

Airports Economic Regulatory Authority of India

In the matter of Determination of Aeronautical Tariffs in respect of Kempegowda International Airport (Earlier Bengaluru International Airport), Bengaluru, for the first Control Period (01.04.2011 to 31.03.2016)

Date of Order: 10th June, 2014

Date of Issue: 10th June, 2014

AERA Building
Administrative Complex
Safdarjung Airport
New Delhi – 110003



Table of Contents

1		Brief of Bangalore International Airport Limited (BIAL)	1
2		Brief facts and chronology of events	18
3 B		Framework for determination of Tariff for Kempegowda International Airport (Earlie galuru International Airport), Bengaluru	
4		Consideration of Regulatory Approach and Till	47
	a.	BIAL's submission on Till and Authority's analysis in CP 14	47
	b.	BIAL's submission on Till and Authority's analysis in CP 22	97
	c.	Stakeholders Comment on Matters regarding Regulatory Approach and Till	109
	d.	BIAL's response to Stakeholders Comment on Matters regarding Regulatory Approach and 122	lliT k
	e.	BIAL's Own Comments on Matters regarding Regulatory Approach and Till	124
	f. Co	Authority's Examination of Stakeholder Comments (including comments from BIAL) on insideration of Regulatory Till	131
5		Pre-Control Period losses	151
	a.	BIAL submission on Consideration of pre-Control Period losses	151
	b.	Authority's Examination of BIAL submissions on Consideration of pre-Control Period losse 151	S
	c. Bl	Stakeholder Comments on Issues pertaining to Consideration of pre-Control Period losses AL 153	of
	d.	BIAL's response to Stakeholder Comments on Issues pertaining to pre-Control Period losse 155	es
	e.	BIAL's own comments on Issues pertaining to pre-Control Period losses of BIAL	156
	f. pe	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Iss rtaining to pre-Control Period losses	
6		Control Period	161
	a.	BIAL submission on Control period	161
	b.	Authority's examination of BIAL submission on Control period	161
	c.	Stakeholder Comments on Issues pertaining to Regulatory Period	161
	d.	BIAL's response to Stakeholder Comments on Issues pertaining to Regulatory Period	163
	e.	BIAL's own comments on Issues pertaining to Regulatory Period	164
	f.	Authority's Examination of Stakeholder Comments on Issues pertaining to Regulatory Peri 164	iod
7		Regulatory Building Block	166

3 4		location of Assets and Operation and Maintenance Expenditure between autical and Non-Aeronautical services1	68
	a. Aero	BIAL Submission on Asset and Operation and Maintenance Expenditure allocation between onautical and Non-Aeronautical services	
	b. Expe	Authority's Examination of BIAL Submissions on Asset and Operation and Maintenance enditure Allocation between Aeronautical and Non-Aeronautical services	.69
	c. Expe	Stakeholder Comments on Issues pertaining to Asset and Operation and Maintenance enditureAllocation between Aeronautical and Non-Aeronautical services	.74
	d. Maiı	BIAL's response to Stakeholder Comments on Issues pertaining to Asset and Operation and ntenance Expenditure Allocation between Aeronautical and Non-Aeronautical services 1	
	e. Expe	BIAL's own comments on Issues pertaining to Asset and Operation and Maintenance enditure Allocation between Aeronautical and Non-Aeronautical services	.82
	•	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issu aining to Asset and Operation and Maintenance Expenditure allocation between Aeronautic Non-Aeronautical services	cal
9	Fı	uture Capital Expenditure including General Capital Expenditure1	93
	a.	BIAL Submission on Future Capital Expenditure	.93
	b.	Authority's Examination of BIAL Submissions on Future Capital Expenditure 1	.94
	c. Capi	Stakeholder Comments on Issues pertaining to Future Capital Expenditure including General Expenditure	
	d.	BIAL's response to Stakeholder Comments on Issues pertaining to Future Capital Expenditu 218	re
	e.	BIAL's own comments on Issues pertaining to Future Capital Expenditure 2	21
	f. pert	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issu aining to Future Capital Expenditure	
1() R	egulatory Asset Base (RAB) and Depreciation2	49
	a.	BIAL' submission on Regulatory Asset Base and Depreciation	49
	b.	Authority's examination of BIAL's submission on Regulatory Asset Base and Depreciation. 2	:55
	c.	Stakeholder Comments on Issues pertaining to Regulatory Asset Base (RAB) and Depreciation 264	on
	d. (RAE	BIAL's response to Stakeholder Comments on Issues pertaining to Regulatory Asset Base 3) and Depreciation	267
	e.	BIAL's own comments on Issues pertaining to Regulatory Asset Base (RAB) and Depreciation 267	n
	f. pert	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issu aining to Regulatory Asset Base (RAB)	
1:	1 Tr	eatment of Land2	78

	a.	BIAL's submission on Treatment of land	278
	b.	Authority's examination of BIAL's submission on treatment of land	283
	c.	Stakeholders' comments with respect to treatment of land	301
	d.	BIAL's comments on Stakeholders' comments with respect to treatment of land	311
	e.	BIAL's own comments on Authority's proposals on treatment of land	312
	f. resp	Authority's examination of Stakeholders' comments (including comments from BIAL) wit ect to treatment of land	
1	2 Tr	affic Forecast	323
	a.	BIAL Submission on traffic forecast	323
	b.	Authority's Examination of BIAL Submission on Traffic forecast	325
	c.	Stakeholder Comments on Issues pertaining to Traffic forecast	329
	d.	BIAL's response to Stakeholder Comments on Issues pertaining to Traffic Forecast	330
	e.	BIAL's own comments on Issues pertaining to Traffic Forecast	330
	f. pert	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issaining to Traffic forecast	
1	3 C	ost of Debt	333
	a.	BIAL Submission on Cost of Debt	333
	b.	Authority's Examination of BIAL Submissions on Cost of Debt	336
	c.	Stakeholder Comments on Issues pertaining to Cost of Debt	342
	d.	BIAL's response to Stakeholder Comments on Issues pertaining to Cost of Debt	343
	e.	BIAL's own comments on Issues pertaining to Cost of Debt	344
	f. pert	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issaining to Cost of Debt	
1	4 C	ost of Equity	348
	a.	BIAL Submission on Cost of Equity	348
	b.	Authority's examination of BIAL submission on cost of Equity	351
	c.	Stakeholder Comments on Issues pertaining to Cost of Equity	368
	d.	BIAL's comments on Stakeholders comment on Issues pertaining to Cost of Equity	380
	e.	BIAL's own comments on Issues pertaining to Cost of Equity	380
	f. pert	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issaining to Cost of Equity	
1	5 W	eighted Average Cost of Capital (WACC)	390
	a.	BIAL Submission on Weighted Average Cost of Capital (WACC)	390
	b.	Authority's examination of BIAL's submission on Weighted Average Cost of Capital	391
	С.	Stakeholder Comments on Issues pertaining to Weighted Average Cost of Capital (WACC)	394

	d. Cap	BIAL's response to Stakeholder Comments on Issues pertaining to Weighted Average Cos ital	
	e.	BIAL's own comments on Issues pertaining to Weighted Average Cost of Capital	. 397
	f. pert	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Iss	
1	6 T	axation	.399
	a.	BIAL Submission on Taxation	. 399
	b.	Authority's examination of BIAL's submission on Taxation	. 400
	c.	Stakeholder Comments on Issues pertaining to Taxation	. 402
	d.	BIAL's response to Stakeholder Comments on Issues pertaining to Taxation	. 403
	e.	BIAL's own comments on Issues pertaining to Taxation	. 403
	f. pert	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Iss	
1	7 V	Vorking capital and Interest thereon	.407
	a.	BIAL' Submission on Working Capital and Interest thereon	. 407
	b.	Authority's Examination of BIAL Submissions on Working Capital and Interest thereon	. 408
	C.	Stakeholder Comments on Issues pertaining to Working Capital and Interest thereon	. 410
	d. Inte	BIAL's response to Stakeholder Comments on Issues pertaining to Working Capital and	. 412
	e.	BIAL's own comments on Issues pertaining to Working Capital and Interest thereon	. 412
	f. pert	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Is taining to Working Capital and Interest thereon	
1	8 C	Operation and Maintenance Expenditure	.415
	a.	BIAL's submission on Operation and Maintenance Expenditure	. 415
	b.	Authority's Examination of BIAL Submissions on Operation and Maintenance Expenses	. 418
	c.	Stakeholder Comments on Issues pertaining to Operation and Maintenance Expenditure	. 426
	d.	BIAL's comments on Stakeholders' comments on Operation and Maintenance Expenditure 432	e
	e.	BIAL's own comments on Issues pertaining to Operation and Maintenance Expenditure	. 433
	f. pert	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Isstaining to Operation and Maintenance Expenditure	
19	9 A	nalysis of Service Providers of CGF as Agents of BIAL	.441
	a. CP 1	BIAL's submission on CGF Service providers being agents of BIAL and Authority's analysis	
	b.	BIAL's submission and Authority's Examination of Service Providers of CGF as Agents of B	IAL

