaining to Quality of Service**

**30.17.** On the issue of Quality of Service, IATA stated that

*“IATA believes that a fair system in the case of service shortfall by the airport is to provide a rebate to the users. The rebate mechanism should be in place at the same time as when the higher airport charges start to apply.”*

**30.18.** FIA has suggested that the entity responsible for a quality of service should also bear the cost in case of defaults. FIA stated as under,

*“..... the Airport charges that Airlines are required to discharge, during these times need to be lower, as Airlines, in any case, are saddled with huge infrastructural bottleneck costs. There is a need to consider this and other aspects in evolving standards of performance and putting in place a system of incentives and disincentives to drive efficiency in all elements of operations as well as also ensure that the entity responsible for a quality of service default bears the cost.”*

**30.19.** British Airways, on the same issue, commented as under,

*“British Airways strongly believes that in a normal market there would be a clear set of duties on both parties to a contract. In the case of an airport the airline and its’ customers would be required to pay certain charges, for which the airport should be obligated to provide certain levels of service and performance. A regulator, acting in lieu of a competitive market, should set the de facto minimum standards that the airport must achieve in order to justify the charges paid. Failure by the airport to then deliver those standards must have some consequence to the airport. Without a structural incentive to ensure ongoing delivery of key service standards the airport could continue to take fees for services that are not delivered. The airlines require protection from such circumstances and look to the regulator to ensure these exist as soon as possible. A rebate system, where the airport refunds charges received in circumstances where they have failed to deliver the services that have been paid for would seem to be the minimum requirement.”*

**c MIAL’s Response to Stakeholder comments on Issues pertaining to Quality of Service**

**30.20.** MIAL has responded to the stakeholder comments on this issue. MIAL’s response is as under,

*“OMDA adequately provides for penalties for deficiencies in service level. Hence there is no justification for any additional penalties.”*

**d MIAL’s own comments on Issues pertaining to Quality of Service**

**30.21.** MIAL has not provided its own comments on the issue.

**e Authority’s Examination of Issues pertaining to Quality of Service**

**30.22.** The Authority has examined the comments made by IATA, FIA and British Airways and MIAL’s response to these comments. The Authority, in its Consultation Paper 22/2012-13 dated 11.10.2012, has provided detailed consideration on this issue. The Authority had reference to the provisions of OMDA, which require that *“The JVC shall at all times during the Term hereof make best endeavours to ensure improvement of the Airport in the IATA/ACI AETRA passenger surveys.”*



**30.23.** Having considered the provisions of OMDA, the Authority, in the Consultation Paper 22/2012-13 dated 11.10.2012 for MIAL, had proposed for the current control period that it will not impose rebate mechanism in addition to the liquidated damages mechanism in OMDA.

**30.24.** The MoCA have, vide their letter No. No.AV.24026/001/2009-AAI dated 09.03.2012, observed that the Authority has proposed a separate rebate mechanism as part of tariff to be prescribed as a penalty for not meeting the service standards in addition to those prescribed under the contractual Agreements in force. The MoCA have stated as under:

*“ 2. On perusal of the Paper, it is seen that vide Para 456 of the Paper, a separate rebate mechanism as part of tariff is proposed to be prescribed as a penalty for not meeting the service standards in addition to those prescribed under the contractual Agreements in force. Kind attention is also invited to sub-section (1) (d) of Section 13 of the AERA Act which stipulates that AERA is to monitor the set performance standards relating to quality, continuity and reliability of service, as may be specified by the Central Govt. or any Authority authorized by it in this behalf. Therefore, AERA can only monitor the set performance standards.*

*3. This Ministry has been asking AERA to indicate the proposed performance standards, and also forward the related draft Rules for notification. The response of AERA to the above is long awaited despite repeated reminders from this Ministry. It needs to be appreciated that in the absence of any Rules prescribing performance standards, it may not be justifiable to prescribe a separate rebate mechanism as part of tariff determination as has been proposed in the Consultation Paper. Under the statute, AERA clearly has not been mandated to impose additional quality parameters and penalties over and above those prescribed in the OMDA.*

*4. It is pertinent to mention that there is a provision under OMDA prescribing fixed objective and subjective service quality standards and also the mechanism of penalty and fines in the event of a failure by DIAL to meet such service quality standards. This Ministry had advised AERA vide its letters dated 04.01.2010 and 15.06.2011 to monitor the performance*

*standards as prescribed in the Concession Agreement (for Hyderabad and Bangalore airports) and OMDA (for Delhi and Mumbai airports) entered into with respective JVCs.*

*5. In the light of above, AERA may re-consider its decision regarding separate rebate mechanism as part of tariff, as it is in non-conformity of the agreement entered into with the JVCs.”*

**30.25.** The Authority has noted and carefully considered the views of MoCA in the matter. As regards the scope of Authority’s functions under Section 13 (1) (d) and requirement of specifying standards therefor, the Authority would separately interact with the Ministry.

**30.26.** Having regard to the nature of the various comments and observations as well as particularly the views of the Government and noting the fact that this is the first regulatory period, the Authority, on the balance, feels that the liquidated damages provided in OMDA for not adhering to the standard as prescribed therein can be considered to be reasonably adequate for the current control period. Hence, it has decided that it may not be necessary to operationalise the additional rebate mechanism for the current control period.

#### **Decision No. XXVI. Regarding Quality of Service**

**XXVI.a.** The Authority decides that, as specified by the Government, to monitor the performance standards as laid down in the OMDA. Since OMDA provisions have a provision of liquidated damages to be paid to AAI, should the quality of service not be achieved, the Authority decides that for the current control period, it would not impose rebate mechanism in addition to the liquidated damages mechanism in OMDA.

### **31. Tariff Structure/ Rate Card**

#### **a Authority's position on Issues pertaining to Tariff Structure/ Rate Card in the Consultation Paper**

**31.1.** MIAL had, vide their letter No. MIAL/CFO/304 dated 27.08.2012, submitted their Annual Tariff Proposal(s) for the FY 2012-13 and 2013-2014 effective 1st July, 2012. MIAL, in their ATP, submitted as under:

*“Mumbai International Airport Private Limited (MIAL) has filed its Multi-Year Tariff Proposal (MYTP) dated 11.10.2011 with Hon'ble Airports Economic Regulatory Authority of India (Hon'ble Authority) for approval of its Target Revenue Requirement, hike required in existing tariffs and revised amount/rate of Development Fee. The MYTP was prepared as per the principles and methodology specified in Schedule 1 of the State Support Agreement (SSA) read with relevant provisions of Operation, Management and Development Agreement (OMDA). We also refer to various meetings held with the Authority in connection with the above and further submissions made by us in the matter from time to time. Based upon our last submission, attached please find proposed Annual Tariff Proposal (ATP) for FY 13 & FY 14 .....”*

*“This is to inform the Authority that cost of Security equipment is currently not included in the project cost since the same is projected to be funded from PSF - Security component account PSF (SC). However if considering recent developments MoCA issues any direction contrary to the same or does not allow MIAL to meet such cost from PSF (SC) account than cost of such security equipment will have to be included in RAB. Authority will be informed as and when such directions/ instructions are received.*

*With a view to ensure safety at CSIA, MIAL had to resort to introduction of Penal charges as per Schedule 1 attached (with effect from 1st July 2012) to discourage unauthorized stay of non CSIA based GA aircraft at CSIA. This is a penal charge and not a parking charge and hence should be treated as Non Aero revenue.*

**31.2.** Further, MIAL also requested that:

*“The UDF rate mentioned in the ATP for FY13 and FY14 includes the collection charges assuming Rs.2.5 per departing passenger. The ATP for FY14 is indicative and subject to change as per the business requirement, keeping the overall proposed revenue same.*

*We request the Authority;*

- i) to make suitable changes in airport charges if our appeal before AERAAT in the matter of FTC is decided in our favour.*
- ii) to make suitable changes in the airport charges taking into account additional expenditure on security equipments, if any.*
- iii) to true up deficit in Projected/ Proposed revenue, if any, considering changes in traffic, traffic mix, MTOW of Aircraft and usage of Aerobridges.”*

**31.3.** However, vide their further submission dated 14.09.2012, MIAL submitted a revised ATP considering the revision in tariff effective from 01.01.2013. The revised rate card assumes a tariff hike of 881.28% to be effective from 01.01.2013 and a further hike linked to inflation of 8.94% has been assumed to be effective from 01.04.2013. Further MIAL have also assumed the revised DF hike to be effective from 01.01.2013.

**31.4.** MIAL had requested the Authority to allow a time of around 4 weeks from the date of order for implementation of the new tariff order and also requested that total shortfall in collection of UDF for the current control period. MIAL submitted as under:

*“MIAL would request the Authority to kindly allow a time of around 4 weeks from the date of order for implementation of the new tariff order. Further it is requested that total shortfall in collection of UDF for this control period (i.e. due to difference between number of passengers considered in MYTP and actual number of passengers from whom UDF is collected) be trued up fully considering the fact that international tickets are issued well in advance (almost a year) and domestic tickets are also issued 3-6 months in advance and it will be impossible to collect UDF from passengers individually at the airport.”*

**31.5.** MIAL had, in their revised ATP dated 14.09.2012, submitted for approval the charges in respect of the following heads of revenue:

31.5.1. Landing and Parking charges;

31.5.2. Aerobridge Charges;

31.5.3. User Development Fee (UDF) on departing passengers.

**31.6.** MIAL had further submitted that the Landing, Parking and Aerobridge charges are fixed and for any change in the proposed revenue, adjustment should be made only in UDF which is balancing figure. The ratio between rate of Domestic and International UDF per passenger is to be maintained as 1:2.

**31.7.** MIAL had also introduced Slot charges in their Annual Tariff proposal. MIAL have stated that:

*“Given the runway capacity constraints faced by CSIA and the fact that CSIA should be operating at its peak capacity to sustain the demand in most part of the day, maximum utilisation of the available slot is of utmost importance making it necessary that the non-utilization of slots is effectively checked. The value of slots, if not utilized, is lost forever and cannot be recovered in any manner. Accordingly, in order to increase overall operational efficiency leading to lower charges for users, MIAL is making this proposal to deter the misuse of scheduled and unscheduled slots allocated to air carriers.*

*In spite of MIAL’s active monitoring of slots there are still quite a few airline operators who obtain the slots but do not adhere to it resulting in sub-optimal utilization of the existing infrastructure, the load of which is ultimately passed on to passengers. In view of the above it is proposed to levy this charge as follows:-*

*“In case allocated slots remain unused due to purely commercial consideration than in such cases after 2 instances of slot remaining unutilized, slot charges equivalent to landing charges as mentioned above, depending upon international or domestic slot, shall be recovered from 3rd instance onwards.”*

**31.8.** The Authority noted that Principle 10 in the Schedule 1 of SSA provides as under:

*“ 10. Pricing responsibility: Within the overall price cap the JVC will be able to impose charges subject to those charges being consistent with these pricing principles and IATA pricing principles as revised from time to time including the following:*

- i) Cost reflectivity: Any charges made by the JVC must be allocated across users in a manner that is fully cost reflective and relates to facilities and services that are used by Airport users;*
- ii) Non-discriminatory: Charges imposed by the JVC are to be non discriminatory as within the same class of users;*
- iii) Safety: Charges should not be imposed in a way as to discourage the use of facilities and services necessary for safety;*
- iv) Usage: In general, aircraft operators, passengers and other users should not be charged for facilities and services they do not use ”*

**31.9.** Thus, the SSA contemplates that MIAL would be free to impose charges within the overall price cap subject to conditions stated therein. In view of this, for the present, the rate card proposed by MIAL is placed for stakeholder consultation.

**31.10.** In addition to the items of charges proposed by MIAL in their tariff card (refer para 31.5 above), the Authority has in the above sections also treated the following as aeronautical revenues for the purpose of current tariff determination, which MIAL have treated as non-aeronautical. The charges are as under:

31.10.1. Fuel Throughput charges (Discussed in para 22.1 to para 22.27)

31.10.2. CUTE Counter charges (Discussed in para 23 to para 23.11)

31.10.3. Parking Charges for Non CSIA based General Aircrafts (Discussed in para 24.1 to para 24.10)

**31.11.** The Authority’s treatment with respect to cargo and demurrage charges is set out separately in Para 20 and Decision No. XVI.b.

**31.12.** In addition to the above, the Authority also proposed to approve the DF determined in its Order No 29 / 2012-13 dated 21.12.2012.

**31.13.** As regards the new slot charge proposed by MIAL, the Authority is informed that the same is not prevalent in practice and invites stakeholder comments to enable the Authority to take a final view in the matter.

**31.14.** MIAL, vide their submission dated 13.09.2012, submitted that they have been collecting FTC @ Rs. 561.75/ KL for FY 2011-12 pending approval of the Authority and since the FY 2011-12 has already elapsed without any increase in FTC rates, pending approval of AERA, MIAL have updated FY 2011-12 FTC revenue based on actual and taken arrears upto FY 12 to FY 13 (amounting to Rs. 5.81 crs.). MIAL have included the increased charges retrospectively from FY 2011-12 in the MYTP since the increase is as per signed agreement with the oil companies and increase is pending only for the approval of the Authority.

**Table 125: Rates proposed to be charged by MIAL in respect of FTC**

	FY 10	FY11	FY 12	FY 13	FY14
				<i>Projected</i>	
<i>FTC Rate/ KL (Rs.)</i>	535.00	561.75	601.07#	643.15	688.17
<i>Increase in %</i>		5.00%	7.00%	7.00%	7.00%
<i>Revenue (Rs . Crs.)</i>	73.17	79.96	82.95	104.66	108.74
<i>Arrears in Revenue of FY 12 proposed to be collected in FY 13 (Rs. Crs.)</i>				5.81	

*"#-MIAL has been collecting FTC @ Rs. 561.75/ KL for FY 12 pending approval of the Authority. Since FY 12 has already elapsed without any increase in FTC rates, pending approval of AERA, MIAL has updated FY 12 FTC revenue based on actual and taken arrears upto FY 12 to FY 13 (amounting to Rs. 5.81 crs.). MIAL has included the increased charges retrospectively from FY 12 in the MYTP since the increase is as per signed agreement with the oil companies and increase is pending only for the approval of the Authority."*

**31.15.** The Authority had accordingly proposed the rates indicated in Table 125 in respect of FTC for stakeholder consultations.

**31.16.** CUTE Counter charges - MIAL had submitted that they receive counter charges (Rental charges) from the airlines for the counters utilised by them for checking/ processing of passengers. MIAL submitted that they only provide the bare counters and that necessary hardware and software is directly procured by the airlines from outsourced service provider.

MIAL had stated that no capital expenditure has been incurred by them towards Hardware or software and no service is being provided by the airport operator to airlines/ passengers and that this charge is like any other rentals, hence of non-aeronautical nature. Therefore it should be considered as Non Aeronautical for the purpose of computing cross subsidy. The rates being charged by MIAL for the domestic and International counters are as under:

**Table 126: Rates being charged by MIAL for the domestic and International CUTE counters**

Counter Type	Rates per month / Counter
Domestic Counter –NACIL	Rs. 5000/-
Domestic Counter – Other Airlines	Rs. 6500/-
Mobile Counter	Rs. 2500
International Flights (excepting NACIL flights)	Rs. 1500 per departing flight

**31.17.** Charges for Cargo operations and Demurrage – MIAL submitted that these charges have remained same effective April 2009 and currently no increase is proposed.

**31.18.** The Authority had noted MIAL’s submission dated 14.09.2012, presented in para 31.6, to consider UDF as the balancing figure while keeping Landing, Parking and Aerobridge charges as proposed by MIAL in its tariff / rate card fixed. The Authority had an occasion to tentatively calculate the quantum of UDF in connection with the treatment of cargo revenue and presented the values of UDF in Table 103 based on certain assumptions as stated therein.

**31.19.** *The Authority had proposed to calculate the X factor for the tariff determination w.e.f 01.01.2013 at (-)151.56% on a one time basis during the Control Period. Hence the X factor for the tariff year 2013-14 is zero.*

**31.20.** *The Authority had proposed to note the tariff structure and rate cards for the tariff years 2012-13 and 2013-14 as appended hereto (corresponding to tariff hike (CPI – X) of 881.28%). The Authority also noted MIAL’s request to determine UDF as a balancing tariff item. The Authority accordingly proposed to finally determine UDF broadly proportionate to the reduction of X-factor in its Final Order. However, the Authority further proposed to keep the rate of UDF as constant till the end of the current control period.*



**31.21. The Authority had proposed to determine the rates for FTC as per Table 125 above for the current control period.**

**31.22. The Authority had proposed to determine CUTE counter charges as per Table 126 above for the current control period.**

**31.23. The Authority had proposed to determine enhanced parking charges for GA Aircrafts beyond the slot allotted and not having usual station at CSIA as per Table 107 above for the current control period.**

**31.24. The Authority had proposed that the rates for 2012-13 would be effective from 01.01.2013 and the rates for 2013-14 will be effective from 01.04.2013.**

**b Stakeholder Comments on Issues pertaining to Tariff Structure/ Rate Card**

**31.25.** On the issue of Tariff Structure / Rate card, IATA referred to the SSA and stated that

*“Principle 10 in Schedule 1 of SSA requires charges to be set in accordance with IATA pricing principles. Consultation with users is a cornerstone of IATA pricing principles which are aligned with that of ICAO. Users’ inputs on the rate card should be fairly considered before it is finalized.”*

**31.26.** IATA further stated that

*“In its current form, the rate card proposed by MIAL is not in line with IATA and ICAO principles and the principles stipulated in the SSA, as elaborated hereunder. This cannot be supported by IATA.*

- *The rates for landing domestic flights and international flights should be the same for correct cost reflectivity. The rates should be common and solely based on MTOW i.e. the same aircraft type using the same facilities at the airport should be charged the same irrespective of its point of origin. The different percentage increases for international and domestic landing fees proposed by MIAL have further widened the disparity.*
- *UDF for international and domestic passengers should be the same.*

- *The increases proposed for landing, parking and housing are too steep and should be re-balanced with UDF to more accurately reflect the usage of the terminal building by passengers.*
- *Fuel throughput charge which has no cost basis should be removed or at least moderated. An automatic escalation should not be allowed.*
- *CUTE Counter charges should not discriminate by airlines as charging competing airlines different fees distorts the playing field.*

**31.27.** IATA proposed that

*“In summary, the tariff structure that is in line with IATA principles would be as follows:*

- *Landing rates for international flights and domestic flights must be exactly the same to be cost-reflective. There should be no cross-subsidy of cost.*
- *UDF for international and domestic passengers should be the same.*
- *CUTE charges should be the same for domestic and international flights.*
- *There should be a greater re-balancing of the costs towards UDF.”*

**31.28.** IATA further stated that a reduction in the X-factor in the final order by AERA should not just cause UDF to reduce but should also proportionately bring down the increases in landing, parking and housing fees and moderate the new fee i.e. aerobridge charge .