	C.	Stakeholder Comments on Service Providers of CGF as Agents of BIAL	445
	d.	BIAL's comments on stakeholder Comments on Service Providers of CGF as Agents of BIAL	.448
	e.	BIAL's own Comments on Service Providers of CGF as Agents of BIAL	448
	f. Serv	Authority's examination of Stakeholder Comments (including comments from BIAL) on ice Providers of CGF as Agents of BIAL	448
2() Tr	reatment of Cargo, Ground Handling & Fuel throughput Revenues	450
	a.	BIAL Submission on Treatment of Cargo, Ground Handling & Fuel throughput Revenues	450
	b. thro	Authority's Examination of BIAL Submissions on Treatment of Cargo, Ground Handling & Fughput Revenues	
	c. thro	Stakeholder Comments on Issues pertaining to Treatment of Cargo, Ground Handling & Fuughput Revenues	
	d. Grou	BIAL's response to Stakeholder Comments on Issues pertaining to Treatment of Cargo, and Handling & Fuel throughput Revenues	466
	e. thro	BIAL's own comments on Issues pertaining to Treatment of Cargo, Ground Handling & Fue	
	f. pert	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issuaining to Treatment of Cargo, Ground Handling & Fuel throughput Revenues	
2 :	1 N	on-aeronautical revenue4	470
	a.	BIAL Submission on Non-aeronautical revenue	470
	b.	Authority's Examination of BIAL Submissions on Non-aeronautical revenue	474
	c.	Stakeholder Comments on Issues pertaining to Non-aeronautical revenue	484
	d.	BIAL's response to Stakeholder Comments on Issues pertaining to Non-aeronautical reven	ue
	e.	BIAL's own comments on Issues pertaining to Non-aeronautical revenue	488
	f. pert	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issuaining to Non-aeronautical revenue	
22	2 In	flation and WPI based increase	498
	a.	BIAL's Submission on Inflation and WPI based increase	498
	b.	Authority's Examination of BIAL Submissions on WPI	498
	c.	Stakeholder Comments on Issues pertaining to Inflation and WPI based increase	499
	d.	BIAL's response to Stakeholder Comments on Issues pertaining to Inflation	499
	e.	BIAL's own comments on Issues pertaining to Inflation	499
	f. pert	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issuaining to Inflation	
2	3 Ca	alculation of WPI – X	501
	2	Authority's view on X factor	501

24	S	Sensitivity Analysis, calculation of Yield and Target Revenues	.502
25	P	Annual Tariff Proposal	.508
â	a.	BIAL's submission on Tariff structure / Rate card	. 508
k).	Authority's Examination of BIAL Submissions on Tariff Structure/ Rate Card	. 509
C	: .	Stakeholder Comments on Issues pertaining to Tariff Structure/ Rate Card	. 518
C	d.	BIAL's response to Stakeholder Comments on Issues pertaining to Tariff Structure/ Rate C 530	Card
E	<u>.</u>	BIAL's own comments on Issues pertaining to Tariff Structure/ Rate Card	. 532
	ber	Authority's Examination of Stakeholder Comments (including comments from BIAL) on Istaining to Tariff Structure/ Rate Card	
26	N	Matters relating to quality of service	.542
ā	a.	BIAL's Submission on Quality of service	. 542
k).	Authority's examination of BIAL's Submission on Quality of service	. 543
C	: .	Stakeholders Comments on matter related to Quality of service	. 547
C	d.	BIAL's comment on stakeholders Comments on matter related to Quality of service	. 549
e	€.	BIAL's own comment on matter related to Quality of service	. 549
f i:		Authority's examination of Stakeholders' comments (including comments from BIAL) on ues pertaining to Quality of service	. 550
27	N	Matters regarding Error Correction and Annual Compliance Statement	.552
ā	a.	Authority's examination of Error Correction and Annual Compliance Statement	. 552
k).	Stakeholders' comments on Error correction and Annual Compliance Statement	. 552
c	: .	BIAL's comments on Stakeholders' comments on Error correction and Annual Compliance	<u> </u>
5	Sta	tement	. 554
C	d.	BIAL's own comments on Error correction and Annual Compliance Statement	. 554
	e. cor	Authority's analysis on Stakeholders' comments (including comments from BIAL) on Error rection and Annual Compliance Statement	
28	S	Summary of Decisions	.556
29	C	Order	.563
30	L	ist of Figures	.564
31	L	ist of Tables	.565
22	,	Anney – Annual Tariff Plan and Variable Tariff Plan (2014-15 and 2015-16)	571

F.No. AERA/20010/MYTP/BIAL/Vol-III Airports Economic Regulatory Authority of India Order No. 08/2014-15

AERA Building Administrative Complex Safdarjung Airport New Delhi – 110003 Date of Order: 10th June, 2014

Date of Issue: 10th June, 2014

In the matter of Determination of Aeronautical Tariffs in respect of Kempegowda International Airport (Earlier Bengaluru International Airport), Bengaluru, for the first Control Period (01.04.2011 to 31.03.2016)

1 Brief of Bangalore International Airport Limited (BIAL)

- 1.1 Earlier, Airports in India were developed, owned and managed by Airports Authority of India (AAI). To keep with anticipated air traffic growth, Government of India (GoI) initiated the process of upgrading the existing airports in the country through AAI and also encouraged the setting up of Greenfield airports through private sector participation (PSP) allowing, inter alia, carrying out airport related activities through Public-Private Partnership (PPP) model, except for certain reserved activities such as Air Traffic Control, Security, Customs etc. To address this issue, amendments were proposed to the Airports Authority of India Act, 1994 (AAI Act). The amendments proposed were introduced in April May 2003 session of the Parliament. The Amendment Bill was passed by Lok Sabha on 9th May 2003 and subsequently by Rajya Sabha on 28th July 2003. A formal notification of the amended Act was issued on 1st July 2004.
- 1.2 The GoI also announced several fiscal incentives and concessions such as the availability of land from respective State Governments, financial assistance by way of equity/interest free loans etc.
- 1.3 Ministry of Civil Aviation (MoCA) had approved, in the year 1994, the proposal to establish a new airport at a site near Devanahalli, Bangalore, by bringing in funds from the private sector to handle both passenger and cargo, domestic and international traffic to meet the growing demand of the Bangalore City. Several discussions were held among the representatives of GoI in the Ministries of Civil Aviation, Defence, Law & Justice, the AAI, the Director General of Civil Aviation (DGCA) and others to finalize various aspects relating to the

establishment of the project.

- 1.4 A meeting was held at New Delhi on 15th April, 1999 under the Chairmanship of the Secretary, MoCA, GoI, in which the following decisions on the basic parameters of the project were taken:
 - 1.4.1 Location of the airport: It was agreed that the new Bangalore International Airport shall be located in the site identified by the Ramanathan Committee, south of Devanahalli, based on Integrated Airspace Management subject to the usual clearances such as local (municipal) authorities, Environment Ministry, Defence Ministry and other concerned agencies.
 - 1.4.2 <u>Land</u>: Government of Karnataka (GoK) informed that State Government has earmarked 3500 acres (approx.) of land for the development of Devanahalli airport.
 - 1.4.3 Project format: It was agreed that the project will be implemented by a joint venture company in which AAI and GoK or its agency will have equity stake of 13% each and the strategic private partners will hold balance equity upto 74%. It was also decided that the equity holding of AAI and GoK may vary but total equity holding by both of them together will be 26%.
 - 1.4.4 <u>Aeronautical charges</u>: It was agreed that the new airport will fix aeronautical charges based on the principle of cost recovery in accordance with the guidelines of ICAO subject to approval of the competent Authority.
 - 1.4.5 <u>Future role of HAL airport</u>: It was agreed that the existing HAL airport could continue to be available to smaller aircrafts (upto 52 seater capacity) for short haul operations, training, emergency and VIP flights. However, the representatives of GoK reiterated their earlier request of excluding the state capitals and international airports from the purview of the services to be operated from the HAL airport.
 - 1.4.6 <u>Landing rights for international airlines (bi-lateral)</u>: It was agreed that the bi-lateral rights would continue to be retained by the Central Government. However, the proposed new airport will not be discriminated against.

1.4.7 General issues:

a Since airport is a central subject, it was decided that the legal position with respect to establishment of the above airport as a civilian commercial joint/ private sector airport shall be examined and steps shall be taken to bring in necessary amendments in the AAI Act / Aircraft Act, 1934 to facilitate the establishment of the above Airport, if required. Further, legal position with respect to participation by AAI in the equity capital of the joint venture company

- to be set up for the establishment of the above Airport project shall also be examined and necessary amendments shall be brought in the AAI Act in this regard as well, if required.
- b It was also decided that AAI and Karnataka State Industrial and Investment Development Corporation (KSIIDC) shall enter into necessary Memorandum of Understanding / joint venture agreement laying down the roles and responsibilities of the two agencies in taking further effective steps towards expeditious implementation of the project.
- c The representatives of GoK requested that all the above mentioned decisions be communicated in writing by the MoCA to enable GoK to initiate further necessary action on the project.
- 1.5 As decided in the above meeting, a Memorandum of Understanding (MoU) was signed between AAI and KSIIDC on 3rd May 1999 to facilitate further action leading to early commencement of the implementation of the project based on the decisions taken in the above meeting. As envisaged in the MoU, a Steering Committee comprising of two representatives each of GoI (two Joint Secretaries of MoCA), AAI (Member Planning and Member Finance), GoK (Principal Secretary, C&I and Secretary Finance) and KSIIDC (Managing Director and former Chairman of HAL as an external expert) was constituted to oversee the entire tendering process. Based on the approval of the Steering Committee, KSIIDC appointed IL&FS as the Project Advisors and Dua Associates as the Legal Advisors.
- 1.6 The Steering Committee decided to follow a three stage bidding process comprising of Expression of Interest (RFQ) in Stage-1, submission of concept master plan called Airport Development Plan in Stage-2 and Request for Proposal (RFP) in Stage-3.
- 1.7 Advertisements soliciting EoI from interested parties were released in national and international newspapers in June 1999. Seventeen firms/consortia submitted EoI during August 1999. The EoIs were evaluated on the basis of financial and experience criteria. Seven consortia were found to satisfy these criteria and these seven firms/consortia were shortlisted and taken to the next stage of the bidding process. A Project Information Memorandum (PIM) containing the project background, broad technical specifications and traffic assessment was issued to the shortlisted parties in September 1999. In the pre-RFP meeting held on 10th September 1999, all the seven pre-qualified bidders expressed serious concern and apprehensions on keeping the HAL Airport open for commercial operations after

the new Airport becomes operational even for smaller aircrafts for short haul flights. Keeping in view the viability of the new airport, the bidders insisted on clarity and pre-confirmation regarding the following fundamental issues before proceeding with the next phase of bidding:

- in-principle commitment to declare the new airport at Devanahalli as an international airport;
- 1.7.2 in-principle approval to close the existing HAL airport for commercial operations once the new facility is commissioned/ made operational;
- 1.7.3 the existing airport also declared as international airport;
- 1.7.4 assurance on providing infrastructural facilities viz. Land, water, power, roads, etc up to the battery limits.
- 1.8 Considering the concern and apprehensions expressed by the bidders, the Steering Committee recommended to GoI for consideration and approval of complete closure of civilian commercial operations from the existing HAL Airport, after commencement of the operations by the new Airport at Devanahalli. MoCA, GoI vide letter No.AV.20014/2/90-VB dated 23-3-2000 communicated the following approvals to the State Government:
 - 1.8.1 Declaring the existing airport at Bangalore as an International Airport, with the understanding that this did not involve any substantial investment of public resources.
 - 1.8.2 This status of International Airport would be transferred /granted to the new airport proposed to be developed with private sector participation at Bangalore, on its commissioning, in case it enjoys all the necessary infrastructure facilities required for an international airport and the existing airport at Bangalore then closed for civilian operations.
- 1.9 The bidders also requested that an independent traffic study be commissioned, to enable a common traffic forecast for use by the bidders in their development plans. KSIIDC commissioned an independent traffic study to SH&E of London, a reputed firm of airport consultants.
- 1.10 The GoK also issued an Order in March 2000 on the provision of peripheral infrastructure for the Airport. The RFP document was finally issued on 20th March 2000 and the SH&E study report was sent to the bidders a few days after the RFP, during April 2000. The seven shortlisted bidders were then asked to submit the Master Plan/Airport Development Plan (ADP) by 30th June 2000. The following two bidders responded with submission of ADP

within the stipulated time:

- 1.10.1 Consortium led by Hochtief Airport, GmbH, Germany; and
- 1.10.2 Consortium led by Siemens Project Ventures, Germany.
- 1.11 The ADPs submitted by the two bidders were evaluated by an Expert Committee. Based on the evaluation report, the Steering Committee approved both the Bidders being nominated as 'Preferred Bidders' under the RFP. Both the bidders had requested explicit viability support commitments from the GoK before they were ready to invest more resources into the final stage of the procurement process. On 18th September 2000, letters were issued to both the bidders to participate in the next stage of the RFP. The Bidders pressed for clarity on government support. To give additional comfort to the bidders, GoK assured them of the financial support of the Government.
- 1.12 Both the bidders viz. Siemens and Hochtief consortia submitted final project proposals on 30th April 2001 as stipulated. An Evaluation Committee consisting of eminent external professionals with knowledge and familiarity with subjects relating to infrastructure development, airports, business plans and commercial issues was constituted to appraise the proposals received.
- 1.13 In their overall assessment of the two proposals, the Evaluation Committee opined that the project approach and methodology of Siemens brings the airport to fruition in a shorter time frame and a lower cost than the Hochtief proposal. The Siemens master plan provides for significantly increased capacity throughout the airfield and terminal area in the long run, and offers more flexibility in development modifications after the first phase should a need arise.
- 1.14 On the basis of the evaluation by the Committee, in June 2001, GoK approved acceptance of Siemens proposal and constituted a Negotiation Team to further discuss the project proposal in detail, optimize the project cost, minimize the State Financial Support and finalise the Shareholders Agreement and the Airport Development Agreement.
- 1.15 After several round of discussions and negotiations between the Siemens Consortium and the Negotiation Team, the Shareholders' Agreement (SHA) between AAI, KSIIDC, Siemens Project Ventures GmbH, Flughafen Zuerich AG (Unique Zurich), Larsen & Toubro Limited (L&T) and KSIIDC was signed on 23rd January 2002. Following the execution of the SHA, the management of the special purpose vehicle Bangalore International Airport

Limited (BIAL) which was incorporated by GoK was handed over to private promoters.

- The Greenfield airport at Devanahalli near Bengaluru has been implemented on a Build Own Operate and Transfer (BOOT) model under Public Private Participation (PPP) basis. GoK through KSIIDC and AAI together hold 26% equity and the strategic joint venture partners hold the balance 74%.
- 1.17 BIAL was incorporated with limited liability under the Indian Companies Act, 1956, with the participation of KSIIDC, the AAI, Siemens Project Ventures GmbH (Siemens), Unique Zurich and L&T, each of whom have agreed to participate as a shareholder in BIAL, for the development, design, financing, construction, completion, maintenance, operation and management of a greenfield airport at Devanahalli, near Bangalore in the State of Karnataka.
- 1.18 The Working Group constituted by the Prime Minister Office (PMO) comprising of representatives from the MoCA, Ministry of Finance, Ministry of Law and GoK finalized the draft Concession Agreement (CA), which was approved by the Cabinet in January 2004/June 2004. The approved version of the CA was executed between GoI and BIAL on 5th July 2004. The CA defines the terms and conditions under which BIAL, as a private company, is entitled to build and run the airport. As per the CA, the parties recognize and acknowledge that in matters of Airport Infrastructure and Civil Aviation, GoI has and must continue to have a major role and responsibility in determining the framework for the aviation sector. Further, the CA sets out the terms and conditions upon which the project, undertaken through a public/private sector approach, is to be implemented. The term of the concession is for a period of 30 years from the Airport Opening date i.e., 24th May, 2008, extendable by a further period of 30 years at BIAL's option. As per the CA, the activities of customs, immigration, quarantine, security and meteorological service will be performed by the relevant Government Agencies at the Airport and the Communication, Navigation & Surveillance (CNS) and Air Traffic Management (ATM) will be performed by AAI. BIAL shall, in consideration for the grant of Concession by GoI, pay to GoI a fee amounting to four per cent (4%) of gross revenue annually.
- 1.19 The GoK extended Rs. 350 crores as State support for which a State Support Agreement (SSA) was executed by GoK with BIAL. Further, GoK has also provided 4008 acres of land (approximately having the value of Rs. 175 crores) on concessional rent and a Land Lease Agreement (LLA) was also executed in this regard. The State Support Agreement (SSA) between GoK and BIAL and LLA between KSIIDC and BIAL were concluded on 20th December

- 2004. The CA, SSA and LLA paved the way for BIAL to achieve Financial Close by June 2005 and the construction work commenced thereafter.
- At the time of Financial close and commencement of construction, the Initial Phase of the Bengaluru International Airport (renamed as KempeGowda International Airport on 17th July 2013) was designed for handling about 4.5 million passengers per annum and the project cost was Rs. 1411.79 crore. However, owing to significant increase in aviation traffic, BIAL redesigned the initial phase midway through the implementation of the project, increasing the capacity of the Airport to 11.4 million passengers per annum and the project cost to Rs. 1930.29 crore, so that the Airport, at the Airport Opening Date (AOD), had the requisite capacity to handle the aviation traffic at the required/ prescribed service levels. The entire additional cost was met by increase in debt from lenders. Subsequently, certain project extension works were taken up with supplemental expenditure budget of Rs. 540 crores (which was funded partly by raising additional equity from the shareholders and partly by further additional debt from lenders) taking the total project budget to Rs. 2470.29 crores.
- 1.21 The airport commenced the operations in May 2008. Some of the important milestones achieved in the development of the Project are as under:

Table 1: List of Key dates in formation of BIAL

MoU between AAI and KSIIDC	3 rd May 1999
Shareholders' Agreement	23 rd Jan 2002
Concession Agreement with Gol	5 th Jul 2004
State Support Agreement with GoK	20 th Jan 2005
Land Lease Agreement with KSIIDC	20 th Jan 2005
Declaration of Financial Close	23 rd Jun 2005
Construction commencement	2 nd Jul 2005
Airport Opening	24 th May 2008

- 1.22 BIAL has also executed other agreements such as EPC Contracts, Communication Navigation Surveillance/Air Traffic Management (CNS-ATM) Agreement with AAI and Financing Agreements with Lenders etc.
- 1.23 Subject to Article 14 (Assignment and Security) of the CA and in accordance with the terms of the SHA, the shareholding of Siemens Project Ventures GmbH and Unique Zurich AG are subject to the following lock-in restrictions:
 - 1.23.1 Siemens Project Ventures GmbH shall subscribe and hold at least forty percent (40%) of the paid up capital of BIAL for a period of three (3) years after Airport Opening and

- no less than twenty six percent (26%) for a period of seven (7) years after Airport Opening; and
- 1.23.2 Unique Zurich shall subscribe and hold at least five percent (5%) of the paid up capital of BIAL for a period of three (3) years after Airport Opening.
- 1.24 The Shareholding pattern of BIAL at the initial phase and as of November 2012 is as under:

Table 2: Shareholding Pattern of BIAL - Initial

Shareholder	Share-holding (%)
Private Promoters:	
Siemens Project Ventures GmbH	40%
Flughafen Zurich AG Ltd.	17%
L&T IDPL	17%
Sub-Total	74%
State Promoters:	
Airport Authority of India – (GoI)	13%
Karnataka State Industrial Investment & Development Corporation Limited (GoK)	13%
Sub-Total	26%
TOTAL	100%