**31.29.** On the issue of tariff structure, British Airways stated that

*“The proposed tariff structure is not in line with IATA and ICAO principle. As such British Airways cannot support it.*

*We would support a tariff structure where:*

- *Landing rates for international flights and domestic flights are exactly the*
- *same and are fully cost-reflective, with no cross-subsidy of cost.*
- *UDF for international and domestic passengers are the same.*

- *CUTE charges are the same for domestic and international flights.*
- *There is a greater re-balancing of the costs towards UDF, providing sufficient notice of the changes in the UDF to allow airlines to pass on the costs to their customers.*
- *The impact of the increased tariffs is moderated, so as to allow a more gradual rise in the charges.”*

**31.30.** Cathay Pacific on the issue of tariff structure stated that

*“We cannot accept the discrepancy between landing charges for international flights and those for domestic flights which has been made even larger following the unequal percentage increases proposed by MIAL. This practice of charging international airlines higher than domestic airlines violates ICAO’s policy of cost-based charging. The same aircraft using the same facilities at the airport should be charged the same.”*

**31.31.** On the issue of Tariff Structure Air France stated that

*“We object to the steep increase of 160% in airport charges as from 1 January 2013 proposed by AERA for BOM, which despite it being a significant moderation from the tariff hike of 881% sought by MIAL, would still have a severe impact on the viability of airlines operations at Mumbai Airport.*

*Such magnitude of increase would be also counter-productive for BOM as it would have an adverse impact on the traffic growth at the airport.*

*As to the structure of the charges we consider this not in line with ICAO principles, and we urge you not to approve the discriminatory tariff setting between domestic and international operations. We object in particular for landing charges to the gap between domestic and international flights, which not only remained, but had been widened.*

*Taking into consideration the existing high cost of operating, this huge proposed increase could oblige us to reconsider our Mumbai operations.”*

**31.32.** On the issue of Tariff Structure, FIA commented under the heading **“MIAL's monopolistic approach and 'Doctrine of Essential Facilities'”** and stated as under”

*“It is submitted that under the competition law, an enterprise is under an obligation to extend its essential infrastructural facility at a reasonable cost. MIAL's control over CSI Airport, renders it a monopolist having control over 'essential infrastructural facility' of the airport in the city Mumbai. 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)<sup>16</sup>. Under the principles of access to essential facility, the following four factors must be proven:*

*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<sup>17</sup>. In view of the foregoing judicial precedents, it*

- a Control of the essential facility by a monopolist;*
- b A competitor's inability practically or reasonably to duplicate the 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<sup>17</sup>. In view of the foregoing judicial precedents, it is submitted that N1IAL assumes the position of a monopolist since it exercises control over CSI Airport which is a crucial infrastructural facility for a city like Mumbai 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 his facility.*

*It is submitted that such enormous hike in tariff by a monopolist MIAL may be viewed as 'abuse of its dominance' and accordingly liable under section*

*4 of the Competition Act, 2002 ("Competition Act"). Further, the Competition Act promulgates the "economic development of the country" by establishment of a Commission to, amongst other things, protect the interests of the consumers. Levy of such exponential charges by a monopolist is clearly against consumer interests, and thus, is against the basic premise of competition law in India.*

*MIAL is "pricing out" the airlines with such substantial increase in aeronautical charges. The hike in aeronautical tariff has already witnessed airlines discontinued their services."*

**31.33.** With regard to the rate card annexed in the Consultation Paper – 22/2012-13, dated 11.10.2012, wherein MIAL has proposed a charge on airlines for use of aerobridges, BAR (India) commented as under,

*"10.1 AERA has tentatively decided to accept MIAL's request for charging airlines for the use of Aerobridges, which we understand has never been done before at any airport (major or otherwise) in India. Further, MIAL has proposed exorbitant rates for the utilization of Aerobridges by airlines and its passengers. The amount of INR 6,000 per hour per international flight is an excessively high amount that the airlines have to shell out. If the proposed charge of INR 6,000 per hour is accepted by AERA, all International airlines will have to bear the Aerobridge charges for 2 hours, as the minimum transit time for an International airline ranges from 1.5 -2 hours. AERA ought not to consider such Aerobridge charges and ought to disallow the proposal made by MIAL for the same. Even if this charge of INR 6,000 per hour per international flight is taken into consideration, the same cannot become applicable until the airlines move into the New Terminal T2 as Aerobridges at the existing old Terminal 2A and 2B do not have the facility to provide Ground Power and Air-Conditioning. The Stakeholders have been given to understand that these facilities of Ground Power and Air-conditioning will be made available to the airlines only at the new Terminal T2.*

10.2 AERA has tentatively decided to accept the tariff card submitted by MIAL as a part of its proposal for the airport charges for the years 2013 and 2014. As per the said tariff card, which is Annexure VII to the Consultation Paper No. 22/2012-13, the charges for landing an international flight are almost twice the amount that are being charged for landing a domestic flight. Such differential pricing for landing charges cannot be justified if the airlines are using the same facilities for both domestic and international flights. Thus, AERA ought to ensure that there is no difference in the landing charges for domestic and international flights and accordingly amend the tariff card proposed by MIAL. Such non-discriminatory pricing is also a requirement under the OMDA, as set out elsewhere hereinabove.

10.3 'MIAL, in its tariff card that AERA has tentatively decided to accept, has proposed to levy slot charges that we understand have never been charged by any airport in the world. As per the tariff card, in the event an allocated slot remains unused due to purely commercial consideration, after 2 instances of the slot remaining unutilized, slot charges equivalent to the minimum landing charges prescribed in the tariff card shall be recovered from 3<sup>rd</sup> instance onwards. AERA ought not to permit such slot charges to be levied by MIAL, as the same is contrary to the rules laid down under the Worldwide Slot Guidelines, which state that in the event an airline utilizes a slot for less than 80%, it loses its rights for the same during the subsequent season. As there are no slot charges being paid by any airline across the world, AERA ought to refuse MIAL's request to levy such charges at the CSI Airport, Mumbai.'

**31.34.** APAI in their submission stated that there is no justification for differential rates for the landing charges on domestic and international flights. APAI proposed that landing charges on domestic and international flights must be the same for both. APAI further noted that there is a very wide difference between the levy on domestic and international passengers and are unable to understand the reasons for the same.

**31.35.** British Airways on the issue of tariff structure stated that

*"We would support a tariff structure where:*

- *Landing rates for international flights and domestic flights are exactly the same and are fully cost-reflective, with no cross-subsidy of cost.*
- *UDF for international and domestic passengers are the same.*
- *CUTE charges are the same for domestic and international flights.*
- *There is a greater re-balancing of the costs towards UDF, providing sufficient notice of the changes in the UDF to allow airlines to pass on the costs to their customers.*
- *The impact of the increased tariffs is moderated, so as to allow a more gradual rise in the charges.”*

**31.36.** Airlines for America in its submission stated that

*“The practice of maintaining a differential in landing charges based on international versus domestic operations violates the U.S.-India Open Skies Agreement under Article 10, User Charges.*

*The existing regime (soon to be further exacerbated) charges one user more than another for the same service and so is neither ‘just” nor “equitably apportioned among categories of users.” Equally, U.S. carriers are not accorded the same terms as “the most favorable terms available to any other airline,” in this case, Indian carriers offering domestic services. As a result, the charges are unjustly discriminatory in violation of Article 10(1). Article 10(2) requires that user charges be cost-related. Charges are not cost-related when they differ based upon the origin or destination of an aircraft. Drastic increases in airport-related charges at the levels proposed, as well as the introduction of new charges not found at other airports, will be devastating for all who rely on the airport: passengers, shippers, vendors and the local economy. The result will be that economic development at CSIA will be depressed. Rather than ensuring that air service remains an engine of growth, the proposed charges for CSIA promise to strangle that growth, hurting — not supporting — the local economy. The proposed increased charges at CSIA will be unsustainable*

*and will inhibit the valuable air links between the United States and India. As you know, airlines continue to operate on slim margins as they battle the economic uncertainties in their home countries and in countries that they serve. While such uncertainty is already daunting, the continued high cost and volatility of jet fuel prices remains a constant threat to an airline's bottom line. Higher operating costs will result in airlines having to reassess service levels and growth plans at CSIA, which could result in negative implications for the Indian economy. Unnecessary taxes and fees have an adverse effect on airlines that also result in unintended consequences: impeding job creation; diminishing services and increasing the cost of air transportation."*

**c MIAL Response to Stakeholder Comments on Issues pertaining to Tariff Structure/ Rate Card**

**31.37.** MIAL responded to the concern raised by Cathay Pacific and stated as under

*"We would like to put on record that there is no proposal to have differential charge based on stage length and inter se carriers. Different charges for domestic and international operation are prevalent throughout India and it does not inter se discriminate any class of carrier.*

**31.38.** MIAL further referred to ICAO and stated that

*"ICAO's 'Policies on Charges for Airports and Air Navigation Services' (Doc 9082, 9<sup>th</sup> edition), Section II, para 3 (iv) states that:*

*"The charges must be non-discriminatory both between foreign users and those having the nationality of the state in which the airport is located and engaged in similar international operations, and between two or more foreign users."*

**31.39.** MIAL further referred to the Authority Order No. 28/2011-12 dated 8<sup>th</sup> November 2011 on levy of DF for DIAL in respect of levy of differential DF rates for DIAL and stated as under:

*"the Authority, in respect of levy of differential DF rates for DIAL, has stated the following vide Order No. 28/2011-12 dated 8<sup>th</sup> November 2011 on levy of DF for DIAL:*

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*“Difference in DF between domestic and international departing passengers – It is IATA’s contention that current ratio of 6.5 times of DF for international passengers is very high and needs to be moderated. It has also been stated by IATA that the international precedents suggest parity or a difference upto 4 times. IATA has not suggested any economic basis for determination and has only cited international precedents, which also sharply vary in this regard. Further, the rates approved by the Ministry of Civil Aviation, i.e., Rs. 200 per embarking domestic passenger and Rs.1300 per embarking international passenger were successfully implemented during the earlier levy period. Therefore, the Authority has decided to continue with the same rates.””*

**d MIAL’s own comments on Issues pertaining to Tariff Structure/ Rate Card**

**31.40.** MIAL in their submission stated that

*“For the purpose of administrative ease, MIAL requests the Authority to allow a onetime hike in tariffs which would also account for the inflationary increase for FY 2013- 14. Further, the actual inflation based on CPI (IW) can be trued up at the start of the second control period.”*

**e Authority’s Examination of Issues pertaining to Tariff Structure/ Rate Card**

**31.41.** The Authority has carefully considered the comments of the stakeholders outlined above as well as the responses of MIAL thereon. The Authority has decided to take into account the SSA / OMDA, for the purpose of determination of aeronautical tariff in respect of CSI Airport, Mumbai. It has first calculated the X-factor based on the formulae of Schedule 1 of SSA. For the purposes of this calculation, it has gone into detail the various building blocks to give the Target Revenue, that would enable the Airport Operator to get a Fair Rate of Return on his investment and at the same time, safeguard reasonable interests of the stakeholders.

**31.42.** Based on the X-factor different components of aeronautical tariff have also been determined by the Authority. Primarily these elements comprise charges that impinge directly on the airlines (like landing parking housing etc) and those that impinge directly on the passengers (UDF and what was already determined by its Order No 29/2012-13 dated

21.12.2012, the ADF). It has also given its decision about the truing-up of different elements of ARR in the next Control Period.

**31.43.** While performing the function of tariff determination the Authority had also taken into account the ICAO Guidelines. One of the main points of the comments of the stakeholders is that no difference be made in respective charges for international and domestic passengers. In this regard, the Authority has noted that IATA had, in the Stakeholder Consultation (on 29.10.2012) as well as its comments on the issue of level of DF, accepted the position of having a differential between charges for domestic passengers and international passengers. It had felt that a ratio of 2:1 would be acceptable. The rate card has this differential with respect to UDF charges for domestic and international passengers. The Authority therefore feels that on balance the rate cards at Annexure III-A & Annexure III-B and takes into account reasonable interest of all the stakeholders and therefore it has decided to determine the aeronautical charges accordingly.

**31.44.** The Authority has noted the comment of IATA that aerobridge charges are not in place anywhere in the world. The Authority understands that these charges are applicable in Bengaluru as well as Hyderabad airports. The assertion of IATA, in this regard, therefore, does not appear to be correct. The Authority has, with regard to totality of circumstances, decided to approve the aerobridge charges, as indicated in the tariff card.

#### **Decision No. XXVII. Regarding Tariff Structure/ Rate Card**

**XXVII.a.** The Authority determines the aeronautical tariff for the years 2012-13 and 2013-14 as per the Rate Cards at Annexure III-A and Annexure III-B (The Authority has separately determined the tariff for the aeronautical service of cargo (including demurrage) as per Annexure IV).

**XXVII.b.** The Authority also decides that the tariffs for 2012-13 will be effective from 01.02.2013 and the tariffs for 2013-14 will be effective from 01.04.2013.

**XXVII.c.** The tariffs determined are the maximum tariffs allowed to be charged and are exclusive of service tax, if any.

Truing Up: 11. **Truing-up of UDF as indicated in the Tariff Structure/ Rate Card**

**11.a. The Authority notes that after the issue of this Order, DGCA issues Aeronautical Information Circular (AIC) acting upon which the airlines will incorporate the UDF in the tickets for passengers travelling on or after 01.02.2013.**

**11.b. The Authority decides to true-up the short-fall in UDF on account of passengers travelling on or after 01.02.2013 but who have not been charged UDF on their tickets.**

## **32. Slot Charge for Flight Cancellations**

### **a Authority's position on Issues pertaining to Slot Charge for Flight Cancellations in the Consultation Paper**

**32.1.** MIAL's submission on the issues pertaining to Slot charge have been presented in Para 31.7 above and the Authority's position in this regard is presented in Para 31.13 above. The Authority, in this regard, had stated that it is informed that levy of slot charge is not prevalent in practice and had invited stakeholder comments to enable the Authority to take a final view in the matter.

### **b Stakeholder Comments on Issues pertaining to Slot Charge for Flight Cancellations**

**32.2.** On the issue of slot charge, IATA in its submission stated that IATA is opposed to MIAL's proposal to introduce a slot charge for flight cancellations. Slot allocation is not made through imposition of charges, but through adherence to the internationally accepted Worldwide Slot Guidelines (WSG). IATA also stated that nowhere else in the world is there a slot use charge.

**32.3.** IATA further stated that introducing a slot charge is not the right way to solve the slots problems at Mumbai Airport. The common and accepted way to resolve the problem is through coordination committees, slot performance committees and the appointment of an independent slot coordinator to manage the slot coordination in accordance with the internationally accepted Worldwide Slot Guidelines (WSG).

**32.4.** IATA further stated that the Guidelines for Slot Allocation issued in October 2012 by the Ministry of Civil Aviation (MOCA) have no mention of a charge for Slots. IATA stated that the proposal for implementing a Slot-charge is thus not in line with government policy.

**32.5.** On the issue of Slot Charges, British Airways stated that

*"With regards to proposed introduction of Slot Charges (for flight cancellations) we would like to express significant concern in relation to the introduction of such charges. We do not fully understand the proposal as it stands, for instance we do not know who would determine if a flight was cancelled for "purely commercial consideration", nor do we understand in what time period that an airline would be able to cancel its' use of two slots without the charge being incurred (i.e. is this per week, per month, per*

*season, per year?). The proposed slot charge relates to landing charge, so are the two slots that an airline would be allowed to not use, prior to this slot charge being levied, landing slots, or would one cancelled flight (which would not use a landing and a take-off slot) trigger the charge from the next cancelled service?*

*Whilst we have sympathy with the airport in regards to the revenue that it loses from cancelled services this is also the case at many capacity constrained airports worldwide. These airports use Worldwide Slot Guidelines to control the issue (e.g. less than 80% use of slot by an airline results in losing rights for next season). Such a charge is not levied anywhere in the world.”*

**32.6.** BAR (I) on the issue of Slot Charge stated that

*“MIAL, in its tariff card that AERA has tentatively decided to accept, has proposed to levy slot charges that we understand have never been charged by any airport in the world. As per the tariff card, in the event an allocated slot remains unused due to purely commercial consideration, after 2 instances of the slot remaining unutilized, slot charges equivalent to the minimum landing charges prescribed in the tariff card shall be recovered from 3<sup>rd</sup> instance onwards. AERA ought not to permit such slot charges to be levied by MIAL, as the same is contrary to the rules laid down under the Worldwide Slot Guidelines, which state that in the event an airline utilizes a slot for less than 80%, it loses its rights for the same during the subsequent season. As there are no slot charges being paid by any airline across the world, AERA ought to refuse MIAL’s request to levy such charges at the CSI Airport, Mumbai”*

**32.7.** Cathay Pacific in its submission stated that

*“...In addition, the MIAL’s proposal to introduce a slot charge for flight cancellations cannot be accepted. Nowhere else in the world is there a charge for unused slot due to flight cancellations. This is not the right way to solve the slots problems at Mumbai Airport. The way to resolve this problem is through coordination committees, slot performance committees*

*and the appointment of an independent slot coordinator to manage the slot coordination in accordance with the internationally accepted Worldwide Slot Guidelines (WSG).”*

**c MIAL Response to Stakeholder Comments on Issues pertaining to Slot Charge for Flight Cancellations**

**32.8.** MIAL responded to the concern raised by Stakeholders on the issue of Slot Charge and stated as under

*“CSI Airport, Mumbai, is in a unique position in comparison to other airports, at least in India. It is highly constrained airport and possibility of increasing capacity is limited. Non-utilisation of slots certainly lead to depriving other airlines who could utilise such slots. In order to make the best use of scarce resource it is imperative to penalise misuse. No general guidelines like that of IATA covers unique proposition of a particular airport. In fact, lately MoCA is contemplating auctioning of slots which also supports efficient use and price discovery of economically scarce resource. Principle 10 in the Schedule 1 of SSA, supports such charges in view of opportunity cost to MIAL.*

*MIAL is open to discuss, modalities of implementing the proposal, with stakeholders”*

**d MIAL’s own comments on Issues pertaining to Slot Charge for Flight Cancellations**

**32.9.** MIAL has not provided its own comments on the issue.

**e Authority’s Examination of Issues pertaining to Slot Charge for Flight Cancellations**

**32.10.** At the outset the Authority regards making of slots available to the airlines as fundamental to the airport operations and regards it as an aeronautical service. Therefore the revenues accruing to the airport operator on account of provision of this service by him as aeronautical revenue. It has analysed the nature and procedure of allocation of slots to the airlines.

**32.11.** In its proposal for aeronautical tariffs, MIAL has included a tariff item by the name of “Slot Charges” which it has justified as follows:

*“Given the runway capacity constraints faced by CSIA and the fact that CSIA should be operating at its peak capacity to sustain the demand in most part of the day, maximum utilisation of the available slot is of utmost importance making it necessary that the non-utilization of slots is effectively checked. The value of slots, if not utilized, is lost forever and cannot be recovered in any manner. Accordingly, in order to increase overall operational efficiency leading to lower charges for users, MIAL is making this proposal to deter the misuse of scheduled and unscheduled slots allocated to air carriers.*

*In spite of MIAL’s active monitoring of slots there are still quite a few airlines operators who obtain the slots but do not adhere to it resulting in suboptimal utilization of the existing infrastructure, the load of which is ultimately passed on to passengers. In view of the above it is proposed to levy this charge as follows:-*

*“In case allocated slots remain unused due to purely commercial consideration than in such cases after 2 instances of slot remaining unutilized, slot charges equivalent to landing charges as mentioned above, depending upon international or domestic slot, shall be recovered from 3rd instance onwards.”*

*.....”*

**32.12.** The Authority has considered the issue and noted the stakeholders comment in this regard.

**32.13.** The Authority has also noted that the MoCA has issued Guidelines for Slot Allocation (GSA) in October 2012, wherein, the following has been stated:

*“...to ensure the most efficient use of airport infrastructure and in order to maximize benefits to the greatest number of airport users, it is essential to have a policy for allocation of constrained or limited airport capacity to airlines and other aircraft operators through a transparent and equitable mechanism so as to ensure viable airport and air transport operations “*

**32.14.** The Guidelines envisage an independent slot coordinator to be notified for level 3 airports (congested airports), who is advised on matters relating to capacity, slot allocation and monitoring the use of slots at the airport, by a Co-ordination Committee, comprising of

- (i) The concerned Airport Operator
- (ii) A representative of the AAI/ANS
- (iii) A representative of the DGCA

**32.15.** As per GSA, it is also observed that while considering fresh allocation of slots, DGCA considers:

*“Historic precedence is only granted for a series of slots if the airline can demonstrate to the satisfaction of the Coordinators that the series was operated at least 80% of the time during the period allocated in the previous equivalent season. Coordinators should provide timely feedback to airlines about flights at risk of failing to meet the minimum 80% usage requirement during the season to allow the airline to take appropriate action”*

**32.16.** Further GSA permits “justified non-utilisation” of slots as under

*“...Cancellations after the Historic Baseline Date: All cancellations made after the Historic Baseline Date are considered as non-utilization of the series of slots in the 80% usage calculation, unless the non-utilization is justified.....”*

**32.17.** In such cases GSA mandates that

*“...Airlines should contact the Coordinator as soon as possible after the flight cancellation or non-operation occurs to confirm that such flights will be treated as operated.....”*

**32.18.** As per GSA, Slot Misuse has been defined and is dealt with as follows:

*“Slot Misuse:*

*i) An airline must have a slot allocated to it before operating at a Level 3 airport. An airline that operates without slots will be requested by the coordinator to stop any operations not having slots. If the airline continues*



*to operate without slots, the matter will be brought to the attention of the airport's Coordination Committee or other responsible body.*

*ii) Airlines must not intentionally operate services at a significantly different time or use slots in a significantly different way than allocated by the coordinator. Airlines that do so on a regular basis will not be entitled to historic precedence for either the times they operated or for the allocated times.*

*iii) The data of the on time performance of an airline for a given slot for the whole season will be monitored by the coordinator and taken into account while determining the slot misuse.*

*iv) The Coordinators must not deny an airline historic precedence without first initiating a dialogue with that airline. If, by the Historic Deadline, the airline has not responded to the dialogue initiated by the Coordinator, then the decision of the Coordinator will be final.*

*v) The following actions would also constitute slot misuse:-*

*(a) Holding slots that the airline does not intend to operate:*

*(b) Holding slots for an operation other than that planned for the purpose of denying capacity to another aircraft operator;*

*(c) Requesting new slots that the airline does not intend to operate or*

*(d) Requesting slots for an operation other than that indicated, with the intention of gaining improved priority.*

*vi) The Coordinator should seek the advice of the Coordination Committee to review the Coordinator's findings in monitoring slot performance.*

*vii) Continued slot misuse may result in a lower priority for future slot requests.....”*

**32.19.** Further, if there are any disputes regarding unresolved slot issues, they are dealt with by the GSA as under:

*“..... Dispute Resolution Committee:*

*17. A Dispute Resolution Committee may be constituted as under:*

*i) Joint Secretary, Ministry of Civil Aviation*

*ii) DGCA*

*iii) Member (ANS), AAI*

*iv) Defence Authorities (in case of Defence enclaves)*

*18. The unresolved slot issues will be discussed in the meeting of the Dispute Resolution Committee to be held before the Slot Return Deadline. The airline will file their schedule with the DGCA as per their final slot allocation plan prior to season start vetted by the Coordinators of the concerned airports.”*

**32.20.** These guidelines do not refer to imposition of any slot charge in case of any non-utilisation of slots by the airlines.

**32.21.** In view of the above, it is observed that Slot non-utilisation has been dealt with in the Slot Guidelines issued by MoCA – by way of the airline losing rights to such non-used slot during future slot allocations. This is done through an institutional mechanism put in place by MoCA. The Authority therefore feels that charges for non-utilisation of slots, if any, should also fall within the jurisdiction of such institutional mechanism.

**32.22.** Further it is observed that IATA has stated that nowhere else in the world is there a charge for slot non-utilization. The Authority has, however, noted that UK as well as EU have either passed legislation or issued directives on the issue for levy of charges for non-utilization of slots by the airlines, based on a set procedure in this regard.

**32.23.** In view of the above discussion, the Authority decided not to determine any charges towards non-utilisation of slots by airlines – as were proposed by MIAL.

#### **Decision No. XXVIII. Regarding Slot Charge for Flight Cancellations**

**XXVIII.a. Having noted that the Guidelines for Slot Allocation issued by Ministry of Civil Aviation in October, 2012 are applicable to MIAL, the Authority decides not to determine any charges towards non-utilisation of slots by airlines – as were proposed by MIAL**

### **33. User Development Fee**

#### **a Authority's position on Issues pertaining to User Development Fee in the Consultation Paper**

**33.1.** The Authority noted that, presently, PSF being collected at CSI Airport, Mumbai comprises two components [PSF Security component (SC) – Rs.130 per embarking passenger and Facilitation Component (FC) - Rs.77 per embarking passenger]. The Authority has noted MIAL's submission dated 13.09.2012 on levy and collection of UDF. The Authority had decided that the facilitation component of the PSF (namely Rs 77/- per embarking passenger) will now form part of the UDF proposed in tariff/rate card, and that PSF will comprise only of the security component (namely Rs 130/- per embarking passenger). The Authority notes that MIAL have requested for truing-up total shortfall in collection of UDF for the current control period (i.e. due to difference between number of passengers considered in MYTP and actual number of passengers from whom UDF is collected).

**33.2.** In terms of implementation of UDF levy, the Authority is aware that if the levy of UDF is made effective along with the date of tariff hike i.e., 01.01.2013, it may require gate collection of UDF, as there may be passengers, who would have purchased tickets prior to the effective date of levy of UDF and hence would not have paid the same as part of the airline ticket. The Authority further notes that while the gate collection of UDF may cause operational inconvenience at the airport, it would imply lower rate of UDF, as the total UDF collection would be distributed over larger number of passengers and over longer period. It would also practically eliminate the requirement of truing-up of shortfall in UDF collection, if any, on account of difference in the date of levy of UDF from the date of tariff hike.

**33.3.** In another option, the Authority, considering MIAL submission that international tickets are issued almost a year in advance and domestic tickets are issued around 3-6 months in advance, may like to defer the date of levy of domestic UDF by three (3) months and the date of levy of international UDF by six (6) months. Under this option, the Authority feels that the requirement of gate collection of UDF may be considerably reduced thus reducing the operational inconvenience at the airport.

**33.4.** The Authority, further, feels that even in case the levy of UDF is made effective along with the date of tariff hike i.e., 01.01.2013, the period available for collection of UDF within the current control period would be fifteen (15) months. MIAL, in their ATP, have proposed

an inflationary increase in the UDF rate effective from 01.04.2013. The Authority feels that it would be practical to keep the rate of UDF at same level for the entire period of 15 months.

**33.5. In view of the above, the Authority was inclined to present the following alternatives to the stakeholders and based on the views expressed by the stakeholders, had proposed to consider the final approach with regards to levy of UDF:**

33.5.1. ***To accept MIAL's request for levy of UDF along with the date of tariff hike, i.e. 01.01.2013 and true-up of any shortfall in UDF collection***

33.5.2. ***To levy domestic UDF three (3) months after the date of tariff hike i.e., 01.04.2013 and international UDF six (6) months after the date of tariff hike i.e., 01.07.2013***

**b Stakeholder Comments on Issues pertaining to User Development Fee**

**33.6.** The Authority has received comments from various Stakeholders (IATA, FIA, APAO and British Airways) on the issue pertaining to UDF.

**33.7.** Out of the options proposed by the Authority for levy of UDF, IATA has preferred the option of deferring the levy of UDF. On this issue, IATA stated that

*"IATA would support the option of deferring UDF implementation for a stated number of months after the tariff hike. MIAL needs to set up a counter at the airport to collect UDF for passengers who have ticketed but not paid the UDF."*

**33.8.** FIA in its submission has raised a concern that

*"Can the levy of User Development Fee ("UDF") on passengers is justifiable in context of the prevalent legal framework?"*

**33.9.** FIA further stated that

*"It is submitted that Authority is introducing absolutely new stream of revenue in favour of MIAL, which is not envisaged under the Airport Authority of India Act, 1994 ("AAI Act") or AERA Act.*

*It is a settled position of law that any levy or compulsory exaction which is in the nature of tax/cess cannot be levied without a statutory foundation/charging section, as laid down in a catena of judgements by the*

*Hon'ble Supreme Court. It is well settled principle of law that no tax, fee or any compulsory charge can be imposed by any bye-law, rule or regulation unless the statute under which the subordinate legislation is made specifically authorises the imposition. There is no room for intendment.*

*In view of the foregoing, it is submitted that:-*

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

*(b) Authority in the present CP 1\10. 22/ 2012-13 has not deliberated upon the rationale for levying UDF. It is submitted that Authority is bound under Section 13(4)(c) of the AERA Act to fully document and explain its decision."*

**33.10.** FIA further submitted that

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

**33.11.** APAO in their submission, stated that

*"Only 15 months remain in the current control period for levy and collection of tariffs approved by the Authority. Reducing the period of UDF levy by another 3 months for domestic passengers and 6 months for international passengers would imply shifting the entire burden of UDF on passengers travelling in this short period rather than distributing it among a broader passenger base.*

*To avoid inconvenience to the passengers on account of gate collection of UDF and at the same time not to increase the burden of UDF on passengers due to a shorter collection period it is important that collection of UDF is*

*started immediately from 1 January 2013 along with tariff increase and allow for a 100% true-up for any shortfall in passenger volumes”*

**33.12.** APAO requested the Authority to allow MIAL to levy UDF effective from 1 January 2013 and 100% truing-up any shortfall in UDF billing.

**33.13.** British Airways in their submission stated that

*“British Airways is extremely keen to ensure that any changes in the rate of UDF that is determined, by you, is not implemented without an appropriate time lag, such as to allow us time to properly introduce this fee and collect it from our customers. It would be usual to have a minimum of two months notice of a tariff increase in this case, as detailed in the European Airport Charges Directive legislation. A period longer than this would be welcome though, and at Heathrow, whilst final determination of the charges does happen two months prior to implementation the airport gives over 5 months notice of the likely charges through the publication of an “early-sight” document.”*

**c MIAL Response to Stakeholder Comments on Issues pertaining to User Development Fee**

**33.14.** MIAL responded to the concern raised by FIA and stated as under

*“Aeronautical Charges are determined within the framework of SSA, Aircraft Act, Aircraft Rules and AERA Act. These charges have to be realized from Airlines and / or passengers. If all the charges are imposed on Airlines and realized through landing and parking charges alone, it is certain that Airlines will not accept it. Similarly, all the charges cannot be realized from the passengers alone, hence a well accepted prevalent practice has been proposed to be adopted to collect charges from Airlines and passengers.*

*Rule 89 of the Aircraft Rules 1934 provides for levy and collection of UDF by the airport operator at such rates as determined by the Authority under Section 13 (1) (b) of the AERA Act.”*

**d MIAL’s own comments on Issues pertaining to User Development Fee**

**33.15.** On the issue of UDF levy, MIAL in their submission stated that

*“Start of UDF levy and true-up: 15 months are available in the current control period for levy and collection of tariffs (including UDF) approved by the Authority. Reduction in the period of UDF levy by another 3 months for domestic passengers and 6 months for international passengers would shift the entire burden of UDF on passengers travelling in this limited time period instead of broadening the passenger base to the extent possible.*

*The Authority has noted that airlines issue tickets in advance (nearly 12 months for international travel and 3 to 6 months for domestic travel). In case UDF levy is made effective from 1 January 2013 (i.e. option (a)), the Authority has anticipated operational inconvenience at the airport on account of gate collection of UDF for tickets issued in advance.*

*In order to avoid the burden of UDF falling on fewer passengers due to shorter collection period (in case UDF levy is postponed) it is important that collection of UDF is started from 1 January 2013 along with proposed tariff increase. In this option, inconvenience to the passengers on account of gate collection of UDF would be avoided as it will allow for a 100% true-up for any shortfall in passenger volumes.”*

**33.16.** On the issue of UDF collection charge, MIAL in their submission stated that

*“The Authority has proposed UDF @ Rs. 257 per domestic departing passenger and Rs. 513 per international departing passenger for the current control period (as per Table 111 in the Consultation Paper). However, the proposed UDF is not inclusive of the collection charge of Rs. 2.5 per departing passenger which MIAL is required to pay to airlines. We request the Authority to add the same to the proposed UDF rate.”*

**33.17.** On the issue of exempted passengers for UDF, MIAL in their submission stated that

*“The proposed UDF rates are determined based on the forecast of total number of domestic and international passengers for FY 13 and FY14. However, there exists some category of passengers who are exempt from payment of UDF e.g. children below the age of 2 yrs, holders of diplomatic passport, airline crew, transit and transfer passengers, etc. Such exempted passengers should be taken into account before determining the UDF rates.*

*Historical ratios of such exempted passengers (4.16% for domestic passengers and 0.76% for international passengers) should be considered before determining the UDF rates.”*

**33.18.** MIAL requested the Authority to:

*“(c) allow MIAL to levy UDF effective from 1 January 2013 and to true-up any shortfall in UDF billing;*

*(d) add the collection charge (Rs 2.5 per departing passenger) to the proposed UDF levy rates; and*

*(e) allow for those categories of passengers exempted from paying UDF needs to be made while determining the UDF rates.”*

**e Authority’s Examination of Issues pertaining to User Development Fee**

**33.19.** The Authority has noted the comments of the Stakeholders regarding the proposed levy of UDF at CSIA, Mumbai. It was proposed in the Consultation paper No. 22/2012-13 that in place of PSF (Facilitation Component, Rs. 77), UDF will be levied, thereby leaving PSF at CSI Airport, Mumbai to be levied towards security component (Rs. 130) only.

**33.20.** FIA has raised the issue of legal basis of levy of UDF and has stated that neither the AERA act nor the AAI Act nor the Aircraft Rules, 1937 have any provision for levy of UDF. In this regard the Authority observed that this comment apparently stems from an incomplete reading of the said Acts and the Aircraft Rules.

**33.21. Airport Authority of India Act, 1994** as amended by the Airports Authority of India (Amendment) Act 2003 provides as under;

*“22A. “The Authority may,—*

*(i) after the previous approval of the Central Government in this behalf, levy on, and collect from, the embarking passengers at an airport other than the major airports referred to in clause (h) of section 2 of the Airports Economic Regulatory Authority of India Act, 2008 the development fees at the rate as may be prescribed;*

*(ii) levy on, and collect from, the embarking passengers at major airport referred to in clause (h) of section 2 of the Airports Economic Regulatory Authority of India Act, 2008 the development fees at the rate as may be*



*determined under clause (b) of sub-section (1) of section 13 of the Airports Economic Regulatory Authority of India Act, 2008,*

*and such fees shall be credited to the Authority and shall be regulated and utilized in the prescribed manner, for the purposes of-*

*(a) funding or financing the costs of upgradation, expansion or development of the airport at which the fee is collected; or*

*(b) establishment or development of a new airport in lieu of the airport referred to in clause (a); or*

*(c) investment in the equity in respect of shares to be subscribed by the Authority in companies engaged in establishing, owning, developing, operating or maintaining a private airport in lieu of the airport referred to in clause (a) or advancement of loans to such companies or other persons engaged in such activities.*

**41.** *(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.*

*(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-*

*.....*

*9(ee) the rate of development fees and the manner of regulating and utilizing the fees under section 22A.*

**33.22.** Further the Authority draws the reference from the Aircraft Rules 1937 as follows,

***Aircraft Rules, 1937***

***PART – XI Aerodromes***

**“86. Tariff charges.** – *(1) At every aerodrome referred to in rule 85, there shall be exhibited in a conspicuous place a single tariff of charges, including charges for landing and length of stay, and such tariff shall be applicable alike to all aircraft whether registered in India or in any other contracting State.*

(2) *In the case of aerodromes belonging to the Authority, the charges mentioned in sub-rule (1) shall be levied by the Authority in accordance with section 22 of the Airports Authority of India Act, 1994. (55 of 1994).*

(3) *In the case of licensed public aerodromes, other than the aerodromes belonging to the Authority, the charges mentioned in sub-rule (1) shall be determined by the licensee in accordance with the principle of cost recovery as specified by the International Civil Aviation Organisation and such charges shall be notified with the approval of the Central Government or any authority constituted in this behalf by such Government.*

(4) *Notwithstanding anything contained in sub-rules (2) and (3), in the case of a major airport, the tariff of charges referred to in sub-rule (1) shall be such as may be determined under clause 9A) of sub-section (1) of section 13 of the Airports Economic Regulatory Authority of India Act, 2008.*

*Explanation. – For the purpose of this rule, “Authority” means the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994. (55 of 1994).*

**88. Passenger Service Fee.** *—The licensee is entitled to collect fees to be called as Passenger Service Fee from the embarking passengers at such rate as the Central Government may specify and is also liable to pay for security component to any security agency designated by the Central Government for providing the security service.*

*Provided that in respect of a major airport such rate shall be as determined under clause (c) of sub-section (1) of section 13 of the Airports Economic Regulatory Authority of India Act, 2008.*

**89. 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, 2008;*

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

33.23. The Airports Economic Regulatory Authority of India Act, 2008 reads as under;

**2. Definitions.** - *In this Act, unless the context otherwise requires,—*

.....