Table 3: Shareholding Pattern of BIAL - Present

Shareholder	Share- holding (%)	
Private Promoters:		
Siemens Project Ventures GmbH	26%	
Flughafen Zurich AG Ltd.	5%	
GVK Group - Bangalore Airport & Infrastructure Developers Private Limited	43%	
Sub-Total	74%	
State Promoters:		
Airport Authority of India – (GoI)	13%	
Karnataka State Industrial Investment & Development Corporation Limited (GoK)	13%	
Sub-Total	26%	
TOTAL	100%	
Note: GVK Group acquired (a) 17% of equity shares from Larsen & Toubro (b) Flughafen Zurich and (c) 14% of equity shares from Siemens.	12% of equity shares of	

- 1.25 The key agreements in respect of BIAL inter alia include:
 - 1.25.1 Concession Agreement including amendment
 - 1.25.2 Land Lease Agreement
 - 1.25.3 State Support Agreement

- 1.25.4 CNS/ ATM Agreement
- 1.25.5 Shareholders Agreement
- 1.26 Summary details of the above agreements are given below.
- 1.27 **Concession Agreement**: The CA entered into between MoCA Gol and BIAL on 5th July 2004, is an agreement for the Development, Construction, Operation and Maintenance of Bangalore International Airport. The salient features of the CA are as under:
 - 1.27.1 Article 3.1 of the CA GoI grants BIAL the exclusive right and privilege to carry out the development, design, financing, construction, commissioning, maintenance, operation and management of the Airport (excluding the right to carry out the Reserved Activities and to provide CNS/ ATM which are required to be provided by AAI).
 - 1.27.2 Scope of the Project Development and Construction of the Airport on the site in accordance with the provisions of the agreement, Operation and maintenance of the airport and performance of the Airport Activities and Non-Airport Activities in accordance with the provisions of the agreement, performance and fulfilment of all obligations of BIAL in accordance with the provisions of the agreement.
 - 1.27.3 Rights – BIAL may carry out any activity or business related or ancillary to the activities referred to in the Concession or which BIAL considers desirable or appropriate to be carried on or engaged in connection therewith (including any infrastructure service considered by BIAL to be reasonably necessary for the activities referred to) and any activity or business in connection with or related to the arrival, departure and / or handling of aircraft, passengers, baggage, cargo and / or mail at the Airport; and any activity or business in connection with or related to the development of the Site or operation of the Airport to generate revenues including the development of commercial ventures such as hotels, restaurants, conference venues, meeting facilities, business centres, trade fairs, real estate, theme parks, amusement arcades, golf courses and other sports and/or entertainment facilities, banks and exchanges and shopping malls. BIAL may, subject to and in accordance with the terms of this agreement, at any time, grant Service Provider Rights (including the right of the Service Provider Right Holders to grant sub-rights) to any Person for the purpose of carrying out the activities.
 - 1.27.4 Concession Fee Article 3.3 of the CA provides that BIAL shall, in consideration for the grant by GoI of the Concession pursuant to Article 3.1, pay to GoI a fee amounting to four per cent (4%) of Gross Revenue annually on the terms specified. The Gross

Revenue means all pre-tax revenue of BIAL, excluding the following: (a) payments made by BIAL for the activities undertaken by Relevant Authorities pursuant to Article 8.4, 8.5 and 8.6; (b) Insurance proceeds; and (c) any amount that accrues to BIAL from sale of any capital assets or items (d) payments and/or monies received in respect of air navigation and air traffic management services (e) payments and/or monies collected by BIAL for and on behalf of any governmental authorities under applicable law. The Concession Fee shall be determined in respect of each financial year of BIAL occurring on and after the Airport Opening Date. The Concession Fee in respect of the first ten (10) Financial Years (the Deferred Payment) shall be payable in twenty (20) equal half-yearly instalments. The first such instalment being due and payable on the 30th of June and second such instalment being due and payable on 31st of December (each of these dates referred as the Reference Date) in the eleventh (11th) Financial Year, with the remaining instalments each payable on each Reference Date falling thereafter. Payments made under Article 3.3 shall be treated as part of the operating expenses of the Airport with the exception of deferred payment under Article 3.3.5, which are in lieu of payments to be accounted for in the relevant year. Other than in the case of late payment in which case Article 18.14 shall apply, no interest shall be levied or due in respect of any amount or payment to be made pursuant to this Article 3.3.

- 1.27.5 Exclusivity Article 5.2.1 of the CA, provides that no new or existing airport shall be permitted by GoI to be developed as, or improved or upgraded into, an International Airport within an aerial distance of 150 kilometres of the Airport before the twenty-fifth anniversary of the Airport Opening Date. Further, Article 5.2.2 of the CA, provides that no new or existing airport (except for Mysore and Hassan airports) shall be permitted by GoI to be developed as, or improved or upgraded into, a Domestic Airport within an aerial distance of 150 kilometres of the Airport before the twenty-fifth anniversary of the Airport Opening Date.
- 1.27.6 Article 5.5 of the CA provides that the existing airport in Bangalore known as the HAL airport located at Vimanapura, Bangalore shall from and with effect from the date on which the Airport Opening occurs (the greenfield international airport comprising of the Initial Phase, to be constructed and operated by BIAL at Devanahalli), GoI will ensure that the existing Airport shall not be open or available for use for commercial civil aviation operations and shall no longer be classified as a civil enclave under the AAI Act 1994. The CA also provides that from

and with effect from the date on which Airport Opening occurs, GoI will issue and publish an appropriate notification stating that the existing Airport is no longer open or available for commercial civil aviation operations (which shall, for these purposes, not include use for Airport activity at times of national emergency or (at any time) by aircraft owned or operated by or for the Indian Air Force or other Armed Forces of India or for transportation of dignitaries by special government hired VIP aircraft or otherwise for their use or activities) and that it is no longer classified as a civil enclave under the AAI Act and also for ensuring that the international code (BLR) of the Existing Airport is transferred to the Airport. Further, it also states that General Aviation Services (other than those relating to commercial aircraft) may continue to be provided at the existing Airport notwithstanding its closure to commercial aircrafts.

- 1.27.7 Lock-in-Period Article 6.2 of the CA lays down the following lock-in restrictions subject to Article 14 (Assignment and Security) and in accordance with the terms of the Shareholders Agreement:
 - a Siemens Project Ventures GmbH shall subscribe and hold at least forty percent (40%) of the paid up capital of BIAL for a period of three (3) years after Airport Opening and no less than twenty six percent (26%) for a period of seven (7) years after Airport Opening; and
 - b Flughafen Zuerich AG shall subscribe and hold at least five percent (5%) of the paid up capital of BIAL for a period of three (3) years after Airport Opening.
- 1.27.8 Master Plan Article 7.1 of CA provides that BIAL shall review the Master Plan every five (5) years. If, on such review, BIAL considers it necessary to revise the Master Plan to reflect changed circumstances at the Airport, BIAL shall revise the Master Plan and provide GoI with a copy of such revised Master Plan.
- 1.27.9 Charges Article 10 of the CA provides that the Airport Charges specified in Schedule 6 (Regulated Charges) shall be consistent with ICAO Policies and that the Regulated charges set out in Schedule 6 shall be indicative charges. Prior to Airport Opening BIAL shall seek approval from the MoCA for the Regulated Charges, which shall be based on the final audited project cost.
- 1.27.10 BIAL and / or Service Provider Right Holders shall be free without any restriction to determine the charges to be imposed in respect of the facilities and services provided at the Airport or on the Site, other than the facilities and services in respect of which Regulated Charges are levied.
- 1.27.11 Schedule 6: Regulated Charges.

- a Landing, Housing and Parking Charges (Domestic and International): The charges to be adopted by BIAL at the time of airport opening will be the higher of: (a) The AAI tariff effective 2001 duly increased with inflation index, as set out hereunder, upto the airport opening date **Or** (b) The then prevailing tariff at the other AAI airports.
- b Passenger Service Fee (Domestic and International): The charges to be adopted by BIAL at the time of airport opening will be the higher of: a) The AAI tariff effective 2001 duly increased with inflation index, as set out hereunder, upto the airport opening date **Or** b) The then prevailing Passenger Service Fee at the other AAI airports. The Passenger Service Fee chargeable by BIAL, as given above, is inclusive of the cost of Security Expenditure on Central Industrial Security Force (CISF). This component of cost towards Security Expenditure on CISF shall be revised upwards by BIAL as and when directed by GoI.
- c User Development Fee (UDF) (Domestic and International): BIAL will be allowed to levy UDF, w.e.f Airport Opening Date, duly increased in the subsequent years with inflation index as set out hereunder, from embarking domestic and international passengers, for the provision of passenger amenities, services and facilities and the UDF will be used for the development, management, maintenance, operation and expansion of the facilities at the Airport.
- 1.27.12 Article 13.7 of the CA provides that unless terminated earlier, the CA shall continue in full force and effect from its commencement in accordance with Article 4 until the thirtieth (30th) anniversary of the Airport Opening Date whereupon the term of the Agreement shall at the option of BIAL be extended for a further period of thirty (30) years and that BIAL may at any time prior to the twenty-seventh (27th) anniversary of the Airport Opening Date, exercise the aforesaid option of extending the term of this Concession Agreement by another thirty (30) years. In the event of BIAL not exercising its option of extending the term of this Concession Agreement, then the Concession Agreement shall expire on the thirtieth (30th) anniversary of the Airport Opening Date and GoI or its nominee shall acquire all of BIAL's rights, title and interests in and to the Airport on payment on the Transfer Date to BIAL the aggregate of:
 - a One hundred per cent (100%) of the par value of the issued, subscribed and paidup share capital of BIAL; and
 - b One hundred per cent (100%) of the Debt.