*(p) words and expressions used but not defined in this Act and defined in the Airports Authority of India Act, 1994 shall have the same meanings respectively assigned to them in that Act.*

**13. Functions of Authority.** - *(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 the aeronautical services;*

*(vi) the concession offered by the Central Government in any 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 above considerations specified at sub-clauses (i) to (vii);*

*(b) to determine the amount of the development fees in respect of major airports;*

*(c) to determine the amount of the passengers service fee levied under rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934;*

*(d) to monitor 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;*

**50. Application of other laws not barred.** - The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”

**33.24.** As evident from the bare perusal of the various provisions of the Act, the expression “Development Fee” or “User Development Fee” has not been defined either under the AERA Act or the AAI Act or the Aircraft Rules. Definition clause of the AERA Act, i.e. Section 2 thereof, moreover, mentions that “words and expression used but not defined in this Act and defined in the Airports Authority of India Act, 1994 shall have the same meanings respectively assigned to them in that Act.” In view of the situation in absence of any specific meaning assigned to the expression by any of the statutes in question, as per the rules of interpretation the expression has to be understood in their ordinary and general meaning, as has also been held by various courts in their judgments.

**33.25.** Hence, in the present case the expression “Development Fee” or “User Development Fee” will be given ordinary natural dictionary meaning having not been specifically defined in the definition clause of any of the statutes in question, therefore, the ordinary dictionary meaning needs to be considered.

**33.26.** As per **Blacks Law** dictionary

33.26.1. “Development” mean

*1) A human-created change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavating, and drilling.*

*2) An activity, action or alteration that changes undeveloped property into developed property.*

33.26.2. “**Fee**” means “a charge for labor or service, esp. professional services.”

33.26.3. “**User**” means

*1. exercise or employment of a right or property.*

*2. Someone who uses a thing.*

33.26.4. “**User Fee**” mean

*A Charge assessed for the use of a particular item or facility.*

**33.27.** As per Law lexicon

33.27.1. **“Development”** mean

1. *The act, process or result of developing or growing or causing to grow; the state of being developed;*
2. *Happening*

33.27.2. **“Fee”** means

*“Fees are a charge or emolument, or compensation for particular acts or services; reward or compensation for services rendered or to be rendered,- a payment in money for official or professional services, whether the amount be optional or fixed by custom; compensation paid to professional men, as an attorney or physician; the reward or compensation allowed by law to an officer for specific services performed by him in the discharge of his duties; frequently for services rendered in the progress of cause, to be paid by the parties obtaining the benefit of the acts, or receiving the services, at whose instances they were performed. Sometimes the term may mean charges and is often used interchangeably within the term “costs”.”*

33.27.3. A **“fee”** is generally defined to be charge for special service rendered to individual s by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the government in rendering the service. Commissioner HRE Vs. Sri. Lakshmindra Thirtha Swamiar Sri Shirur Mutt. AIR 1954 SC 282.

33.27.4. **“User”** means “Continued use or enjoyment of a right.”

**33.28.** As per **Websters** Dictionary

33.28.1. **“Development”** mean “Gradual evolution or completion; also, the result of such an evolution or completion.”

33.28.2. **“Fee”** mean “A payment, as for professional service. A charge for special privilege.”

33.28.3. **“User”** mean

1. *one who or that which uses.*
2. *The exercise or enjoyment of a right.*

**33.29.** In view of the aforementioned and in line with the rules of interpretation, the meaning of the expressions has to be understood in the context in which the same are used in the provisions of the statute.

**33.30.** Thus, considering the other provisions, object and powers of the Authority under the AERA Act, it is observed that the expression “Development Fee” has been used under section-13(1)(b) of the AERA Act which reads as under;

*“(b) to determine the amount of the development fees in respect of major airports;”*

**33.31.** The Authority has been empowered to determine the amount of the development fee which expression is neither qualified nor circumscribed by any specific provision in this regard under the Act.

**33.32.** The expression “User Development Fee” is mentioned in the Aircraft Rules, 1937 which reads as under

*“89. **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, 2008;”*

**33.33.** Upon glance of the aforesaid provision it is apparent that the “User Development Fee” has reference to determination under section-13(1)(b) of the AERA Act, whereas the Section-13(1)(b) of the AERA Act uses the expression “Development Fees” only. Thus, the expression “Development Fees” has been qualified by the word “User” and the power to collect and levy has been given to “licensee” under the said Rule 89 of the Aircraft Rules 1937.

**33.34.** In view of the above, the Authority has been mandated to determine “User Development Fee” under Section 13(1)(b) of the AERA Act read with Rule 89 of the Aircraft Rules 1937.

**33.35.** 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 CSI Airport, Mumbai – being a major airport) namely - the User Development Fee which is in the nature of revenue receipt as a revenue enhancing measure.

**33.36.** It is observed that UDF is a revenue enhancing measure in order to allow a fair rate of return on the investments made in an airport. UDF thus is not of the nature of tax / cess and hence is not a levy towards compulsory exaction of money. Being a revenue enhancement measure, the same is to be determined under Section 13 (I) (b) of the AERA act read with Rule 88 of the Aircraft Rules. Hence, the proposal for levy of UDF has sound legal basis.

**33.37.** As regards the date of levy of UDF, the Authority finds that while the airlines and their representative bodies have preferred a deferred date of levy of UDF, MIAL and APAO have preferred 01.01.2013 as the date of levy. While providing the options for Stakeholder's views, the Authority had considered the issues of complexity in trueing-up of shortfall in UDF collection, higher UDF rates in case of shorter time period and possible gate collection by MIAL. The Authority has decided to true-up the shortfall in UDF collection and hence does not envisage gate collection of UDF, which may have caused the inconvenience to passengers. The Authority also notes that an early date of levy of UDF would enable the UDF collection to be spread over larger number of passengers and thus would bring down the level of UDF to that extent.

**33.38.** In view of the above, the Authority decides to levy the UDF at CSI Airport, Mumbai with effect from 01.02.2013. The Authority had indicated in the Consultation Paper 22 / 2012-13 dated 11.10.2012 that it proposed to keep UDF at the same level for the balance period of the current Control Period (01.02.2013 till 31.03.2013 and from 01.04.2013 till 31.03.2014). However on detailed calculations of the yearly revenues for the balance period, it was noticed that to balance yearly revenues with what is held admissible based on the building blocks of the formula in the SSA, it would be necessary to determine different levels of UDF for 01.02.2013 till 31.03.2013 and then for 01.04.2013 till 31.03.2014. These different rates of UDF are thus indicated in the tariff / rate card along with rates of other aeronautical charges.

**33.39.** The Authority has also noted MIAL's request to add UDF collection charge of Rs 2.5 per departing passenger to the proposed UDF rates. The Authority's views in respect of UDF collection charge is presented in Para 34.2 below.

**33.40.** The Authority's decision in respect of rate of UDF levy is stated in Decision No. XXVII above.



### **34. Collection Charges for DF, UDF and PSF**

#### **a Authority's position on Issues pertaining to Collection Charges for DF, UDF and PSF in the Consultation Paper**

**34.1.** Collection Charges over Development Fee (DF): MIAL, vide their submission dated 26.06.2012, submitted that they are required to pay collection charges of Rs. 5 per international embarking pax and Rs. 2.5 per domestic embarking pax to airlines. MIAL stated as under,

*"MIAL has been sanctioned to collect DF amounting Rs. 876 Crs. over a period of 23 months effective from 1<sup>st</sup> May 2012. As per AIC issued by DGCA, MIAL is required to pay collection charges of Rs. 5 per international embarking pax and Rs. 2.5 per domestic embarking pax to airlines. Since the charges paid are cost to the Company the same is taken to the Operating expenses. We request the Authority to approve the collection charges on DF as the same was mandated under the AIC dated 30<sup>th</sup> April 2012, issued by DGCA and accordingly being incurred by MIAL."*

**34.2.** Collection Charges over Passenger Service Fee (PSF) / User Development Fee (UDF): MIAL, vide their submission dated 26.06.2012, requested the Authority to allow collection charges at the rate Rs 3 per arriving passenger and Rs 2.50 per departing passenger for both UDF and PSF. MIAL stated as under,

*"MIAL requests the Authority to allow collection charges at the rate Rs. 3 per arriving passenger and Rs 2.50 per departing passenger for both UDF and PSF, since the same is cost to the company."*

**34.3.** MIAL, vide their submission dated 24.07.2012, reiterated their earlier request with regards to the collection charges. MIAL stated as under,

*"Collection charges on DF were decided by MoCA at the time of initial approval, which now needs to be approved by AERA.*

*Similarly collection charges on PSF were earlier decided by MoCA and therefore such charges for UDF now need to be approved by AERA."*

**34.4.** The Authority has noted MIAL submissions with regards to collection charges for DF and UDF / PSF. The Authority noted that the facilitation component of the existing PSF at CSI

Airport, Mumbai will be merged with the UDF, which is being considered by the Authority for levy at CSI Airport, Mumbai under the current tariff determination exercise. Further the Authority also notes that PSF (security component) is not a subject matter of the current tariff determination and hence shall continue to be levied at the existing rates mentioned in para 33.1. Accordingly no collection charge is to be considered separately for UDF and separately for PSF (facilitation).

**34.5.** The Authority further noted that MIAL in their tariff / rate card, filed before the Authority for approval, have not proposed any UDF for arriving passengers and hence the collection charge of Rs 3 per arriving passenger, requested by MIAL through submission dated 26.06.2012, is not applicable. As regards the UDF collection charge of Rs 2.5 per departing passenger, requested by MIAL through submission dated 26.06.2012, the Authority notes that as a practical mechanism the passenger related charges are collected through airline tickets. The Authority further notes that as per the MoCA's letter No.G.29011/001/2002/AAI dated 25.03.2001, the collection charges of 2.5% were allowed for collection of PSF. The Authority, in view of the same, is inclined to consider MIAL submission of Rs 2.50 per departing passenger towards collection of PSF (Facilitation) / UDF.

**34.6.** The Authority also noted from MIAL's submission dated 27.08.2012 that the UDF rates proposed by MIAL in their tariff / rate card include collection charge of Rs 2.5 per embarking passenger. Hence this collection charge is to be removed from the UDF rates proposed by MIAL before making any adjustment in UDF on account of the X-factor as may be determined by the Authority. The treatment of this collection charge is separately indicated in the Authority's tentative decision no 34.10

**34.7.** In respect of the collection charges for DF, the Authority has had reference to the AIC SL. No. 5/2012, dated 22.06.2012, issued by DGCA. The said AIC, in respect of collection charges states as under,

*".....*

*2. In order to obviate inconvenience to passengers and for smooth and orderly air transport / airport operations, it has been decided that all the airlines shall collect the Development Fees (DF) from passengers at the time of issue of air ticket and remit the same to Mumbai International Airport Pvt. Ltd. (MIAL) in line system/procedure in vogue in respect of collection of*

*PSF. For this, collection charges not exceeding Rs. 5/- per international passenger and Rs. 2.50 per domestic passenger shall be receivable by the airline from MIAL, which shall not be passed on to the passengers in any manner.....”*

**34.8.** In view of the collection charges specified in the said AIC, the Authority noted that DGCA had allowed a collection charge of Rs 5/- per international passenger and Rs 2.50 per domestic passenger towards collection of DF. However, the request of MIAL to defray this collection charge as an operating expense does not appear to be acceptable because as per the provisions of Section 13 (1) (b) of the AERA Act read with Section 22A of the AAI Act, 1994, the Authority’s function in respect of DF is confined to determination of the rate/amount thereof. Further, the issue of collection, deposit etc., of DF is not within the purview of the Authority. Hence the Authority proposes not to accept the request for defraying the collection charges.

**34.9.** *The Authority had proposed not to allow any collection charges on DF to be defrayed as an operating expenditure.*

**34.10.** *The Authority had further proposed to delink the Facilitation Component from the existing PSF at CSI Airport, Mumbai and consider it as part of the UDF, as proposed by MIAL in the rate card and as may finally be determined by the Authority. The Authority had also proposed to consider an amount of Rs. 2.50 to be collected per departing passenger towards collection charge for UDF.*

**b Stakeholder Comments on Issues pertaining to Collection Charges for DF, UDF and PSF**

**34.11.** On the issue of DF collection charges, APAO stated that

*“DF as part of means of finance: MIAL has been allowed to collect DF to part fund the capital expenditure. Collection charges with respect to DF are similar to the collection charges being allowed by the Authority on collection of PSF / UDF. Since the nature of the charges are identical both for UDF / PSF and DF, the same should be allowed as part of O&M cost.*

*Mandated by the Government: DF collection charge is mandated by the Government. MIAL is therefore obligated to pay such collection charge to the airlines.”*

**34.12.** APAO requested the Authority to allow collection charges with respect to DF collection as part of operational expenses.

**c MIAL Response to Stakeholder Comments on Issues pertaining to Collection Charges for DF, UDF and PSF**

**34.13.** MIAL has provided any response to the APAO comments on the issue.

**d MIAL’s own comments on Issues pertaining to Collection Charges for DF, UDF and PSF**

**34.14.** On the issue of DF collection charges, MIAL stated that the amount being retained by airlines while remitting the amount of DF collected is based on authorisation from DGCA. Thus, only net Amount is received by MIAL. Hence accounting for DF should be for net amount only.

**34.15.** MIAL further stated the possibilities of accounting for DF as under

“

*(i) Net DF amount is accounted for*

*(ii) Amount retained by airlines as per DGCA order is considered as capital expenditure and thereby effectively net DF should only reflect in the books.*

*This treatment is same as (i) above except method of accounting.”*

**34.16.** MIAL further raised a concern that

*“In support of the fact that collection of net DF needs to be considered we need to consider the fact that in case there is interest payment by airlines due to late remittance of DF collected, interest amount will also go to DF account. If not so, then where this amount will be accounted for?”*

**34.17.** MIAL further submitted that it is imperative that collection charges retained by airlines need to be considered for the purpose of considering total amount to be collected for the project.

**34.18.** MIAL further stated that

*“Function of the Authority to determine the rate/ amount of DF cannot be achieved by ignoring the amount to be retained by airlines. Collection*

*charges are to be given same treatment as given to service tax, if any, on DF, where AERA has approved collection of Tax over and above the DF amount.”*

**34.19.** MIAL requested the Authority to finalise amount of DF to cover collection charges.

**e Authority’s Examination of Issues pertaining to Collection Charges for DF, UDF and PSF**

**34.20.** The Authority has carefully examined the comment made by APAO and MIAL on the issue of collection charges for DF. The Authority has already provided its detailed reasoning on this issue in the Consultation Paper 22/2012-13 dated 11.10.2012 reproduced in Para 34.14 above supra. The Authority finds no reason to reconsider this issue and states that as per the provisions of Section 13 (1) (b) of the AERA Act read with Section 22A of the AAI Act, 1994, the Authority’s function in respect of DF is confined to determination of the rate/amount thereof. Further, the issue of collection, deposit etc., of DF is not within the purview of the Authority. Hence the Authority reiterates not to accept the request for defraying the collection charges.

**Decision No. XXIX. Regarding Collection Charges for DF, UDF and PSF**

**XXIX.a.** The Authority decides not to allow any collection charges on DF to be defrayed as an operating expenditure.

**XXIX.b.** The Authority further decides to delink the Facilitation Component from the existing PSF at CSI Airport, Mumbai and consider it as part of the UDF, determined by the Authority, vide its Decision No. XXVII above. The Authority also decides to consider an amount of Rs. 2.50 to be collected per departing passenger towards collection charge for UDF.

### **35. Discount on Charges for Aeronautical Services**

#### **a Authority's position on Issues pertaining to Discount on Charges for Aeronautical Services in the Consultation Paper**

**35.1.** The Authority noted from MIAL submission that MIAL have proposed to modify the reduction in Landing charges for Domestic flights of scheduled airlines from 15% to 5% in case payments are made within 15 days credit period. MIAL's submission dated 26.06.2012 in respect of the same is as under,

*"MIAL vide its letter MIAL/CFO/217 dated 2<sup>nd</sup> May 2012 sent to AERA had modified reduction in Landing charges for Domestic flights of scheduled airlines from 15% to 5% in case payments are made within 15 days credit period. Necessary changes have been made into MYTP model for the same."*

**35.2.** MIAL vide their submission dated 31.07.2012, submitted as under,

*".....*

*We note that the Authority's Order No 03/2012-13 of 20th April 2012 in respect of DIAL for IGI Airport, New Delhi that such reduction is a commercial decision of the Airport Operator and Authority will not permit any adjustment on account of under recoveries due to such reduction while determining tariff for the Airport. It implies that it is prerogative of airport operator to decided extent of such reduction in landing charges. In view of the above, MIAL has decided to modify the reduction in landing charges from 15% to 5% w.e.f. 15th May 2012.*

*....."*

**35.3.** The Authority has deliberated the issue of treatment of discounts on all domestic scheduled landings in its DIAL Tariff Determination Order and accordingly the Authority proposes not to consider any adjustments on account of discount.

**35.4. *The Authority had proposed not to consider any adjustments on account of discount.***

**b Stakeholder Comments on Issues pertaining to Discount on Charges for Aeronautical Services**

35.5. The Authority has not received any comments from the Stakeholders on this issue.

**c MIAL Response to Stakeholder Comments on Issues pertaining to Discount on Charges for Aeronautical Services**

35.6. Not Applicable

**d MIAL's own comments on Issues pertaining to Discount on Charges for Aeronautical Services**

35.7. MIAL has not provided its own comment on this issue.

**e Authority's Examination of Issues pertaining to Discount on Charges for Aeronautical Services**

35.8. In light of no comments having been made by the Stakeholders including MIAL on this issue of discounts on domestic scheduled landing, the Authority reiterates its position not to consider any adjustments in the determination of aeronautical tariff on account of discounts provided by MIAL.