- 1.27.13 Subsequent to the execution of the Concession Agreement, and due to unforeseen commercial developments in the Civil Aviation sector in India leading to an increase in air traffic and passengers, the GoI and BIAL discussed and mutually agreed to amend the Original Concession Agreement (Amendment agreement dated 20th November 2006). The original CA was amended to include and replace the definition of Financial Close, Shareholders Agreement, Description of Initial Phase revised, Master plan revised and amended etc.
- 1.28 Land Lease Agreement (LLA): The Land Lease Agreement dated 20th January 2005, was entered in to between KSIIDC and BIAL. As per the LLA the GOK agreed to provide financial support to improve the viability of the Project and enhance the bankability of the initial phase and also agreed to have KSIIDC provide the Site on lease to BIAL.
 - 1.28.1 Land Lease Agreement provided for 3884 acres of land to be leased to BIAL and additional land area of approx. 133 acres to be procured by KSIIDC and leased to BIAL. The Authority notes, from the Financial statements of BIAL as of 31st March 2013 that out of the additional 133 acres that KSIIDC had to acquire, KSIIDC has handed over land aggregating to approx. 124 acres, thereby making the total land leased by KSIIDC to BIAL at 4008 acres.
 - 1.28.2 As regards the lease rent payable, the Land Lease Agreement provides that from the Airport Opening date till the end of seven years 3% per annum of the site cost of Rs. 175 crores shall be payable, and for the eighth year 6% of the site cost shall be payable and for every year following the eighth year after the Airport Opening date and the remainder of the term, the lease rent payable shall be the lease rent of the preceding year plus 3%.
 - 1.28.3 Further to the Land Lease Agreement, Land Lease Deed was executed on 30th April 2005.
- 1.29 **State Support Agreement (SSA)**: The SSA entered into between GoK and BIAL on 20th January 2005 provides financial support to improve the viability of the Project and enhance the bankability of the initial phase and has also agreed to have KSIIDC provide the site on lease to BIAL. Salient features of the SSA are as given below:
 - 1.29.1 The State Financial Support (interest free loan) specified in the SSA is Rs. 350 crore out of which the Authority notes that Rs. 335 crores has been disbursed by GoK. As per the SSA, no interest shall be payable by BIAL on the outstanding amounts of the State Financial Support paid to BIAL. However, interest shall be paid on delayed

- repayment of instalments. The State Financial Support is repayable in twenty equal half yearly instalments, first of which will become due on the 30th April in the eleventh (11th) Financial Year and the next on 31st October in the same year, with the remaining instalments being payable on 30th April and 31st October of the subsequent years.
- 1.29.2 The SSA also provides that BIAL should review the Master Plan every 5 years and if on such review BIAL considers it necessary to revise the master plan to reflect changed circumstances at the airport, BIAL shall revise the Master Plan and provide GoK with a copy of such revised Master Plan, with explanations as appropriate. It also provides that the BIAL shall complete the construction of the Initial Phase and ensure that Airport Opening date shall occur by not later than the date falling thirty three (33) months after Financial Close.
- 1.29.3 Project support by GoK The SSA also states that GoK will not revoke the decision to appoint the Private Promoters as joint venture partners in BIAL and to award the Project to the Project Promoters. In recognition of the investment to be made by the Shareholders and Lenders and subject to material compliances by the Shareholders and the Lenders with all applicable and the terms and conditions thereof, GoK will not take any steps or action in contradiction of this agreement which results or would result in Shareholders or lenders being deprived of their Investment or economic interest in the project except in accordance with applicable law.
- 1.29.4 Non-Airport Activities The SSA also states that the GoK recognises that BIAL may carry out any activity or business in connection with or related to the development of site or operation of airport to generate revenues including the development of commercial ventures such as hotels, restaurants, conference venues, meeting facilities, business centres, trade fairs, real estate, theme park, amusement arcades, golf courses and other sports/ entertainment facilities, banks and exchanges and shopping malls.
- CNS / ATM agreement: The CNS ATM Agreement has been entered into between AAI and BIAL on 6th April, 2005 which covers the scope of services as provision of CNS/ATM services by AAI in the Pre-commissioning phase, Commissioning Phase and Operation Phase. As per the agreement, AAI shall be entitled to recover the Route Navigation Facilities Charges directly from airlines. The Terminal Navigation Landing charges payable by airlines shall be paid directly by airlines to AAI and BIAL shall incur no liability in respect of charges. Rental is to be paid to BIAL in consideration of the facility and office space as set out. Rental rate shall be on a cost recovery basis and mutually agreed.

- 1.31 **Shareholders Agreement** The Original SHA dated 23rd January, 2002 between the State Promoters KSIIDC, AAI and the Private Promoters -Siemens Project Ventures GmBH, Unique Zurich, L&T, BIAL, was amended on 10.06.2005. Salient features of the Shareholders Agreement is as given below:
 - 1.31.1 The original authorised share capital of the Company was Rs. 50,00,00,000/- (Rupees Fifty Crores) only, divided into 5,00,00,000 (Five Crores) equity shares of the face value of Rs. 10/- (Rupees Ten) each. The present authorised share capital of the Company has since been increased to Rs. 350,00,00,000/- (Rupees Three Hundred Fifty Crores) to meet the requirements of the Project.
 - 1.31.2 The SHA provides that Subject to the AAI Equity Cap (maximum Equity Contribution of AAI, not exceeding Rs.50 crores), the combined shareholding of the State Promoters shall be no less than twenty six percent (26%) of the total paid up share capital and KSIIDC, or its Affiliates, shall contribute to such additional amounts to maintain the combined shareholding of twenty six percent (26%) if the AAI Equity Cap is reached.
 - 1.31.3 The SHA provides that upon subscription to the Shares in accordance with this Agreement, the paid-up capital structure of the Company shall be as follows:
 - a Private Promoters and Other Investors (collectively) 74%
 - b State Promoters (collectively) 26%
 - 1.31.4 Further, SHA provides that the shareholding of the Private Promoters shall be subject to the following lock-in restrictions as under:
 - a Siemens shall subscribe and hold at least forty percent (40%) of the paid up capital of the Company until a period of three (3) years after the Commercial Operations Date and in no event less than twenty six percent (26%) Shares for a period of seven (7) years after Commercial Operations Date;
 - b Unique Zurich shall subscribe and hold at least five percent (5%) Shares in the paid up capital of the Company until a period of three (3) years after the Commercial Operations Date.
 - 1.31.5 Circumstances in which further Capital may be raised by simple majority:
 - a The SHA provides that in the unlikely event the Company suffers operating losses, the funding whereof has not been provided for in the business plan, the Board may appoint a financial consultant to advice on the possible means of financing that the Company may pursue. It is agreed by the Parties that to the

- extent possible such financing shall be first through internal accruals and thereafter borrowings. However should there be inadequate internal accruals or borrowings are not available on reasonable terms, the Board may, by a simple majority approve the issuance of further equity through a rights issue to the extent reasonably necessary to fund the uncovered operating losses.
- b If any change in law (including any change in enactment, legislation, regulation, rule, notification, order or directive having statutory force) subsequent to the finalisation of the Detailed Project Report requires a change in the scope of the Project which results in additional capital expenditure, the financing whereof cannot be covered in contingencies or otherwise in the business plan, the Board may appoint a financial consultant to advise on the possible means of financing that the Company may pursue. It is agreed by the Parties that to the extent possible such financing shall be first brought through borrowings. However, should borrowings be not available on reasonable terms, the Board may, by a simple majority approve the issuance of further equity through a rights issue to the extent reasonably necessary to fund such additional capital expenditure.
- 1.31.6 Unforeseeable events Further, the Clause 9.8 of the SHA provides that should the Project be impacted financially or otherwise due to any unforeseeable event beyond the reasonable control of the Private Promoters, the following process will be followed:
 - a The Parties shall consult with each other upon the course of action to mitigate such risk or costs and the manner of financing, if any, required.
 - In such an event the Board may appoint a financial consultant to advise on the possible manner of financing that the Company may pursue.
 - c Pending agreement between the Parties on the manner of financing, the Board may, if it is expedient to do so, raise borrowings or debt on such terms as may be deemed appropriate to meet any financing requirements arising due to the aforesaid event subject to an aggregate limit (together with any existing loan obtained for the purpose of this Clause 9.8) of Rs. 25 crores. The Parties agree that for such financing the Private Promoters may grant unsecured subordinate debt.
 - d Should the Parties mutually agree that instead of or in addition to any borrowing, such financing or any part thereof should be through equity subscription by the

Parties and then any subordinated debt provided by the Private Promoters may be converted to equity.

- 1.31.7 It further provides that the Parties recognise and agree that the risks and costs resulting from unforeseeable events, to the extent possible, shall be caused to be assumed by concerned third parties and / or appropriately insured against, such that protection against such risks and costs is available.
- 1.31.8 Clause 9.9 of the SHA also states that the Parties recognize that the Airport will operate in a competitive environment and potentially within a short term, in a regulated environment. The Parties, therefore, will cause the Company to operate in a manner, which maximizes efficiencies and utilization of resources.
- 1.31.9 Clause 13 of the SHA states that the Company in General meeting may declare dividends, but no dividend shall exceed the amount of dividend recommended by the Board. While recommending the declaration of any dividend, the Board will have regard to and consider the expansion plans of the Airport, taking into account the traffic growth, and the need for making provisions therefor.

2 Brief facts and chronology of events

- 2.1 The Airports Economic Regulatory Authority of India (Authority) was established under "The Airports Economic Regulatory Authority of India Act, 2008" (the AERA Act) to perform the functions in respect of major airports, inter alia:
 - 2.1.1 to determine the tariff for the aeronautical services;
 - 2.1.2 to determine the amount of the development fees in respect of major airports;
 - 2.1.3 to determine the amount of the passengers service fee levied under Rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934; and
 - 2.1.4 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 authorized by it in this behalf.
- 2.2 As per Section 2 (a) of the AERA Act, any service provided, inter alia,
 - 2.2.1 for the landing, housing or parking of an aircraft or any other ground facility offered in connection with aircraft operations at an airport;
 - 2.2.2 for ground safety services at an airport;
 - 2.2.3 for ground handling services relating to aircraft, passengers and cargo at an airport;
 - 2.2.4 for the cargo facility at an airport; and
 - 2.2.5 for supplying fuel to the aircraft at an airport,

are aeronautical services and the tariff for such aeronautical services at a major airport are to be determined by this Authority in terms of Section 13 (1) (a) of the Act.