**Decision No. XXX. Regarding Discount on Charges for Aeronautical Services**

**XXX.a. The Authority decides not to consider any adjustments in the determination of aeronautical tariff in respect of CSI Airport, Mumbai on account of discounts provided by MIAL.**

**36. Truing-up in respect of building blocks**

36.1. The Authority has decided to true- up the revenues and costs in respect of some of the building blocks that enter the calculation of Target Revenue. These include, for example, traffic, non-aeronautical revenue, cost of debt (under circumstances in the relevant paragraph) etc. The Authority is cognizant of the fact that in respect of passenger traffic, for example, some passengers fall in the exempted category from whom DF or PSF is not charged. During discussions, MIAL indicated that it may also follow the same policy in respect of UDF. It also indicated that the percentage of such exempted category is around 10% of total number of passengers. Similarly MIAL also indicated that the revenue from FTC

may also be different from what is forecast, depending upon the ATMs as well as lifting of fuel by the aircrafts.

**36.2.** The Authority has decided that any discounts, which the airport operator may give as his business decision would not qualify for trueing-up. However, any exemptions, on a policy matter, do not attract certain aeronautical charges and are not within the discretion of the airport operator. The objective of the tariff determination is to afford to the airport operator a fair rate of return on his investment keeping in focus the interest of the passengers. The fair rate of return would be obtained, if at the end of Control Period, the airport operator gets the revenues in accordance with the figures indicated in this Order.

**36.3.** One of the suggestions made for trueing-up was to true-up the short-fall or excess in the revenue as well as costs and take these into account for tariff determination in the next Control Period. The Authority would make a final decision, in this regard, at the time of tariff determination for the next Control Period after due stakeholder consultation.



## **37. Rates / tariff for Cargo services**

### **a Authority's position on Issues pertaining to Rates / tariff for Cargo services in the Consultation Paper**

**37.1.** MIAL, in addition to being the airport operator at CSI Airport, Mumbai, is also providing services for cargo facility at the airport. MIAL has informed that it has outsourced the domestic cargo services to M/s CONCOR. Further, it is in the process of outsourcing the international cargo services to a third party concessionaire. However, as of now MIAL is providing the international cargo services itself. In this regard, the Authority noted that MIAL has included the details of fixed assets, expenses, staff etc. costs towards the cargo operations handled by it as part of the MYTP submissions. However, these assets, costs/expenses are not being factored-in in the determination of Annual Revenue Requirement (ARR) in respect of MIAL (as Airport Operator).

**37.2.** As discussed above in para 20.11 to 20.26, the Authority has noted that as per section 2(a)(vi) of the act, the services provided for cargo facility at an airport is an *"aeronautical service"*. Further, CSI Airport, Mumbai being a major airport, the tariffs for such aeronautical services, namely cargo facility service, is to be determined by the Authority under Section 13(1)(a) of the Act.

**37.3.** In respect of determination of tariffs for aeronautical services pertaining to cargo facility, ground handling and supply of fuel to an aircraft, the Authority had finalised its regulatory philosophy and approach and issued Direction No. 4/2010-11 in the matter of *"Airports Economic Regulatory Authority of India (Terms and Conditions for Determination of Tariffs for Services Provided for Cargo Facility, Ground Handling and Supply of Fuel to the Aircraft) Guidelines, 2011"* (hereinafter referred to as the CGF Guidelines).

**37.4.** While determining these tariffs, as per the provisions of CGF Guidelines, the Authority had decided to follow a three stage process: (i) Materiality Assessment; (ii) Competition Assessment; (iii) Assessment of reasonableness of the User Agreements between the service providers and the users of the regulated services. The Materiality Index with respect to cargo facility service at a major airport was decided to be determined based on the information obtained in respect of such cargo service as the percentage of volume of cargo at the subject airport vis-à-vis the total cargo volumes at all major airports. In case the Materiality Index computed for an airport is equal to or more than 2.5% then the

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cargo facility service at such major airport was decided to be deemed “Material”. Otherwise, in case Materiality Index was below 2.5%, then the service provided for cargo facility at the airport was decided to be deemed “Not Material”.

**37.5.** In this regard, as per 2008-09 AAI Traffic Statistics, the share of cargo volumes at CSI Airport, Mumbai, as a percentage of total cargo, is 32.14% - which is greater than 2.5% Materiality Index. Hence, the cargo services at CSI Airport, Mumbai is deemed “material”.

**37.6.** Further, at CSI Airport, Mumbai, Air India is also providing cargo facility services. Hence, as per the CGF Guidelines, the cargo service at CSI Airport, Mumbai is also deemed “Competitive”.

**37.7.** Thus, as per the CGF Guidelines, the cargo services rendered by MIAL at CSI Airport, Mumbai is deemed “material but competitive”. In case of “material but competitive” service, as per CGF Guidelines, the Authority had decided to determine the tariffs under “light touch approach”. Accordingly, the tariffs for cargo facility service being provided by MIAL at CSI Airport, Mumbai merit to be determined under “light touch approach”.

**37.8.** Regarding tariffs for cargo facility services, MIAL, vide their letter dated 13.09.2012, submitted as under:

*“These charges have remained same effective April, 2009 and no increase is currently proposed into the same. Schedule of cargo charges and Demurrage are being provided to the Authority as requested by it, without prejudice and contention of MIAL that cargo revenues and Demurrage accruing to MIAL is part of revenue from Revenue Share Assets as per provisions of SSA and only 30% of the same should be considered as cross subsidy for the purpose of tariff determination.”*

**37.9.** MIAL have also included the tariffs for cargo services being provided by them at CSI Airport, Mumbai, in the same letter dated 13.09.2012 (also extracted out and presented **in Annexure VII**).

**37.10.** It is noted that as the cargo service at a major airport namely, CSI Airport, Mumbai, is an aeronautical services, hence, the Authority has to determine tariffs for the same. Further, as per CGF Guidelines, the tariffs for cargo facility service being provided by MIAL at CSI Airport, Mumbai merits to be determined under “Light Touch Approach”, as the service

is “Material but Competitive”. Also, MIAL has not proposed any revision/increase in the tariffs for cargo service.

**37.11.** Further, as MIAL is in the process of outsourcing cargo services to third party concessionaires, the Authority observed that upon the concessionaire taking over the provision of cargo services, there may be a time lag between the time it takes over the service provision and the application to Authority for determination of tariffs by such concessionaire. In such a case, there may be a period where the third party concessionaire would not have any approved/determined charges but would be providing the cargo service. In order to address such a possibility of a tariff vacuum, the Authority may consider a scenario wherein the third party concessionaire is permitted to continue charging the tariffs – as existing on the date of its taking over the service provision. However in case such third party concessionaire wants to increase the rates, prior determination of the same by the Authority will be required.

**37.12.** *The Authority had proposed to determine the tariff for cargo facility services provided by MIAL at CSI Airport, Mumbai under “Light Touch Approach” for the current control period.*

**37.13.** *The Authority had further proposed to determine the tariffs for cargo facility services (including demurrage) provided by MIAL at CSI Airport, Mumbai during the current control period with effect from 01.09.2009 as at Annexure VII. Further the demurrage free period will be as per Government instructions issued from time to time.*

**37.14.** *The Authority had also proposed to permit the third party concessionaires (as and when appointed for provision of cargo facility services at CSI Airport, Mumbai) to charge the tariffs as were being charged by MIAL on the date of taking over the service (i.e. as per Annexure VII). However in case such third party concessionaire wants to increase the rates, prior determination of the same by the Authority will be required.*

#### **b Stakeholder Comments on Issues pertaining to Rates / tariff for Cargo services**

**37.15.** With reference to the Authority’s proposal on tariff for cargo services, proposed to be charged by third party concessionaires, CONCOR Air Limited has made a submission, vide its letter dated 02.11.2012, to the Authority, which states as under,

*“This is to inform you that CONCOR has proposed to enter an agreement with MIAL to construct, develop, operate and manage a new Domestic cargo terminal near Santacruz at CSIA, Mumbai (SACT), on the build, own, operate and transfer (BOOT) model through its wholly owned subsidiary, CONCOR Air Ltd..... As a part of this arrangement CONCOR Air Ltd. has to takeover of the operations at the existing common user domestic cargo facility of MIAL located at the import warehouse at Marol Pipeline, from a date mutually agreed between CONCOR Air Ltd. and MIAL till commissioning of SACT.*

*Since the cargo handling service is an aeronautical services, the Authority's approval is required for tariff to be charged at Marol facility and as well as SACT facility. The SACT commissioning date is within 18 months from the date of the agreement. However we might have to take over Marol Facility within a month or so as explained above.*

*Referring to Para 41.C of the consultation paper No.22/2012-13 published by The Authority in case of determination of aeronautical tariff of MIAL, the third party concessionaire will be permitted to charge the tariffs for cargo handling services as were being charged by MIAL on the date of taking over the service (as and when appointed for provision of cargo facility services- at CSI Airport, Mumbai).*

*Therefore, we request you to kindly accord your concurrence for levy of MIAL's existing tariff for Marol facility and SACT.”*

**c MIAL Response to Stakeholder Comments on Issues pertaining to Rates / tariff for Cargo services**

**37.16.** MIAL has not provided any response to CONCOR Air Limited's request.

**d MIAL's own comments on Issues pertaining to Rates / tariff for Cargo services**

**37.17.** MIAL has not provided its own comments on the issue.

**e Authority's Examination of Issues pertaining to Rates / tariff for Cargo services**

**37.18.** The Authority has been informed during discussions with MIAL that the X-ray service in respect of cargo facility at CSI Airport, Mumbai is provided either by MIAL or by a third

party service provider depending upon the requirement of the airline. In this regard, it is observed that provision of X-ray service in respect of cargo facility is an aeronautical service and the charges for the same are to be determined under Section 13(1)(a) of the AERA Act. In case this service is provided by MIAL, MIAL is the regulated entity for this purpose. In case this service is provided by a third party independent service provider then that third party becomes the regulated entity. In both these cases, charges levied on the users for provision of this service are required to be determined by the Authority. This submission of MIAL has been noted and the Authority has asked MIAL to provide details of such third party independent service providers.

**37.19.** The Authority has examined the submission made by CONCOR Air Limited in respect of approval for levy of MIAL's existing tariff for Marol facility and SACT. The Authority notes from CONCOR submission that CONCOR Air Limited has been appointed as the third party concessionaire to construct, develop, operate and manage a new Domestic cargo terminal near Santacruz at CSIA, Mumbai (SACT). The Authority reiterates its proposal in the Consultation Paper 22 / 2012-13 dated 11.10.2012 to permit third party concessionaires (as and when appointed for provision of cargo facility services at CSI Airport, Mumbai) to charge the tariffs as were being charged by MIAL on the date of taking over the service. In light of this, the Authority determines the tariff for cargo service provided by M/s CONCOR Air Limited at CSI Airport, Mumbai for the current Control Period (2009-10 to 2013-14) as at Annexure – IV from the date it has taken over the cargo service from MIAL.

**Decision No. XXXI. Regarding Rates / tariff for Cargo services**

**XXXI.a. The Authority decides to determine the tariff for cargo facility services provided by MIAL at CSI Airport, Mumbai under “Light Touch Approach” for the current control period.**

**XXXI.b. The Authority further decides to determine the tariffs (including demurrage) for cargo facility services provided by MIAL at CSI Airport, Mumbai as at Annexure IV. Further the demurrage free period will be as per Government instructions issued from time to time.**

XXXI.c. The Authority decides to permit the third party concessionaires (as and when appointed for provision of cargo facility services at CSI Airport, Mumbai) to charge the tariffs as were being charged by MIAL on the date of taking over the service. However in case such third party concessionaire wants to increase the rates, prior determination of the same by the Authority will be required.

XXXI.d. In light of the above decision, the Authority also determines the tariff for cargo service provided by M/s CONCOR Air Limited at CSI Airport, Mumbai for the current Control Period (2009-10 to 2013-14) as at Annexure IV from the date it has taken over the cargo service from MIAL.

### **38. Summary of Decisions**

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ii. Wherever possible, have recourse to principles of tariff determination contained in the Airport Order and Airport Guidelines..... 58

#### **Decision No. II. Regarding Regulatory Period ..... 66**

*II.a. The Authority decides to reckon the first regulatory period, in respect of tariff determination for aeronautical services in respect of CSI Airport, Mumbai, from 1st April 2009 to 31st March 2014..... 66*

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##### **Assets ..... 72**

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III.b.	<i>The Authority decides to commission an independent study in this behalf and take corrective action, as may be necessary, at the commencement of the next control period commencing with effect from 01.04.2014. ....</i>	73
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IV.a.	<i>The Authority decides to consider operational capital expenditure of Rs 177.3 crores for FY 2012-13 and Rs 85.3 crores for FY 2013-14, after appropriate allocation into aeronautical assets, towards determination of X factor for the current Control Period. (The Authority noted that these operational capital expenditure amounts would need to be separated between aeronautical and non-aeronautical activities to arrive at aeronautical asset base and thereafter aeronautical RAB.) .....</i>	78
IV.b.	<i>The Authority further decides that the future operational capital expenditure (FY 2012-13 and FY 2013-14) incurred by MIAL during the balance control period based on the audited figures and evidence of stakeholder consultation as contemplated in the SSA, as well as the review thereof that the Authority may undertake in this behalf, be reckoned for the determination of X factor. This review will also include the amount of Rs 177.3 crores for FY 2012-13 and Rs 85.3 crores for FY 2013-14, which the Authority has, for the present, reckoned for the determination of X factor. ....</i>	78

**Decision No. V. Regarding Regulatory Asset Base (RAB) ..... 107**

V.a. *The Authority decides to calculate RAB for each year as the average of the opening and the closing RAB (as presented in Table 13) and calculate return for each year on the average RAB. .... 107*

V.b. *In respect of Depreciation, the Authority decides that difference between the amount of depreciation calculated based on actual date of commissioning/ disposal of assets and the amount of depreciation calculated considering such asset has been commissioned/ disposed half way through the respective Tariff Year will be adjusted at the end of the Control Period considering Future Value of the differences for each year in the Control Period..... 107*

V.c. *Furthermore, the Authority decides that the difference between the value of RAB - calculated based on actual date of commissioning/ disposal of assets and that calculated considering such asset has been commissioned/ disposed half way through the respective Tariff Year, will also be adjusted at the end of the Control Period considering Future Value of the differences for each year in the Control Period..... 107*

V.d. *The Authority decides to consider DF funding of RAB such that fund available to MIAL on account of DF for investment in a year (including any DF apportioned towards CWIP in the previous year brought-forward to the given year) would be apportioned over expenditure incurred on the aeronautical assets capitalized in the given year and the expenditure incurred on aeronautical CWIP in the given year as per the scheme indicated in Para 8.63, 8.64 and 8.65 above. While the fund apportioned to the expenditure incurred on the aeronautical assets capitalized in a year would be adjusted from RAB in the given year, that amount which is apportioned to expenditure incurred on aeronautical CWIP will be carried over to the subsequent years for adjustment from RAB in those years. .. 108*

**Truing Up: 2. Correction / Truing up for Regulatory Asset Base (RAB) ..... 108**

2.a. *The Authority decides to true up the RAB adjustment on account of DF based on availability of fund to MIAL on account of DF in the given year*



*(including any DF apportioned towards CWIP in the previous year brought-forward to the given year) and the actual depreciation attributable to DF apportioned for adjustment in RAB, based on auditor certificates for the same subject to Authority's review. .... 108*

**Decision No. VI. Regarding Hypothetical Regulatory Asset Base ..... 132**

*VI.a. The Authority decides, as under, ..... 132*

- i. To compute Hypothetical RAB in accordance with the principle of Schedule 1 of SSA. .... 132
- ii. Not to include non-aeronautical revenue in Hypothetical RAB. .... 132
- iii. To include, for the present, Rs 23.14 crores (out of Rs 54 crores provisioned by MIAL as Extraordinary expenses in relation to AAI Operation support cost), as has been certified by the auditor to pertain to FY 2008-09, in the operating expenses in calculation of Hypothetical RAB. The Authority further decided that it would review the apportionment of the provision of Rs 54 crores, that is made by MIAL, in its Income Statement for FY 2008-09 after obtaining further documents, if any, from AAI and if necessary, make appropriate one-time adjustment to this component of Hypothetical RAB in the next Control Period. It will also make appropriate adjustment, if required, to the Target Revenue during this Control Period for taking into consideration while determining aeronautical tariffs for the next Control Period. .... 132
- iv. To consider revenue from fuel throughput charges as part of aeronautical revenue for calculation of Hypothetical RAB ..... 133
- v. To consider revenue from CUTE Counter Charges as non-aeronautical revenue for calculation of Hypothetical RAB. .... 133
- vi. To consider WACC, as may be calculated by the Authority, to be used for calculation of Hypothetical RAB (for the purposes of capitalization factor) 133
- vii. To calculate corporate tax pertaining to earnings from aeronautical services as calculated using revenue share (Annual Fee) on these

earnings as element of cost for the year 2008-09 and use this figure in the calculation of Hypothetical RAB .....	133
VI.b. <i>Accordingly the Authority decides that the Hypothetical RAB be taken as Rs 966.03 Crores. ....</i>	133
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VII.b. <i>The Authority decides to expense out interest related to loan for meeting payment obligations on account of Retirement Compensation. ....</i>	140
<b>Decision No. VIII. Regarding Cost of Debt .....</b>	<b>152</b>
VIII.a. <i>The Authority decides to consider the actual cost of Rupee Term Loan, paid by MIAL for the years 2009-10, 2010-11 and 2011-12. As regards the cost of debt for the period 2012-13 to 2013-14, the Authority decides to consider the actual cost incurred (weighted average rate of interest for the term loan, which has been certified by auditors of MIAL at 10.09%) by MIAL for the years 2009-10, 2010-11 and 2011-12 as the cost of debt for the years 2012-13 and 2013-14. ....</i>	152
<b>Truing Up: 3. Correction / Truing up for Cost of Debt .....</b>	<b>152</b>
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**Decision No. IX. Regarding Treatment of the Interest free Refundable Security Deposits (RSD)..... 175**