2.3 In the discharge of its functions of determination of tariff for aeronautical services, and to call for such information as may be necessary to determine tariff under the AERA Act, and to ensure transparency the Authority had issued a White Paper on "Regulatory Objectives and Philosophy in Economic Regulation of Airport and Air Navigation Services" (White Paper) and Consultation Paper 03/2009-10 on 26th February 2010 and then Order No.13/2010-11 dated 12th January 2011 (Airport Order) finalizing the Regulatory Philosophy and approach for economic regulation of Airport Operators. The Authority thereafter issued Order No. 14/2010-11 and Direction No. 05/2010-11 dated 28th February 2011. The Order and Guidelines were issued by the Authority after extensive stakeholder consultation based on responses received on the White Paper and Consultation Paper No. 03/2009-10 issued on 26th February 2010. The Airports Economic Regulatory Authority of India (Terms and Conditions for determination of tariffs for Airport Operators) Guidelines, 2011 (Airport Guidelines) was

also issued on 28th February 2011 by the Authority under Section 15 of the AERA Act directing all Airport Operators to act in accordance with the Guidelines.

- The Authority also finalised the Regulatory Philosophy and approach for Economic Regulation of the Aeronautical Services of Cargo facility, Ground Handling and Supply of fuel to an aircraft (CGF) vide Order No. 12/2010-11 (CGF Order) and issued Direction No. 04/2010-11 dated 10th January 2011 (CGF Guidelines) detailing the terms and conditions for determination of tariffs in respect of Service Providers (including Independent Service Providers (ISPs)) for the CGF services.
- 2.5 As per clause 3.1 of the Airport Guidelines, the Airport Operator(s) were required to submit to the Authority for its consideration, a Multi-Year Tariff Proposal (MYTP) for the first control period (from 01.04.2011 to 31.03.2016), within four months of the date of issue of the Airport Guidelines, i.e., by 1st July 2011.
- In the meanwhile, the Authority vide its Order No. 15/2010-11 dated 24th March 2011 ordered that in respect of 10 major airports namely Kolkata, Chennai, Hyderabad, Bangalore, Cochin, Ahmedabad, Trivandrum, Calicut, Guwahati and Jaipur, the concerned airport operators be permitted to continue charging the tariffs/ charges for all aeronautical services provided by them, at the existing approved rates (as on 28th February 2011), in the interim period i.e. from 01.04.2011 up to date the new tariffs as may be approved by the Authority become effective.
- 2.7 BIAL filed an appeal (Appeal No.7/2011) before the Hon'ble AERA Appellate Tribunal (AERAAT) against the Authority's Airport Order and Airport Guidelines. BIAL had also filed an Appeal No.12/2011 against the CGF Order and CGF Guidelines relating to tariff determination of ISPs. Key grounds of appeal No.7/2011 and 12/2011 filed by BIAL inter alia are as under:

Appeal No.7/2011

"... Impugned Order ultra vires the power of the Authority and without jurisdiction

That the Regulator has totally misconstrued the provisions of the Act to confer upon
itself the power to indirectly regulate Non Aeronautical and Non-Airport activities /
services, in the guise of determination of tariff for aeronautical services, under
Section 13 of the Act

The impugned order is contrary to vested rights, equities and estoppels.

Further jurisdictional error – Regulation of real estate activities.

Grounds raised in Appeal no. 2/2011 and to be raised in Appeal against Order No. 5 and 12 and Direction 4....."

Appeal No.12/2011

"... The impugned Guidelines and Impugned orders are issued apparently without any power of Authority and are without jurisdiction and ultra vires the Act:

The Authority has no power under Section 15 of the Act to issue Directions to Independent service Providers (ISPs)

In order to circumvent lack of power, the Authority has attempted to re-define "Service provider" under the impugned guidelines

The Authority has expressly admitted its lack of power to regulate ISPs

The Authority has failed to appreciate that the ISPs are sub-contractors and consequently agents of the Appellant – Principal and the Authority could not have regulated such agents directly

The Authority has failed to give effect to the provisions of Section 13 (1) (a) (vi) of the Act.

The concession agreement excludes regulation of services of Cargo facility, Ground Handling and supply of fuel to aircraft.

The interpretation provided by the Authority to the provisions of Section 13 (1) (a) (vi) and Section 2(a) of the Act runs contra to all canons of interpretation and is contrary to trite law.

The Authority has failed to appreciate that the true and correct intent and purport of the Act is to regulate the services of Cargo facility, Ground Handling and Supply of Fuel to aircraft by contract and not by artificially superimposing a regulatory or tariff mechanism.

An interpretation which recognizes and gives effect to settled transactions is to be preferred over any interpretation with upsets settled transactions.

The Impugned order is contrary to vested rights, equities and estoppels..."

2.8 AERAAT, in its Order dated 11th May 2011, in case of Appeal No.07/2011 filed by BIAL, ordered as under:

"In the meantime, without prejudice to the stands taken, let the requisite information/details/data/tariff proposal be furnished by the appellant to the Regulatory Authority. It may continue the process of the determination, but shall not

make a final determination without leave of this Court. Time for submission of information/details/data/tariff proposal/details is extended till 31st July 2011. It is made clear that since the tariff proposal/information/data/details are being directed to be given without prejudice to the claims involved, they shall be treated as confidential by the Regulatory Authority."

- 2.9 However, BIAL filed a Miscellaneous Application in Appeal No. 7/2011, on 25th July 2011, requesting the AERAAT to direct extension of time to file the MYTP till next date of hearing, i.e., 17th August 2011.
- 2.10 Also, BIAL, vide letter ref. BIAL/AERA/MYTP/2011 dated 25th July 2011, requested the Authority to extend the time for submission of MYTP by two months, i.e., till 30th September 2011. This request of BIAL was considered by the Authority and it was decided that, in view of the AERAAT Order dated 11th May 2011, the request for extension cannot be accepted and the decision was conveyed to BIAL, vide Authority's letter No. AERA/20010/BIAL-AC/2009/670 dated 28th July 2011.
- 2.11 BIAL filed a Writ Petition (C) 6.376/2011 before the Hon'ble High Court of Delhi praying, inter alia, for restraining the Authority from taking any coercive action against them for alleged non-compliance of the Airport Order. This petition came up for hearing before the Hon'ble High Court of Delhi on 1st September 2011 wherein the same was disposed-off by the Hon'ble High Court of Delhi and time was granted to BIAL upto 15th September 2011 to submit the requisite details to the Authority. Delhi High Court, in its order dated 1st September 2011, ordered as under:
 - "...However, to put finality to the matter, it is deemed expedient to grant time till 15th September, 2011 to the petitioner to submit to the respondent the balance information/particular sought. Subject to the petitioner furnishing the information by the said date, no fine shall be imposed and no prosecution shall be initiated against the petitioner."
- 2.12 Thereafter, BIAL vide their letter no. BIAL/AERA/MYTP/2011 dated 14th September 2011, in compliance of Order of Hon'ble High Court of Delhi, submitted the balance information and particulars relevant for MYTP for the first control period starting from FY 2011-12 to FY2015-16 for tariff determination and key results from BIAL's Business Plan from FY 2011-12 to FY 2020-21. In their submission, BIAL submitted that their operations and business is governed by the terms and conditions of the CA entered into between MoCA, GoI

and BIAL on 5th July 2004 and related project agreements and in accordance with the CA, the regulated charges include Landing Charges, Parking Charges, Passenger Service Fee (PSF) and Users Development Fee (UDF) and the rest of the revenues items were classified by BIAL as non-regulated charges such as Aviation Concessions, Retail, Commercial, among others.

- BIAL, vide submission dated 14th September 2011 had stated that considering the provisions of CA and Airport Guidelines requirements, the financial statements had been prepared based on 10 years Business Plan that had been approved by the BIAL's Board. BIAL stated that Board has deliberated and considered the results for submission to the Authority subject to the condition that any final scenario of tariff determination requiring fresh equity infusion from the respective state promoters of BIAL would be subject to approval of the Board and respective state government.
- 2.14 BIAL had submitted that their real estate business plan was still under consideration and yet to be firmed up and hence the MYTP and as well 10 years Business plan did not have any inputs/ performance on account of Real estate business.
- 2.15 Further, BIAL stated that the information submitted by them (submission dated 14th September 2011) was without prejudice to their rights, contentions and the grounds urged in Appeal Nos. 7/2011 and 12/2011, pending adjudication by the AERAAT and that the information, including all the supporting documents, submitted till date, concerning the MYTP for the 1st Control Period, were confidential and any disclosure thereof will cause prejudice to BIAL by adversely impacting its commercial position.
- 2.16 BIAL had reserved the liberty to add, modify, revise, and rectify the information relating to MYTP based on additional information, discussions, clarifications that may be received from the Authority and that these submissions were being made without prejudice to BIAL's right to make further submissions, at a subsequent point in time, if found necessary. BIAL had also identified and segregated the Aeronautical Assets, Non-Aeronautical Assets, Aeronautical Services and Non-Aeronautical Services of tariff under Dual Till.
- 2.17 Subsequently, BIAL had made a presentation on its MYTP Submission on 10th February 2012, and on details of the Terminal I expansion Project on 2nd May 2012.
- 2.18 Subsequent to the above, pursuant to various discussions and correspondences with BIAL, BIAL had submitted a revised MYTP (MYTP 2012) on 21st November 2012 along with their Financial Model, wherein BIAL had stated that traffic scenarios and Projections had undergone a significant change, with the actual traffic for F.Y 2011-12 and Projected traffic

for 2012-13 reflecting a de-growth in traffic and in view of this, the Projections required a review and revision with respect to Capital Expenditure Plans, means of financing and consequent changes in the Regulatory Building Block, which had been re-assessed and the revised MYTP was submitted.