- IX.a. The Authority decides to consider RSD at zero cost for the present. It also decides that in case of reasonable interest payment on RSD by MIAL, it will be considered towards calculation of WACC as RSD is being considered as a means of finance and would also enter into the balance sheet (the Authority has separately decided that it would calculate WACC based on the figures from the audited balance sheet). ..... 175*
- IX.b. For the present, the Authority decides not to accept the request of MIAL that “in case there is shortfall in collection of RSD for funding the project and such shortfall is met out of other means of finance, cost of such means of finance has to be considered”, unless MIAL presents compelling evidence to the Authority for its review. .... 175*

**Decision No. X. Regarding Cost of Equity ..... 231**

- X.a. The Authority decides to calculate asset beta for MIAL based on the comparable airports as per the report by NIPFP..... 231*
- X.b. The Authority decides that the de-levering of the equity beta of the comparators will be in accordance with the market capitalisation figures to arrive at the asset betas (as is advised by NIPFP) and thus determines asset beta for CSI Airport, Mumbai at 0.54 after taking into account the risk mitigating factors. (If asset beta of MIAL is taken at 0.59 (i.e. without considering risk mitigating factors), the cost of equity comes to around 16% for equity risk premium of 7.5%.) ..... 231*
- X.c. The Authority also decides to re-lever the asset beta of MIAL at the notional Debt-Equity Ratio of 1.5:1 (as indicated by SBI Caps). ..... 231*
- X.d. The Authority decides to accept the risk-free rate as 7.25%, as advised by NIPFP..... 231*
- X.e. The Authority decides to accept the equity risk premium at 6.1%, as advised by NIPFP. .... 231*
- X.f. Based on the above parameters, the Authority further decides to determine Return on Equity (post tax Cost of Equity) as 16% for the WACC*

	<i>calculation. The Authority's decision takes into account its judgment on allowances made over the upper bound (13.84%) of the range of return on equity estimated by NIPFP. ....</i>	<i>231</i>
<i>X.g.</i>	<i>The Authority clarifies that the same rate of return as of equity, i.e., 16%, would also be applicable for Reserve &amp; Surpluses / Accumulated Profits (Retained Earnings). ....</i>	<i>231</i>
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<i>4.a.</i>	<i>The Authority further decides that WACC would be trued up on account of: .....</i>	<i>250</i>
	<i>i) Changes in equity and Reserves &amp; Surpluses (accumulated profits or retained earnings).....</i>	<i>250</i>
	<i>ii) Adjustments to cost of debt, if any, subject to Decision No. VIII above and Truing Up: 3 above .....</i>	<i>251</i>
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**Decision No. XIV. Regarding Operating Expenses ..... 289**

*XIV.a. The Authority decides to accept the forecasts for 2012-13 and 2013-14 made by MIAL for the present. It decides to commission an independent study to assess the efficient operating expenses of CSI Airport, Mumbai for the entire control period. .... 289*

*XIV.b. The Authority further decides that, if the costs of efficient operation and maintenance, assessed in the independent study are lower than the values used by the Authority, then it will claw back this difference in the next control period commencing from 01.04.2014. .... 289*

*XIV.c. The Authority decides not to expense out the interest on loans taken on account of securitization of DF as operating expenses. .... 289*

*XIV.d. The Authority decides to use the RBI Reference rate for exchange of USD into INR for latest 6 month period, available till 11.01.2013, at Rs 54.67 per USD for conversion of earnings in foreign exchange for MIAL. .... 289*

**Truing Up: 5. Correction / Truing up for items under Operating Expenses ..... 289**

*5.a. The Authority decides that the following factors will be reviewed for the purpose of corrections (adjustments) to tariffs on a Tariff year basis ..... 289*

*i. Mandated costs incurred due to directions issued by regulatory agencies like DGCA; ..... 289*

*ii. Change in per unit rate of costs related to electricity and water charges as determined by the respective regulatory agencies; ..... 289*

*iii. All statutory levies in the nature of fees, levies, taxes and other such charges by Central or State Government or local bodies, local taxes/levies, directly imposed on and paid for by MIAL on final product/service provided by MIAL, may be reviewed by the Authority for the purpose of corrections (adjustments) to tariffs on a Tariff year basis. Furthermore, any additional payment by way of interest payments, penalty, fines and other such penal levies associated with such statutory*

	levies, which MIAL has to pay for either any delay or non-compliance, the same would not be trued up. On the input side if MIAL has to pay higher input costs even on account of change in levies/ taxes on any procurement of goods and services, the same would not be trued up. 290
5.b.	<i>The Authority decides not to include the expense disallowed by MoCA from PSF (SC) account towards determination of aeronautical tariff for the present. As and when the finality on the matter is reached, the Authority would take such expenses into account appropriately. ....</i> 290
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XV.b.	<i>The Authority decides to review the above calculations based on the audited figures. ....</i> 297
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*7.a. The Authority also decides to true-up the actual Non-Aeronautical Revenue at the time of tariff determination for the next Control Period. However, once the terminal building is completed in the beginning of the next Control Period, the Authority may reckon the level of actual non-aeronautical revenue in the current Control Period as a floor for the next Control Period..... 324*

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*XVII.a. The Authority calculates the X-Factor based on the Government's letter No.AV.24032/04/2012-AD dated 10.09.2012 that the revenue from services of cargo and ground handling in Delhi and Mumbai Airports be regarded as non-aeronautical revenue in the hands of the respective Airport Operators, irrespective of whether these services are provided by the Airport Operator itself or concessioned out to third parties. .... 345*

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*XVIII.a. The Authority decides that Fuel Throughput Charges are charges in respect of provision of aeronautical service namely, supply of fuel to the aircraft, hence it is an aeronautical charge and is to be determined by the Authority under Section 13 (1) (a) of the AERA Act. .... 388*

*XVIII.b. The Authority decides to consider revenue from Fuel Throughput Charges as aeronautical revenue. .... 388*

*XVIII.c. The Authority decides to consider the revision in Fuel Throughput Charges in line with the agreements with the oil marketing companies and consider the escalation at CPI or 7%, whichever is less..... 388*

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*XIX.b. The Authority calculates the X-Factor based on the Government's letter No.AV.24032/04/2012-AD dated 10.09.2012 that the revenue from*

- services of cargo and ground handling in Delhi and Mumbai Airports be regarded as non-aeronautical revenue in the hands of the respective Airport Operators, irrespective of whether these services are provided by the Airport Operator itself or concessioned out to third parties. .... 395*
- XIX.c. The Authority decides to consider the payment (revenue share) made by SITA to MIAL in respect of CUTE Counters as non-aeronautical revenue. 396*
- XIX.d. As OMDA defines Ground Handling service as a non-aeronautical service and the CUTE Counter service relates to handling of passengers and baggages (Ground Handling), CUTE Counter service, as per OMDA, is to be considered as non-aeronautical service and the Authority, therefore, decides to consider revenues received by MIAL during 2008-09 from CUTE Counter service as non-aeronautical revenue for the purpose of determination of Hypothetical RAB in accordance with the provisions of OMDA. .... 396*

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- XX.b. The Authority decides to consider revenue from charges for parking of General Aviation aircrafts (including charges for parking beyond the stipulated time) as aeronautical revenue. .... 427*
- XX.c. The Authority decides to approve the General Aviation charges for parking the aircrafts beyond the normal period of 48 hours with effect from 01.07.2012 subject to any stay or decision of Appellate Authority. .... 427*
- XX.d. The Authority determines the charges for parking of General Aviation aircrafts for parking beyond the stipulated time as part of tariff / rate card. .... 427*



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<i>8.b. The Authority also decides to make 100% correction (truing up), of the traffic, the effect of which would be given in the next control period commencing from 01.04.2014. ....</i>	<i>436</i>
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### 39. ORDER

39.1. In exercise of powers conferred by Section 13(1)(a) of the AERA Act, 2008, the Authority hereby determines the aeronautical tariffs to be levied at CSI Airport, Mumbai for the fourth tariff year (i.e. 2012-13) of the first five year control period (i.e. 2009-10 to 2013-14), with effect from 01.02.2013, as placed at Annexure III-A. The rates for the fifth tariff year (i.e. 2013-14) of the first control period are determined as at Annexure III-B and would be effective from 01.04.2013.

39.2. The rates of UDF as indicated in the rate cards at Annexure III-A and Annexure III-B are determined in terms of the provisions of Section 13(1)(b) of the AERA Act read with Rule 89 of the Aircraft Rules 1937.

39.3. The rates determined herein are ceiling rates, exclusive of taxes, if any.

By the Order of and in the  
Name of the Authority

  
(Capt. Kapil Chaudhary (Retd))  
Secretary

To,

Mumbai International Airport Private Limited  
Chhatrapati Shivaji International Airport  
First Floor, Terminal 1B, Santacruz (E),  
Mumbai – 400009  
(Through: Shri R. K. Jain, Chief Executive Officer)



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# Comments on CRISIL Infrastructure Advisory's report on MIAL

NIPFP Research Team

January 10, 2013

## **Abstract**

In this note we present our comments on CRISIL Infrastructure Advisory's report on MIAL. This should be read along with the other reports submitted to AERA.

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# 1 Background

Airports Economic Regulatory Authority of India has asked the National Institute of Public Finance and Policy to estimate the expected cost of equity for the private airports at Delhi, Mumbai, Hyderabad, Bangalore and Cochin.

The Mumbai International Airport Limited (MIAL) has now submitted to AERA a report prepared by the CRISIL Infrastructure Advisory. The report recommends the approach to be taken for estimating cost of equity for MIAL. The NIPFP Research Team has considered the report, and presents its comments in this note.

# 2 The Capital Asset Pricing Model

AERA indicated to NIPFP that it has decided to use CAPM, which is the most commonly used method for estimating cost of equity for airports.

The CAPM formula:

$$R_e = R_f + \beta^*(R_m - R_f)$$

$R_e$ : Cost of equity

$R_f$ : Risk free rate

$\beta$ : a measure of systematic risk i.e. the sensitivity of the expected return of the particular asset to the expected market return. This measure in essence captures the relationship between the market movements and the movements of the respective asset/company's returns.

$R_m$ : Expected return of the market

$(R_m - R_f)$  is typically referred to as the "equity risk premium"

This method assumes that the idiosyncratic risks of the firm have been diversified away, and the only risk still held by the investor is the systematic risk (or  $\beta$ ), which is the additional risk the firm contributes to an otherwise fully diversified portfolio. The exercise is done from the point of view of an investor with a fully diversified portfolio.

NIPFP has already submitted the rationale for its recommendations for each of the variables in CAPM. In this note, we respond to specific recommendations by CRIS.

### 3 Risk-free rate

CRIS report recommends taking a 6-month average of yields on 10-year maturity Government of India bonds to estimate the risk free rate, instead of the 10 year average that NIPFP recommends. This issue was earlier raised in a submission by DIAL as well.

The approach proposed in the CRIS report is based on the assumption that there is very high information content in the current values of the relevant variables, and that this information is sufficient to arrive at the relevant estimate of risk free rate for the next few years. These assumptions are not as valid in India's context as they could be in the context of some mature market (eg. US). Though there is good liquidity in the market for long-term government bonds in India, much of this is due to financial repression - institutions are mandated to hold these bonds.<sup>1</sup> This means that the current information from these instruments does not necessarily reflect true market expectation for the components of risk free rate.

The problem of financial repression does not exist to this extent in most mature markets, but even then some of them do not just take the current rate as predictive of the next few years. This is because reliance on current rates can lead to excessive volatility for the consumers as well as the investors.<sup>2</sup> Some recent events may have pushed the rates too high or too low, leading to very high or low risk free rate projection.

The main reason why we recommend using the 10 year average is because we are keen to ensure that the short term changes in the rate do not affect the decision about risk free rate. As demonstrated by the narrow range in the CRIS presentation, the 6 month average is not likely to suffice for this purpose. Given the level of development of India's financial system, a longer span is required.

Another crucial reason for this recommendation is that the regulatory cycle is of 5 years, and taking the current or average yield for a short period of time may give a risk free rate that may not represent the average risk free rate over the regulatory cycle. The 10 year average is more likely to represent the average risk free rate likely to be observed over a period of time.

---

<sup>1</sup>See Page 83-84, Chapter 5 of "Ajay Shah, Susan Thomas, and Michael Gorham. India's Financial Markets: An Insider's Guide to How the Markets Work. Elsevier, October 2008."

<sup>2</sup>This issue is discussed by the Input methodologies document (2010) of New Zealand's Commerce Commission, as well as the report on economic regulation of the London airports companies (2007) by UK's Competition Commission.

This exercise is being done in a context of a new regulatory framework and regulatory agency. The regulator, the regulated entities, the consumers and the investors are yet to understand each other well. Stability and predictability of estimates should be important concerns for the next few regulatory cycles.

Considering 10 year averages gives the regulated entity, consumers and potential investors a sense of what to expect. Eventually, when things change in the markets, AERA can take a view to change the approach accordingly.

## 4 Equity risk premium

CRIS recommends using returns on BSE Sensex to estimate the equity risk premium. As we have discussed in previous submissions to AERA, this approach is not suitable for various reasons. Span of data matters a lot for estimating equity risk premium. Pre-1991 data is not adequately useful in India. The rapid increase that India's stock market experienced in the early 1990s is a significant event, and to smooth of effects of such events, span is absolutely crucial. That is the reason we estimated the equity risk premium (ERP) for India by taking observed historical equity risk premium in US markets and adding the default spread implicit in India's country rating.

Following is an excerpt on this issue from the NIPFP report submitted to AERA:

*Even though typically the return on an Indian Index (say, Sensex, BSE100 or Nifty) is considered for estimating the equity risk premium, this approach, in our considered view, is not appropriate for India. This is because the statistical precision of estimation of the equity risk premium based on historical data significantly hinge on the time horizon of the data.*

*Even if we take observations with higher frequency (say daily, or even intra-day), it will not help because the larger number of observations will still be capturing the effects of the same overall events. For example, if we take the returns on Sensex from January 02, 1991 (BSE Sensex: 999) to January 02, 2008 (BSE Sensex: 20465), we see that the index climbed almost twenty times during this period. But after one year from January 2008, on January 02, 2009, the index had crashed to less than half of its closing value a year ago (BSE Sensex closed at 9958). So, the Com-*

*pounded Annual Growth Rate (CAGR) from January 02, 1991 to January 02, 2008 was 19.44%, but that from January 02, 1991 to January 02, 2009 was just 13.63%. With just one year's difference in reference point, the change in CAGR is almost 6%.*

*This kind of volatility affects the average returns significantly, biasing them due to some events. Taking a longer time horizon can minimise this problem. So, the standard sources use very long time-series.<sup>3</sup> In India, the time-series for equity index returns only starts in April 1979 (BSE Sensex, excluding dividends), but at that time, interest rates are not observed. Until recently, most interest rates were not deregulated, so what we're seeing as observed interest rates is untrustworthy. Another important factor for India is that the liberalisation of 1991/1992 was a one off event which resulted in a doubling of stock prices and such an event is not expected to get repeated in the foreseeable future. This would tend to bias historical returns over a short span upwards. Hence, we need to find an alternative approach.*

## 5 Beta

CRIS recommends using beta values for emerging market airport companies only for estimating the asset beta for MIAL. This issues has been raised by DIAL and others as well. We have comprehensively responded to this in our previous submissions. We recommend using a large pool of beta values of emerging market as well as developed market airport companies for estimating an asset beta value, and then adjusting it to arrive

We do not agree with the recommendation of including only emerging market airports, because of the following reasons (from a report previously submitted to AERA):

- It is not obvious how the developed or emerging nature of an airport's market would affect the volatility of its business vis-a-vis the market volatility, or, in the language of portfolio management, the risk it would add to a fully diversified portfolio. Beta is essentially a measure of this *systematic risk* or risk that cannot be diversified away in the portfolio. It is not a measure of the individual risk of the company or the asset.

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<sup>3</sup> Dimson, Elroy, Marsh, Paul and Staunton, Mike. "Global Evidence on the Equity Risk Premium". Journal of Applied Corporate Finance, Vol. 15, No. 4, Summer 2003



It is possible that even in a mature market, if measures to manage systematic risk are not in place, an economic downturn can have a significant impact on the returns for an airport asset, in some cases more than the change in the market due to economic downturn.

- *Stage of the economy (emerging/developed)* is just one way to divide the sample into subsets, and there can be many other such variables along which this could be done. Since the private airport business in general, and these new mega-airports (like MIAL) in particular are relatively new, and AERA has a unique regulatory approach, it is not possible to say at this stage which subset of airport companies would be the best comparators for MIAL. So, it seems more reasonable to us that, for this regulatory cycle, we take a large sample set that takes care of the uninformed biases in selecting a subset of airports (based on factors such as stage of the economy (emerging/developed), size of the airport, region (Asia/Rest of the world), type of traffic (business/leisure), and so on). As we come to understand more, it could be reasonable to take a bottom-up approach to constructing the beta, or take a smaller sample of comparable airport companies. In our view, at this stage, neither of these approaches is feasible.
- Though this is not the reason we decided to include developed as well as emerging market airport companies, we must point out that accepting the argument of considering only emerging market airport companies would come with its own problems, such as too much dependence on beta values of Chinese airport companies, which may not be comparable to Indian airport companies in many ways.

Empirically, many of the emerging market airports have beta values well below those of some developed market airports. Please refer to table 1 in the report submitted by NIPFP, providing estimate of cost of equity for MIAL. In the beta values computed for the report, some of the Chinese and Mexican airport companies have beta values lower than some of the developed market airport companies. So, even though the average beta values of developed market airport companies are lower than those of emerging market airport companies, this need not be the case for each of the airports. So, simply assuming that emerging markets airport companies are a good proxy set for the Mumbai airport is not a good idea. We need to look at the business environment as well. The kind of de-risking done for the Mumbai airport is rare, and that must also be taken into account while estimating the beta values, as we have done.

GOVERNMENT OF INDIA  
CIVIL AVIATION DEPARTMENT



भारत सरकार

नागर विमानन विभाग

महानिदेशक नागर विमानन का कार्यालय

सफदरजंग एयरपोर्ट के सामने

नई दिल्ली - ११० ००३

OFFICE OF THE  
DIRECTOR GENERAL OF CIVIL AVIATION  
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Reference No.:  
Dated:

संख्या : DAW/MISC/2012 AI(1)  
दिनांक : 31.10.2012

To:

Airports Economic Regulatory Authority of India,  
AERA Building, Administrative Complex,  
Safdarjung Airport,  
New Delhi-110 003 {Kind Attn: Shri CV Deepak, OSD-II}

Sub: General Aviation Parking Charges levied by Mumbai International Airport  
Pvt. Ltd. (MIAL) at CSI Airport, Mumbai

Sir,

Reference may kindly be made to your letter reference No. AERA/20010/MYTP/MIAL-AC/2009-10/VOL-I dated 26.09.2012 on the above subject.

As desired, the information related to Usual Station is given below for your kind perusal and necessary action.

SN	Question	Answer
1	The meaning and significance of "Usual Station of aircraft" as noted in the Certificate of registration (CofR) of an aircraft. Does it imply that the aircraft is required to be parked only at the 'usual station'?	Usual Station as noted in the C of R implies where the aircraft is normally parked at a particular airfield. However, since aircraft fly to different airports in the country /abroad, these can be parked at airfields permitted by the respective airport operators.
2	How is the "usual Station" allotted at the time of Registration of aircraft?	Earlier, usual station used to be allotted based on request made by owner / operator at the time of registration of an aircraft. Normally, Usual Station used to be the airfield where the aircraft was parked for its maintenance. However, 2008 onwards, Usual Station is being allocated based on permission granted by of airport operator.
3	In case an aircraft is parked at an airport other than this 'usual station'. Will it amount to violation of the 'usual station' clause of the CofR? Does DGCA monitor the violation of this "Usual Station" recorded in the CofR and is there any penal clauses invoked for such violation?	As per existing regulations, there is no violation regarding usual station clause of C of R for aircraft parked at other airports than Usual Station. DGCA, therefore, does not monitor the parking of such aircraft. It is the prerogative of the airport operator to monitor such aircraft to avoid decongestion at an airport.

This is for your information in this matter.

Yours faithfully,

  
(S.N. Dwivedi)

Director of Airworthiness  
For Director General of Civil Aviation

**Chhatrapati Shivaji International Airport**

**Mumbai International Airport Private Limited**

**Airport Charges- effective FY 2012-13 from 1<sup>st</sup> February 2013**

**Contents**

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**Airport Charges**

- 1. Landing, Parking and Housing charges**
  - 2. Aerobridge Charges**
  - 3. User Development Fee (UDF)**
  - 4. Fuel Throughput Charges**
  - 5. CUTE Counter Charges**
  - 6. Charges for unauthorized overstay**
  - 7. Others**
-

## 1. Landing, Parking and Housing charges

### 1.1. Landing Fees per single landing

Weight of Aircraft	Rate Per Landing – International flight	Rate Per Landing – Domestic flight (other than International flight)
Upto 100 MT	Rs. 551.03 per MT	Rs. 263.03 per MT
Above 100 MT	Rs. 55,103/- + Rs. 673.20 per MT in excess of 100 MT	Rs. 26,303/- + Rs. 353.43 per MT in excess of 100 MT

Note:

- Charges shall be calculated on the basis of next Metric Ton (MT) (i.e. 1000 kgs.) of the aircraft.
- A minimum fee of Rs. 15,000 and Rs. 20,000 shall be charged per single domestic and international landing respectively for all types of aircraft/helicopter flights, including but not limited to domestic landing, international landing and general aviation landing.
- Weight of aircraft means maximum takeoff weight (MTOW) as indicated in the Certificate of Airworthiness filed with Director General of Civil Aviation (DGCA).
- All domestic legs of International routes flown by Indian Operators will be treated as domestic flights as far as landing fees is concerned, irrespective of the flight number assigned to such flights.

### 1.2. Housing and Parking Charges

Weight of Aircraft	Parking Charges Rate per MT per Hour	Housing Charges Rate per MT per Hour
Upto 100 MT	Rs. 13.23 per MT	Rs. 26.46 per MT
Above 100 MT	Rs. 1323/- + Rs.17.52 per MT per hour in excess of 100 MT	Rs. 2646/- + Rs. 35.04 per MT per hour in excess of 100 MT

Note:

- No Parking Charges shall be levied for the first two hours. While calculating free parking period, standard time of 15 minutes shall be added on account of time taken between touch down time and actual parking time on the parking stand. Another standard time of 15 minutes shall be added on account of taxing time of aircraft from parking stand to take off point. These periods shall be applicable for each aircraft irrespective of the actual time taken in the movement of aircraft after landing and before takeoff.
- For calculating chargeable parking time, any part of an hour shall be rounded off to the next hour.

- c) Charges shall be calculated on the basis of next MT.
- d) Charges for each period parking shall be rounded off to nearest Rupee.
- e) At the in-contact stands, after free parking, for the next two hours normal parking charges shall be levied. After this period, the Housing Charges shall be levied.

## 2. Aerobridge Charge (Passenger Boarding Bridges)

Aerobridge charges are payable for each usage as per the rates given below

Rate Per Hour – International Flight	Rate Per Hour – Domestic Flight / other than International Flight
Rs. 4500 per hour or part thereof	Rs. 2000 per hour or part thereof

Note:

- a) For calculating chargeable Aerobridge usage time, any part of an hour shall be rounded off to the next hour.
- b) Charges for each usage shall be rounded off to nearest Rupee.
- c) Housing and Parking charges shall be levied separately as mentioned in the para 1.2 above.

## 3. User Development Fee (UDF)

The User Development Fee per departing passenger shall be payable as under

Rate per departing Passenger	International Flight	Domestic Flight
For ticket issued in Indian Rupee	Rs. 692	Rs. 346
For ticket issued in foreign currency (USD)	USD 12.81	USD 6.40

Note:

- a) In respect of tickets issued in foreign currency, the UDF shall be levied in US Dollars. (Assumption : 1 USD = Rs. 54)
- b) Collection Charges: If payment is made within 15 days of receipt of bills, then collection charges at Rs 2.5 per departing passenger shall be paid by MIAL to the collecting airlines. No collection charges shall be paid in case the airline fails to pay the UDF to MIAL within the credit period of 15 days or in case of any part payment. To be eligible to claim this collection charges, the airlines should have no overdue on any other account with MIAL.
- c) No collection charges are payable to casual operator/ non-scheduled operators.

- d) Transfer/Transit passenger is defined as a person transferring/transiting from the airport on a single ticket only within 24 hours of arrival and does not include return journey passenger.
- e) For conversion of USD into INR, RBI reference rate as on the 1<sup>st</sup> day of the month for 1<sup>st</sup> fortnightly billing period and the rate prevailing as on 16<sup>th</sup> day of the month for the 2<sup>nd</sup> fortnightly billing period shall be adopted.

#### 4. Fuel Throughput Charges

The Fuel Throughput charges shall be payable as under:

Charges per kL of Fuel
Rs. 601.07 w.e.f from 1 <sup>st</sup> April 2011*
Rs. 643.15 w.e.f from 1 <sup>st</sup> April 2012#

\*The above fuel throughput charges will be applicable retrospectively from 1<sup>st</sup> April 2011 respectively

# The above fuel throughput charges will be applicable retrospectively from 1<sup>st</sup> April 2012.

#### 5. CUTE Counter Charges

The CUTE Counter charges shall be payable as under:

International per departing flight	Domestic charges per counter per month
Rs. 1500/-	Rs. 6500/-

#### 6. Charges for unauthorized overstay

Charges for unauthorized overstay to be levied, with effect from 1st July 2012, for unauthorized stay beyond the slot allotted in case of General Aviation (including non-scheduled operators) Aircraft not having usual station at CSIA.

##### Schedule of Charges for unauthorized overstay

Sl. No.	Aircraft Type	Charges for unauthorized overstay Per Hour (Rs.)
1	Airbus 319 – 115	15000
2	ERJ 190 – 100 ECJ Lineage 1000	11000
3	Global Express XRS BD700 – 1A – 10	9000
4	Gulfstream G V	8000
5	Global 5000 Model BD700 – 1A11	8000
6	Falcon 900 EX	4500
7	Challenger CL – 600 – 2B16 (CL-	4500

<b>Sl. No.</b>	<b>Aircraft Type</b>	<b>Charges for unauthorized overstay Per Hour (Rs.)</b>
	604)	
8	Challenger 605	4500
9	Falcon 2000 EX Easy	4000
10	BD100-1A10 Challenger 300	4000
11	Hawker Beechcraft 4000	4000
12	Falcon 2000	3000
13	Gulfstream – 200	3000
14	Hawker 800XP	3000
15	Hawker 850XP	3000
16	HS7	3000
17	HS125 700 D	2500
18	Gulfstream G-100 (Astra SPX)	2000
19	Learjet 60 XR	2000
20	Cessna Citation 560 XL5	2000
21	Beech 1900-D	1600
22	Cessna Citation 550 Bravo	1400
23	Hawker 400 XP – (400A)	1400
24	Beechcraft Super King Air B300	1400
25	Cessna 525A	1200
26	Cessna Citation 556	1200
27	Super King Air B 200	1200
28	Premier 1A 390	1200
29	PIAGGIO P-180 Avanti II	1000
30	Pilatus PC12/45	1000
31	Beechcraft King Air C-90B	1000
32	King Air C-90 A	1000
33	Beechcraft Super King Air B200	1000

**Note:** - Any Aircraft Type not listed above will be subject to charges for unauthorized overstay as may be applicable to nearest equivalent Aircraft Type listed above.

## **7. Others**

### **7.1. General Condition**

- a) For all the above charges, credit period allowed by Airport Operator is 15 days.
- b) If the invoice for any of the airport charges is not paid within the credit period, interest shall be charged as per Company's policy from time to time.
- c) Payment received from the airlines shall be first appropriated towards the interest due in case of overdue and unpaid invoices. Thereafter surplus/ remaining amount, if any, shall be applied towards the principle dues in chronological order of pending invoices.

### **7.2. Taxes**

All applicable taxes, including Service Tax, shall be payable over and above the above charges at the prevailing rates from time to time.

**Chhatrapati Shivaji International Airport**

**Mumbai International Airport Private Limited**

**Airport Charges- effective FY 2013-14 from 1<sup>st</sup> April 2013**

**Contents**

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**Airport Charges**

- 1. Landing, Parking and Housing charges**
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  - 4. Fuel Throughput Charges**
  - 5. Cute Counter Charges**
  - 6. Charges for unauthorized overstay**
  - 7. Others**
-



## 1. Landing, Parking and Housing charges

### 1.1. Landing Fees per single landing

Weight of Aircraft	Rate Per Landing – International Flight	Rate Per Landing – Domestic flight (other than International Flight)
Upto 100 MT	Rs. 594.01 per MT	Rs. 283.55 per MT
Above 100 MT	Rs. 59,401/- + Rs. 725.71 per MT in excess of 100 MT	Rs. 28,355/- + Rs. 381.00 per MT in excess of 100 MT

Note:

- Charges shall be calculated on the basis of next Metric Ton (MT) (i.e. 1000 kgs.) of the aircraft.
- A minimum fee of Rs. 16,170 and Rs. 21,560 shall be charged per single domestic and international landing respectively for all types of aircraft/helicopter flights, including but not limited to domestic landing, international landing and general aviation landing.
- Weight of aircraft means maximum takeoff weight (MTOW) as indicated in the Certificate of Airworthiness filed with Director General of Civil Aviation (DGCA).
- All domestic legs of International routes flown by Indian Operators will be treated as domestic flights as far as landing fees is concerned, irrespective of the flight number assigned to such flights.

### 1.2. Housing and Parking Charges

Weight of Aircraft	Parking Charges Rate per MT per Hour	Housing Charges Rate per MT per Hour
Upto 100 MT	Rs. 14.26 per MT	Rs. 28.52 per MT
Above 100 MT	Rs. 1426/- + Rs.18.88 per MT per hour in excess of 100 MT	Rs. 2852/- + Rs. 37.77 per MT per hour in excess of 100 MT

Note:

- No Parking Charges shall be levied for the first two hours. While calculating free parking period, standard time of 15 minutes shall be added on account of time taken between touch down time and actual parking time on the parking stand. Another standard time of 15 minutes shall be added on account of taxing time of aircraft from parking stand to take off point. These periods shall be applicable for each aircraft irrespective of the actual time taken in the movement of aircraft after landing and before takeoff.
- For calculating chargeable parking time, any part of an hour shall be rounded off to the next hour.
- Charges shall be calculated on the basis of next MT.
- Charges for each period parking shall be rounded off to nearest Rupee.

- e) At the in-contact stands, after free parking, for the next two hours normal parking charges shall be levied. After this period, the Housing Charges shall be levied.

## 2. Aerobridge Charge (Passenger Boarding Bridges)

Aerobridge charges are payable for each usage as per the rates given below

Rate Per Hour – International Flight	Rate Per Hour – Domestic Flight / other than International Flight
Rs. 4,851 per hour or part thereof	Rs. 2,156 per hour or part thereof

Note:

- For calculating chargeable Aerobridge usage time, any part of an hour shall be rounded off to the next hour.
- Charges for each usage shall be rounded off to nearest Rupee.
- Housing and Parking charges shall be levied separately as mentioned in the para 1.2 above.

## 3. User Development Fee (UDF)

The User Development Fee per departing passenger shall be payable as under

Rate per departing Passenger	International Flight	Domestic Flight
For ticket issued in Indian Rupee	Rs. 548	Rs. 274
For ticket issued in foreign currency (USD)	USD 10.16	USD 5.08

Note:

- In respect of tickets issued in foreign currency, the UDF shall be levied in US Dollars. (Assumption : 1 USD = Rs. 54)
- Collection Charges: If payment is made within 15 days of receipt of bills, then collection charges at Rs 2.5 per departing passenger shall be paid by MIAL to the collecting airlines. No collection charges shall be paid in case the airline fails to pay the UDF to MIAL within the credit period of 15 days or in case of any part payment. To be eligible to claim this collection charges, the airlines should have no overdue on any other account with MIAL.
- No collection charges are payable to casual operator/ non-scheduled operators.

- d) Transfer/Transit passenger is defined as a person transferring/transiting from the airport on a single ticket only within 24 hours of arrival and does not include return journey passenger.
- e) For conversion of USD into INR, RBI reference rate as on the 1<sup>st</sup> day of the month for 1<sup>st</sup> fortnightly billing period and the rate prevailing as on 16<sup>th</sup> day of the month for the 2<sup>nd</sup> fortnightly billing period shall be adopted.

#### 4. Fuel Throughput charges

The Fuel Throughput charges shall be payable as under:

Charges per kL of Fuel
Rs. 688.17 w.e.f from 1 <sup>st</sup> April 2013

#### 5. CUTE Counter Charges

The CUTE Counter charges shall be payable as under:

International per departing flight	Domestic charges per counter per month
Rs. 1500/-	Rs. 6500/-

#### 6. Charges for unauthorized overstay

Charges for unauthorized overstay to be levied, with effect from 1st July 2012, for unauthorized stay beyond the slot allotted in case of General Aviation (including non-scheduled operators) Aircraft not having usual station at CSIA.

##### Schedule of Charges for unauthorized overstay

Sl. No.	Aircraft Type	Charges for unauthorized overstay Per Hour (Rs.)
1	Airbus 319 – 115	15000
2	ERJ 190 – 100 ECJ Lineage 1000	11000
3	Global Express XRS BD700 – 1A – 10	9000
4	Gulfstream G V	8000
5	Global 5000 Model BD700 – 1A11	8000
6	Falcon 900 EX	4500
7	Challenger CL – 600 – 2B16 (CL-604)	4500
8	Challenger 605	4500
9	Falcon 2000 EX Easy	4000
10	BD100-1A10 Challenger 300	4000
11	Hawker Beechcraft 4000	4000
12	Falcon 2000	3000
13	Gulfstream – 200	3000

<b>Sl. No.</b>	<b>Aircraft Type</b>	<b>Charges for unauthorized overstay Per Hour (Rs.)</b>
14	Hawker 800XP	3000
15	Hawker 850XP	3000
16	HS7	3000
17	HS125 700 D	2500
18	Gulfstream G-100 (Astra SPX)	2000
19	Learjet 60 XR	2000
20	Cessna Citation 560 XL5	2000
21	Beech 1900-D	1600
22	Cessna Citation 550 Bravo	1400
23	Hawker 400 XP – (400A)	1400
24	Beechcraft Super King Air B300	1400
25	Cessna 525A	1200
26	Cessna Citation 556	1200
27	Super King Air B 200	1200
28	Premier 1A 390	1200
29	PIAGGIO P-180 Avanti II	1000
30	Pilatus PC12/45	1000
31	Beechcraft King Air C-90B	1000
32	King Air C-90 A	1000
33	Beechcraft Super King Air B200	1000

**Note: -** Any Aircraft Type not listed above will be subject to charges for unauthorized overstay as may be applicable to nearest equivalent Aircraft Type listed above.

## **7. Others**

### **7.1. General Condition**

- a) For all the above charges, credit period allowed by Airport Operator is 15 days
- b) If the invoice for any of the airport charges is not paid within the credit period, interest shall be charged as per Company policy from time to time.
- c) Payment received from the airlines shall be first appropriated towards the interest due in case of overdue and unpaid invoices. Thereafter surplus/ remaining amount, if any, shall be applied towards the principle dues in chronologically order of pending invoices.

### **7.2. Taxes**

All applicable taxes, including Service Tax, shall be payable over and above the above charges at the prevailing rates from time to time.

**Schedule of charges  
( Effective from 1st April 2009)**

**Annexure - IV**

**(A) IMPORT CARGO**

**TERMINAL CHARGES**

Sl. No.	Type of Cargo	CURRENT CHARGES	
		Rate per Kilogram	Minimum rate Per Consignment
1	General	Rs. 4.45	Rs. 120.00
2	Special and valuable	Rs. 8.89	Rs. 235.00

1. The Free Period will be 72 hrs. (i.e. 3 Working Days ) from the Actual Time of Arrival of Flight. (ATA) which would be revised based on determination by government from time to time.
2. Computation of Free Period will start from the Actual Time of Arrival (ATA) of Flight till generation of Gate Pass.
3. Prevailing Business Hours will remain unchanged.