- 2.19 Further, the Authority had also requested BIAL to appoint a Consultant for the purpose of assisting the Authority in the tariff determination process. BIAL has appointed a Consultant for this task. The Consultant has assisted the Authority in its deliberations.
- 2.20 Further to MYTP 2012, additional submissions/presentations were also been made by BIAL on the queries raised by the Authority between January 2013 and June 2013.
- 2.21 Meanwhile, the Hon'ble AERAAT vide its Order dated 15th February 2013, disposed-off the Appeal No. 07/2011 filed by BIAL, ordering that
 - "5... when the matters came for disposal on merits it was found that in spite of the guidelines the directions issued pursuance thereto yet there would be no impediment for the AERA to consider all the relevant issues and then to finalise the order regarding the determination of tariff of airports....."
 - "6. If this is so, there would not be any question of proceeding with the hearing of these appeals at this stage since in spite of the impugned orders it will be open for the appellants to canvass all the contentions which they want to raise in these appeals and convince AERA about their merits.
 - 7. It has so happened that in spite of elapse of substantial time period the tariff has still not been determined which causes prejudice to both the concerned parties as well as the stakeholders.
 - 8. In that view, we would dispose-off these appeals with the direction to the AERA to complete this exercise of determination of tariff and while doing so, the AERA would give opportunities to all the stakeholders to raise all the plea and contentions and consider the same. The impugned orders herein would not come in the way of that exercise. We would, however, request AERA to complete the determination exercise as expeditiously as possible. We have taken this view as we are of the firm opinion that it would not be proper to entertain the appeals on different stages of determination of tariff and to give the finality to the questions of final determination of tariff..."
- 2.22 Subsequent to the above, with reference to the AERAAT Order dated 15th February 2013, BIAL had sought time to present to the Authority its plea and contentions. Accordingly,

BIAL had made additional presentations to the Authority on 8th April 2013 and has made additional submissions related to:

- 2.22.1 Mechanism of Till to be adopted
- 2.22.2 Observations with respect to Direction No. 5 and BIAL's suggestion on the same
- 2.22.3 Affidavits by Prof. David Gillen and Paper by Shri. K Roy Paul
- 2.23 BIAL had then submitted its Annual Tariff Proposal to the Authority on the 16th April 2013.
- 2.24 Meanwhile the Hon'ble AERAAT vide its Order dated 3rd May 2013, thereafter amended vide its order dated 10th May 2013 permitted withdrawal of the Appeal No. 12/2011 filed by BIAL, ordering that:

"By an order dated 15th February, 2013, this Tribunal had disposed of appeals No. 07, 08, 09, 10 & 11 of 2011 with the directions to the AERA to complete the exercise of determination of tariff. We had also directed therein that AERA would give opportunity to all the stakeholders to raise all the pleas and contentions and consider the same. We had requested the AERA to complete the determination of tariff as expeditiously as possible. In this, we had taken a view that it would not be appropriate to entertain the appeals at different stages of determination. We, thus, had expressed specifically that all the pleas could be taken before AERA while determination of the final tariff. In those appeals, Shri Nanda had specifically made a statement that all the pleas and defenses including those relating to impugned guidelines could be considered by AERA on their own merits despite the guidelines issued by AERA in appeal Nos. 08, 09, 10 & 11 of 2011.

- 2. In view of this, Shri Datar, Senior Advocate, after considerable arguments, seeks to withdraw this appeal. He, however, seeks an opportunity to file an appeal against the final tariff order. It is reported that the final tariff order pertaining to independent service providers (ISPs) has now been passed. He also seeks an opportunity to raise all the questions raised herein in his appeal for filing which, he seeks an opportunity. We allow the withdrawal with the liberty sought for by him...."
- 2.25 The Authority had carefully examined the submissions made by BIAL on the above matters. It was observed that after the initial MYTP submission dated 14th September 2011, BIAL reviewed and revised / modified its submissions and that BIAL had made a revised MYTP 2012 submission on 21st November 2012. The Authority had considered and examined the various submissions on different Building blocks based on the revised MYTP 2012 submission

made by BIAL on 21st November 2012 and subsequent additional submissions/clarifications.

- 2.26 Based on the examination, BIAL's submissions and the Authority's examinations in respect of various building blocks, Consultation Paper No. 14/2013-14 dated 26th June 2013 (CP 14) was issued by the Authority in the matter of determination of Tariffs for Aeronautical Services with respect to Kempegowda International Airport, Bangalore for the first Control Period 1st April 2011 to 31st March 2016.
- In CP 14, the Authority had analysed the submissions made by BIAL as part of its revised MYTP 2012 filed under Single Till and Dual Till and the corresponding Annual Tariff Proposals detailing the rate card of various charges. The Authority had analysed each component of the Regulatory Building Block ("RBB") under both Single Till and Dual Till that was submitted by BIAL and had presented the proposals under each Regulatory building block (both under Single Till and Dual Till), for Stakeholder Consultation and comments.
- 2.28 Comments were sought from Stakeholders on the Proposals laid down by the Authority in the Consultation Paper, within the time line of 5th August 2013, as specified in CP 14.
- 2.29 A Stakeholder Consultation Meeting was held on 22nd July 2013, wherein the comments of the stakeholder comprising of Airlines, Fuel Farm Operators, Industry associations and that of BIAL were discussed, the minutes of which has been uploaded in the website of the Authority.
- 2.30 Further to the Stakeholder meeting, pursuant to requests received from BIAL and other Stakeholders, the Consultation period, originally proposed to end on 5th August 2013 was extended upto 19th August 2013 which was later extended upto 19th September 2013 and finally extended upto 25th September 2013.
- 2.31 Apart from the responses received during the Stakeholder Consultation Meeting on 22nd July 2013, the Authority had received responses from BIAL and the following stakeholders:
 - 2.31.1 Airports Authority of India ("AAI")
 - 2.31.2 Air France
 - 2.31.3 Association of Private Airport Operators ("APAO")
 - 2.31.4 Blue Dart Aviation
 - 2.31.5 British Airways
 - 2.31.6 Cathay Pacific

- 2.31.7 Federation of Indian Airlines ("FIA") 2.31.8 Government of Karnataka ("GoK") 2.31.9 Hindustan Petroleum Corporation Limited ("HPCL") 2.31.10 International Air Transport Association ("IATA") 2.31.11 Menzies Aviation Bobba (B'lore) 2.31.12 Ministry of Civil Aviation ("MoCA") 2.31.13 Sanjeev V Dyamannavar 2.31.14 **Zurich Airport**
- 2.32 Summary of Regulatory Building Blocks which were commented by the various Stakeholders for CP 14 is as given below:

Table 4: Table showing the Regulatory Building blocks / chapters which were commented by the Stakeholders (CP 14)

Stakeholder	Issues commented upon
AAI	 Control Period Pre-control period losses Asset Allocation Future Capital Expenditure Regulatory Asset Base Depreciation Cost of Debt Cost of Equity Weighted Average Cost of Capital Taxation Non-Aeronautical Revenue Operating expenses Sensitivity analysis Tariff structure Regulatory Till
Air France	 Tariff Structure Treatment of CGF Revenues
APAO	 Regulatory Till Regulatory Asset Base Treatment of land Cost of Equity Quality of Service Rebate Treatment of CGF Revenue
Blue Dart Aviation	 Tariff Structure Regulatory Till Cost of Equity Treatment of Land Future Capital Expenditure Bad Debts write off
British Airways	Regulatory TillAsset allocation
Cathay Pacific	 Tariff structure Future Capital Expenditure True up mechanism

Stakeholder	Issues commented upon
	Regulatory Till
	Treatment of CGF Revenue
FIA	Treatment of land
	Regulatory Asset Base
	Means of Finance
	Pre-control period losses
	Regulatory Till
	Tariff Structure
	Control period
	Depreciation
	Asset Allocation
	Future Capital Expenditure
	Bad Debts write off
	Working Capital Interest
	Traffic Projections
	Operating Expenditure
	Non-Aeronautical Revenues
	Cost of Debt
	Treatment of CGF Service providers
	True up mechanism
GoK	Means of Finance
	Treatment of Land
HPCL	Tariff Structure
IATA	Pre-control period shortfall claim
	Future Capital Expenditure
	Debt and Cost of Debt
	Cost of Equity
	Weighted Average Cost of Capital
	Operating Expenditure
	Non Aeronautical Revenues
	Treatment of CGF revenues
	Tariff Structure
	Treatment of CGF Service Providers
	Means of Finance
Menzies Aviation	Treatment of CGF Service Providers
Menzies Aviation	Treatment of CGF revenues
MacA	Treatment of CGF revenues
MoCA	Regulatory Till
Cautan	Treatment of Land
Sanjeev Dyamannavar	- Heatiment of Land
	Regulatory Till
Zurich Airport	Regulatory Asset Base
	Cost of Equity, Cost of Debt, Weighted Average cost of capital
	Treatment of Land
	- Treatment of Land

2.33 Subsequent to the Stakeholder Consultation Meeting, BIAL had, vide letter dated 30th July 2013, submitted to the Authority as follows:

"As you are kindly aware, while submitting the tariff proposal, BIAL had submitted its proposal, based on its interpretation of provisions of Concession Agreement, on Dual

Till basis. It also submitted its proposal on Single Till basis only as per directions of the Authority.