**NOTES:**

- 1 Consignment of human remains, coffin including baggage of deceased & Human eyes will be exempted from the purview of Terminal Charges.
- 2 No separate Forklift Charges will be levied.
- 3 Charges will be levied on the "gross weight" or the "chargeable weight" of the consignment whichever is higher. Wherever the "gross weight and /or volume weight is wrongly indicated on the Airway Bill and is actually found more, charges will be levied on the 'actual gross weight' or 'actual volumetric weight' or 'chargeable weight' whichever is higher.
- 4 Special Import Cargo consists of cargo stored in cold storage, live animal and hazardous goods.
- 5 Valuable cargo consists of gold, bullion, currency notes, securities, shares, share coupon, travelers' cheques, diamonds (including diamonds for industrial use), Diamond jewelry, jewelry and watches made of silver, gold platinum and items valued at USD 1000 per kg and above.
- 6 All the bills shall be rounded off to the nearest of Rs.5/-, as per IATA Tact Rules book clause 5.7.2, the rounding off procedure, when the rounding off unit is 5. When the results of calculations Are between/and Rs. 102.5 - Rs.107.4 Rounded off amount will be Rs.105 and rounding off amount of calculation 107.5 - Rs. 112.4 will be Rs 110
- 7 Packing/repacking charges shall be levied as per existing rates.
- 8 Service Tax and any other statutory indirect taxes shall be levied extra as per government notifications.
- 9 Cancellation of Bank Challan and Gate pass will be charged @ Rs 100/- per cancellation
- 10 Labeling charges will be charged Rs 500 per airway bill.
- 11 Sector and Sector Airway bill charges will be Rs 1.50 per kg.
- 12 Segregation charges will be Rs 500 per shipment
- 13 Special equipment charges will be charged at 200% of the General cargo charges.

**(B) EXPORT CARGO**

**TERMINAL CHARGES**

Sl. No.	Type of Cargo	CURRENT RATE	
		Rate per Kilogram	Minimum rate per Consignment
1	General	Rs. 0.70	Rs. 120/-
2	Special	Rs. 1.40	Rs. 235/-
3	Perishable	a) Rs. 2.43 wherever State of Art facility is provided.	Rs. 235/-
		b) Rs.0.70 wherever exclusive facility is not provided	120

**NOTES :**

- 1 The free period for export cargo shall be one working day (24 Hrs) for examination/processing by the shippers which would be revised based on determination by government from time to time.
- 2 Terminal charges applicable to Newspaper and TV reel consignments shall be 50% of the prescribed charges.
- 3 Consignment of human remains, coffin including baggage of deceased & Human eyes will be exempted from the purview of Terminal charges
- 4 Terminal charges are inclusive of Forklift charges wherever Forklift usage is involved. No separate Forklift charges will be levied.
- 5 Special Cargo consists of live animals, hazardous goods, valuable cargo and cargo stored in cold storage.
- 6 Charges will be levied on the "gross weight" or the "chargeable weight" of the consignment whichever is higher. Wherever the "gross weight and /or volume weight is wrongly indicated on the Airway Bill and is actually found more, charges will be levied on the 'actual gross weight' or 'actual volumetric weight' whichever is higher.
- 7 For mis-declaration of weight above 2% and up to 5% of declared weight penal charges @ double the applicable Terminal charges will be levied. For variation above 5% the penal charges will be leviable @ 5 times the applicable Terminal charges of the differential weight. No penal charges will be leviable for variation up to and inclusive of 2%. This will not apply to valuable cargo.
- 8 All the bills shall be rounded off to the nearest of Rs.5/-, as per IATA Tact Rules book clause 5.7.2, the rounding off procedure, when the rounding off unit is 5. When the results of calculations Are between/and Rs. 102.5 - Rs.107.4 Rounded off amount will be Rs.105 and rounding off amount of calculation 107.5 - Rs. 112.4 will be Rs 110
- 9 Packing/repacking charges shall be levied @ 2% of packages per shipping bill with a minimum of Rs.30/- per airway bill. Packing/repacking charges will be Rs. 15/- per packet.
- 10 Service Tax and any other statutory indirect taxes shall be levied extra as per government notifications.
- 11 MOT charges will be levied Rs 200 per AWB
- 12 Terminal receipt cancellation charges will be Rs 100 per Terminal receipt
- 13 Export administration charges will be charged Rs 100 per receipt in case of expiry of receipt. The receipt will be expired at 2400 hrs of the date of preparation of receipt.
- 14 Facility for advance on line generation of Terminal charge receipt for next working day subject to availability of valid carting order for the day.

**Schedule of charges  
( Effective from 1st April 2009)**

**International Cargo - payable by Airlines**

S.No	Function	Description of Service	Present Charges	
			Rs per Kg	Minimum charges per AWB/CTM/IGM/FLIGHT
1	Export	Carting/Palletisation/Containerization/Bulk Cargo Handling	3.50	
2	Export	Unitization of Bonded cargo	1.50	
3	Export	Carting of Cargo from Domestic airport to MIAL International Warehouse or return from MIAL International Warehouse to Domestic Airport	1.75	
4	Export	Carting of Export using other Gateways Airports in India (Jet Airways Domestic Bonded warehouse) (per kg)	1.15	
5	Export	Carting Export Cargo using other Gateways Airports in India (Domestic airlines warehouse to MIAL Bonded warehouse)	1.10	
6	Export	Carting charges to /from aircraft (per kg)	1.00	
7a	Export	Aircraft loading charges (bulk) (per kg) General cargo	1.65	
7b	Export	Per/HZ/VAL cargo	2.46	
8a	Export	Storage Chgs. - if uplifted beyond free period of 48 hours (per kg) General cargo (rate per kg per day)	1.61	
8b	Export	Special cargo (rate per kg per day)	3.21	
9	Export	Supervision and Coordination for export courier at ICT and export perishable at APEDA. (Minimum charges applicable per AWB)	0.83	110
10	Export	Document Handling . (Additional applicable per AWB only for DGR/SPL/VAL cargo)	1.00	900
11	Export	X ray charges - if screening done by airlines (minimum charges applicable per AWB)	1.38	167
12	Export	X ray charges - if screening not done by airlines ( minimum charges applicable per AWB)	1.70	225
13	Export	P O mail unitization	3.50	
14	Import	Carting charges (TP Cargo) ( minimum charges applicable per CTM)	2.05	156
15a	Import	Storage Charge if cargo unchecked beyond 24 hrs. of arrival of aircraft (per kg per day) (a) Bulk - per Kg./day minimum charges applicable per AWB	1.68	235
15b		(b) ULD - per ULD /day minimum charges applicable per AWB	674	235
15c		(c) VAL - per Kg./day minimum charges applicable per AWB	4.22	235
15d		(d) HAZ / Per - per Kg./day minimum per Rs 235 per AWB	2.78	235
16	Import	Destuffing of ULD ( minimum charges applicable per IGM)	1.06	234
17	Import	Document Handling ( minimum charges applicable per flight)	1.75	800
18	Import	Destuffing of P O Mail. (Minimum charges applicable per IGM)	1.06	234
19	Import	Ramp (Import/Export) ( per arriving flight)	4000	
20	Import	Delivery issuance charges	50% of amount collected by airline	
21	Import	ULD management (per flight)	10000	

**NOTES:**

- a. The free period for export cargo for the airlines from the date of entry in bonded area till upliftment shall be 48 hrs which may be revised from time to time based upon determination by the government.
- b. In case of TP cargo under fresh Sector Airway Bill the additional charge of Rs. 1.50 per kg & the terminal charges applicable for Import Cargo will be levied on Cash & carry basis from the Console Agent & other charges if due & the Carting charges will be leviable on the carrier.
- c. All Bills prepared by the Handling Company shall be rounded off to the nearest Rupee.
- d. Whenever MIAL out-sources certain functions/ services to contractors, the payment terms/ billing arrangements between the airlines and the contractor shall be discussed/ mutually agreed before the same is implemented.
- e. All applicable charges to importer(consignee) in respect of import cargo and exporter(shipper) in respect of export cargo including all types of transshipment cargo will be leviable on airline in event of airline availing such services.
- f. All statutory indirect taxes, duties, levies, etc. shall be extra and shall be borne by airlines.
- g. Invoice shall be raised on a monthly/fortnightly basis and shall have to be paid within 10 days from the date of invoice.
- h. Failure to pay so shall attract 18% p.a. interest.
- i. Payment shall be made by way of demand draft / funds transfer / cheque drawn in favour of \*Mumbai International Airport Pvt Ltd payable at Mumbai.
- j. Demand Draft / cheque should be drawn on a scheduled commercial bank in India.
- k. ULD Handling limited to open pallets, lashing material & loading material used for cargo.
- l. Security deposit from the party will be collected at equivalent to 2 months peak billing based on average of last 6 months billing
- m. In case of Non - schedule operators Destuffing charges for imports will be levied @ Rs. 1.70/ kg.

**Schedule of charges  
( Effective from 1st April 2009)**

**Domestic cargo - Payable by Shippers/ consignors/ agents**

**A) INBOUND CHARGES**

	CURRENT RATE (in Rs.)	
	MIN	PER KG
<b>1. Terminal Charges</b>		
(Terminal Charges inclusive of Offloading/Loading/ Shifting & Forklift Usage)		
a) General Cargo	100.00	0.90
b) Special (AVI)	200.00	1.80
c) PER / DGR / VAL	200.00	1.80
<b>2. Courier Handling</b>	100.00	1.00
3. In addition to the above, in the event of Mis-Declaration of Weight, following charges based on the difference will apply.		
2% - 5% Variation		1.30
More than 5%		3.25

**B) OUTBOUND CHARGES**

	CURRENT RATE (in Rs.)	
	MIN	PER KG
<b>1. Standard Charges for processing &amp; Handling</b>		
(Terminal Charges inclusive of Offloading/Loading/ Shifting & Forklift Usage)		
a) General Cargo	100.00	0.90
b) Special (AVI)	200.00	1.80
c) PER / DGR / VAL	200.00	1.80
<b>2. Courier Handling</b>	100.00	1.00
<b>3. Ammendment of Airway Bill</b>	Rs. 100.00 per AWB	
<b>4. Return Cargo Charges</b>	Rs. 100.00 per AWB	
<b>5. Strapping charges</b>	Rs. 10.00 per Bag	
6. In addition to the above, in the event of Mis-Declaration of Weight, following charges based on the difference will apply.		
2% - 5% Variation		1.30
More than 5%		3.25
(Applicable for Outbound Cargo)		

**Notes - Domestic Inbound & Outbound**

- 1 Consignments of Human Remains, Coffins including Unaccompanied Baggage of the deceased and Human Eyes will be exempted from the purview of the TSP and Demmurrage Charges.
- 2 Free Period for Outbound Cargo/Inbound Cargo shall be one day (24hrs) for Shipper's/ Consignee which would be revised based upon determination by government from time to time.
- 3 All bills will be rounded off to the next INR 5 as per rules.
- 4
- 5 All charges above are excluding any indirect taxes and levies and same will be charged extra as per the rules. The Charges will be levied on "Gross Weight" or "Chargeable Weight " whichever is higher. Wherever the Gross weight or Volume weight is indicated on Airwaybill and found more, Charges would be levied on "Actual Gross Weight" or "Actual Volumetric Weight " whichever is higher.



**Schedule of charges  
( Effective from 1st April 2009)**

**Domestic Cargo - Payable by Airlines**

S.no	Particulars	Current rate		
		Rate per kg (Rs)	Minimum charges(Rs)	Minimum charges applicable
1	Cargo handling charges	0.86	216	Per flight
2	Screening charges	1.35	135	Per AWB
3	Transit Segregation	1.08	135	Per flight
4	Transit Storage	1.08		
5	Documentation charges	1.08	216	Per flight
Notes:				
Additional Services and Charges				
	DGR acceptance check :		1512	Per AWB
	Dry Ice acceptance check list		756	Per AWB
	Live animal acceptance		1080	Per AWB

Valuable handling : Not applicable (As services not being provided at present)

Note: Indirect taxes, Statutory Levies, wherever applicable, will be charged, over & above the above quoted rates in accordance with the applicable laws.

**Schedule of charges**  
**( Effective from 1st April 2009)**

**DEMURRAGE CHARGES - payable by Shippers/ consignors/ agents/ airlines**

**(A) IMPORT CARGO**

Sr.No.	Type of Cargo	Period	Rate per Kg per day	Minimum Rate per Consignment
1	General Cargo	Up to 120 hrs. including free period	Rs.1.30	Rs. 295/-
		Between 120 hrs. and 720 hrs.	Rs. 2.60	
		Beyond 720 hrs.	Rs. 3.90	
2	Special Cargo	Up to 120 hrs. including free period	Rs. 2.60	Rs. 580/-
		Between 120 hrs. and 720 hrs.	Rs. 5.20	
		Beyond 720 hrs.	Rs. 7.80	
3	Valuable Cargo	Up to 120 hrs. including free period	Rs. 5.20	Rs. 1160/-
		Between 120 hrs. and 720 hrs.	Rs. 10.40	
		Beyond 720 hrs.	Rs. 15.60	

1. The Free Period will be 72 hrs. (i.e. 3 Working Days ) from the Actual Time of Arrival of Flight. (ATA) which would be revised based upon determination by the government from time to time.
2. Computation of Free Period will start from the Actual Time of Arrival (ATA) of Flight till generation of Gate Pass.
3. After Expiry of above mentioned stipulated Free Period , Demurrage for next 48 hrs. will be charged on 'per kg per day non cumulative basis' inclusive of holidays, provided the consignment is cleared within 120 hours from ATA.
4. Number of hours applicable for demurrage will be computed as the time between Actual Time of Arrival of the Flight(ATA) and "Time of issue of Gate Pass." Each 24 hrs. cycle will be taken as 01 day and any part thereof will be counted as one full day.
5. Prevailing Business Hours will remain unchanged.
6. After Expiry of the stipulated free period i.e. 72 hrs. , if the total time between ATA and generation of the Gate Pass exceeds 120 hrs. Demurrage Charges will be levied on cumulative basis inclusive of holidays from the date and actual time of arrival of the flight as per above table

**NOTES:**

- 1 Consignment of human remains, coffin including baggage of deceased & Human eyes will be exempted from the purview of Demurrage Charges.
- 2 Charges will be levied on the "gross weight" or the "chargeable weight" of the consignment whichever is higher. Wherever the "gross weight and /or volume weight is wrongly indicated on the Airway Bill and is actually found more, charges will be levied on the 'actual gross weight' or 'actual volumetric weight' or 'chargeable weight' whichever is higher.
- 3 Special Import Cargo consists of cargo stored in cold storage, live animal and hazardous goods.
- 4 Valuable cargo consists of gold, bullion, currency notes, securities, shares, share coupon, travelers' cheques, diamonds (including diamonds for industrial use), Diamond jewelry, jewelry and watches made of silver, gold platinum and items valued at USD 1000 per kg and above.
- 5 All the bills shall be rounded off to the nearest of Rs.5/-, as per IATA Tact Rules book clause 5.7.2, the rounding off procedure, when the rounding off unit is 5. When the results of calculations Are between/and Rs. 102.5 - Rs.107.4 Rounded off amount will be Rs.105 and rounding off amount of calculation 107.5 - Rs. 112.4 will be Rs 110 .
- 6 Packing/repacking charges shall be levied as per existing rates.
- 7 Service Tax and any other indirect statutory taxes shall be levied extra as per government notifications.
- 8 Cancellation of Bank Challan and Gate pass will be charged @ Rs 100/- per cancellation.

**Schedule of charges**  
**( Effective from 1st April 2009)**

**DEMURRAGE CHARGES - payable by Shippers/ consignors/ agents/ airlines.**

**(B) EXPORT CARGO**

Sl. No.	Type of Cargo	Rate per kilogram per day	Minimum rate per Consignment
1	General	Rs. 0.72	Rs. 120/-
2	Special	Rs. 1.43	Rs. 235/-
3	Perishable	(a) Rs. 2.43 Wherever state of Art facility is provided	Rs. 235/-
		(b)Rs. 0.72 wherever exclusive facility is not provided	Rs. 120/-

**NOTES :**

- 1 The free period for export cargo shall be one working day (24 Hrs) for examination/processing by the shippers which would be revised based upon determination by the government from time to time.
- 2 Consignment of human remains, coffin including baggage of deceased & Human eyes will be exempted from the purview of Demurrage charges
- 3 Special Cargo consists of live animals, hazardous goods, valuable cargo and cargo stored in cold storage.
- 4 Charges will be levied on the "gross weight" or the "chargeable weight" of the consignment whichever is higher. Wherever the "gross weight and /or volume weight is wrongly indicated on the Airway Bill and is actually found more, charges will be levied on the 'actual gross weight' or 'actual volumetric weight' whichever is higher.
- 5 For mis-declaration of weight above 2% and up to 5% of declared weight penal charges @ double the applicable Terminal charges will be levied. For variation above 5% the penal charges will be leviable @ 5 times the applicable Terminal charges of the differential weight. No penal charges will be leviable for variation up to and inclusive of 2%. This will not apply to valuable cargo.
- 6 All the bills shall be rounded off to the nearest of Rs.5/-, as per IATA Tact Rules book clause 5.7.2, the rounding off procedure, when the rounding off unit is 5. When the results of calculations Are between/and Rs. 102.5 - Rs.107.4 Rounded off amount will be Rs.105 and rounding off amount of calculation 107.5 - Rs. 112.4 will be Rs 110 .
- 7 Service Tax and any other indirect statutory taxes shall be levied extra as per government notifications.

**Schedule of charges**  
**( Effective from 1st April 2009)**

**Demurrage Charges / Storage - Payable by Shippers/ consignors/ agents/ airlines**

**Domestic cargo**

**A) INBOUND**

	CURRENT RATE (in Rs.)	
	MIN	PER KG
a) General Cargo	125.00	0.90
b) Special	200.00	1.80
c) PER / DGR / VAL	200.00	1.80

**B) OUTBOUND**

	CURRENT RATE (in Rs.)	
	MIN	PER KG
a) General Cargo	125.00	0.90
b) Special (AVI)	200.00	1.80
c) DGR / VAL / PER (if cold storage is used)	200.00	1.80

**Notes -**

- 1 Consignments of Human Remains, Coffins including Unaccompanied Baggage of the deceased and Human Eyes will be exempted from the purview of the TSP and Demurrage Charges.
- 2 Free Period for Outbound Cargo/Inbound Cargo shall be one day (24hrs) for Shipper's/ Consignee which would be revised based upon determination by the government from time to time.
- 3 All bills will be rounded off to the next INR 5 as per rules.
- 4
- 5 All charges above are excluding any indirect taxes and levies and same will be charged extra as per the rules. The Charges will be levied on "Gross Weight" or "Chargeable Weight " whichever is higher. Wherever the Gross weight or Volume weight is indicated on Airwaybill and found more, Charges would be levied on "Actual Gross Weight" or "Actual Volumetric Weight " whichever is higher.