While determining UDF for BIAL, MoCA, though of the view that no cross subsidization from non-aeronautical revenue is provided in the Concession Agreement, finalized UDF on the basis of cross subsidization of 30% from non-aero revenue. UDF decided by MoCA in the year 2008/09 was on ad-hoc basis and continued till the commencement of first control period.

BIAL had submitted a letter dated July 5^{th} 2013 to MoCA, as it had granted the concession, reiterating for dual till, based on its interpretation of the concession agreement.

BIAL had been consistently contesting that Concession Agreement does not envisage cross subsidization. However, in order to reach to a workable solution, BIAL intends to agree with the tariff on hybrid till model and accordingly is in the process of submitting calculations based on Hybrid Till model with 30% cross subsidization. It will not be out of place to mention that even with this model, funds requirement of BIAL for expansion and debt repayment might need a special consideration.

Additionally, BIAL will file its detailed response to Consultation Paper referred above. In the meantime, we request the Authority to kindly consider request of BIAL to consider Hybrid Till model for determination of tariff for Bengaluru International Airport."

- 2.34 Further to the aforementioned letter, BIAL had, on 19th August 2013, submitted to the Authority, its Multi Year Tariff Proposal (MYTP 2013) under the Single Till, Dual Till and Shared Revenue Till (SRT) mechanism. While BIAL's letter dated 30th July 2013 indicated a request for review of proposal under what it calls as Hybrid Till, the Authority had noted, from the submissions made by BIAL that it had considered Shared Revenue Till model wherein 30% of Gross Revenues from Non-Aeronautical Services had been set off from the Aggregate Revenue Requirements computed for the Aeronautical Services, without taking into account the costs associated with providing these Non-Aeronautical services.
- 2.35 The Authority noted that pursuant to the Hon'ble AERAAT Order, BIAL made its submissions before the Authority in April 2013. In these submissions, BIAL had considered only Single Till and Dual Till Regulatory approaches. Similarly, in its presentation to the Stakeholders on 22nd July 2013, BIAL had made no reference regarding its intention to also submit proposals under Shared Revenue Till. The Authority noted therefore that BIAL had not

made any submissions / proposals regarding the Shared Revenue Till upto the stage of Stakeholders' consultation meeting on 22nd July 2013 and upto the end of July 2013, when for the first time, BIAL indicated its intention of making submissions also under Shared Revenue Till as what it termed as "a workable solution".

- In the normal course therefore, the Authority, would have been well within its rights not to consider the fresh tariff proposal of BIAL under Shared Revenue Till. However with a view to give BIAL a last opportunity in this regard, the Authority had proceeded to analyse BIAL's proposal also under Shared Revenue Till (in addition to Single Till). In Chapter 26 of CP 14, the Authority had analysed the Regulatory Approaches under Single Till as well as Dual Till and finally proposed to adopt Single Till. The Authority's reasons for not proposing to adopt Dual Till have also been detailed in the said chapter.
- 2.37 Furthermore, the Authority received a letter dated 24th September 2013 from Ministry of Civil Aviation as below:

"I am directed to refer to AERA's letter NO.AERN20010/MYTP/BIAL/2011-12-Vol./1 4447 dated 27.6.2013 on the above mentioned subject.

Ministry of Civil Aviation have carefully gone through the proposal contained in the Consultation Paper as well as the building blocks for economic regulation of Bengaluru International Airport contained therein. The Consultation Paper has proposed various charges for Aeronautical Services including User Development Fee (UDF) both under Dual till as well as Single till. The BIAL is undertaking substantial expansion to the terminal building and Second Runway etc. at Bengaluru International Airport. The Consultation Paper indicates that BIAL needs an additional amount of about Rs. 4,027 crore during the control period (2011 - 16) for expansion purpose.

The AERA has proposed a Single till approach wherein the revenue from Aeronautical Services as well as Non-Aeronautical Services as mentioned in the Consultation Paper are considered along with associated costs to determine the Aeronautical charges as well as the UDF. The Ministry of Civil Aviation feels that the requirement of capital for the expansion during the current control period would be difficult to be met under a Single till approach. A Shared Revenue till of 40% would strike an appropriate balance between the needs of expansion of the airport as well as passenger interest, in terms of keeping the user charges at reasonable level. Therefore, 40% of gross revenue

generated by BIAL from Non Aeronautical Services may be reckoned towards subsidizing Aeronautical charges and UDF.

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

- 2.38 The Authority noted that MoCA, in its letter dated 24th September 2013, after having carefully gone through the Proposals contained in CP 14 as well as Building Blocks for Economic Regulation of BIAL contained therein, had given its view, inter alia that, 40% of Gross revenue generated by BIAL from Non Aeronautical Services may be reckoned towards subsidising Aeronautical charges and the UDF. In light of the detailed reasoning mentioned in Chapter 26 of CP 14 and MoCA letter dated 24th September 2013 giving its view regarding 40% Shared Revenue Till, the Authority did not further analyse again, BIAL's revised submissions under Dual Till in the CP 22. The Authority noted that BIAL had stated that it considers Shared Revenue Till so as "to reach to a workable solution, BIAL intends to agree with the tariff on hybrid till model".
- 2.39 In its revised submission on Shared Revenue Till, BIAL had made significant changes to some of the Building Blocks. This had necessitated recalculation of almost all the Regulatory Building Blocks.
- 2.40 BIAL had also submitted report dated 2nd August 2013 from its auditors on allocation of Assets and a report dated 20th August 2013 from its auditors on allocation of Expenditure between Aeronautical and Non-Aeronautical services. BIAL had submitted a revised report dated 19th November 2013 from the auditors on allocation of Expenditure between Aeronautical and Non-Aeronautical services.
- 2.41 Further to the submissions made by BIAL, queries were raised by the Authority vide letter dated 5th October 2013 for which BIAL submitted its replies on 15th October 2013 and made presentation to the Authority on 25th October 2013.
- 2.42 Based on the review of the additional submissions made by BIAL further clarifications were sought from BIAL on 5th November 2013. BIAL had submitted its responses

on 2nd December 2013. Further to the same, site visit was carried out by the Authority and discussions with BIAL were held during 18th December 2013 and 19th December 2013.

- Subsequent to the meetings, additional clarifications were sought from BIAL on 20th December 2013. Salient queries relate to West Apron Extension, Airside works, its layout and Terminal Building and Canopy plans, its layout, detailed workings relating to the segregation of costs between Aeronautical and Non Aeronautical services, estimate of Aerobridge charge collection, details relating to the Variable Tariff Proposal, Response to EIL report, justification for the area considered for Terminal 2 Phase 1, details of assessment of Peak Hour Passenger capacity etc. The Authority had received response from BIAL on 17th January 2014 on some of these queries.
- 2.44 Based on the MYTP 2013 submissions and subsequent submissions made by BIAL, the Authority issued Consultation Paper 22/ 2013-14 dated 24th January 2014 (CP 22) as an addendum to CP 14.
- 2.45 A Stakeholder Consultation Meeting was held on 10th February 2014, wherein the comments of the stakeholder comprising of Airlines, Fuel Farm Operators, Industry associations and that of BIAL were discussed, the minutes of which has been uploaded in the website of the Authority.
- 2.46 Further to the Stakeholder meeting, pursuant to requests received from BIAL and other Stakeholders, the Consultation period, originally proposed to end on 17th February 2014 was extended upto 28th February 2014 which was finally extended upto 10th March 2014.
- 2.47 Apart from the responses received during the Stakeholder Consultation Meeting on 10th February 2014, the Authority had, received responses from BIAL and the following stakeholders:
 - 2.47.1 Association of Private Airport Operators (APAO)
 - 2.47.2 Bangalore Political Action Committee (BPAC)
 - 2.47.3 British Airways
 - 2.47.4 Cathay pacific
 - 2.47.5 Federation of Indian Airlines (FIA)
 - 2.47.6 Government of Karnataka (GoK)
 - 2.47.7 Indian Oil Corporation Limited (IOCL)
 - 2.47.8 International Air Transport Association (IATA)
 - 2.47.9 Lufthansa Cargo

- 2.47.10 Lufthansa German Airlines
- 2.47.11 Sanjeev V Dyamannavar
- 2.48 Summary of Regulatory Building Blocks which were commented by the various Stakeholders for CP 22 is as given below:

Table 5: Table showing the Regulatory Building blocks / chapters which were commented by the Stakeholders (CP 22)

Stakeholder	Issues commented upon
APAO	 Regulatory Till Regulatory Asset Base Treatment of land Cost of Equity Quality of Service Rebate Treatment of CGF Revenue
Bangalore Political Action Committee	 Pre-control shortfall Asset allocation Future Capital Expenditure Regulatory Asset Base Depreciation Traffic Projections Cost of Debt Cost of Equity Taxation Operating Expenditure Non Aeronautical Revenue Treatment of CGF Revenue Inflation Quality of Service Tariff Structure Regulatory Till
British Airways	 Regulatory Till Pre-control losses Future Capital Expenditure Tariff Structure Quality of Service
Cathay Pacific	 Tariff structure Pre-control shortfall Asset Allocation, Expenditure Allocation Future Capital Expenditure True up mechanism Regulatory Till Non Aeronautical Revenues Treatment of CGF Revenue
FIA	 Treatment of land Regulatory Asset Base Means of Finance FROR/ Weighted average cost of capital Regulatory Till Tariff Structure Control period Depreciation Asset Allocation / Expenditure Allocation

Stakeholder	Issues commented upon
	 Future Capital Expenditure Bad Debts write off Working Capital Interest Operating Expenditure Traffic Projections Non-Aeronautical Revenues Cost of Debt Treatment of CGF Service providers True up mechanism
GoK	Means of Finance Treatment of Land
IOCL	Treatment of CGF Revenues
IATA	 Regulatory Till Means of Finance Pre-control period shortfall claim Asset Allocation, Expenditure Allocation Future Capital Expenditure Debt and Cost of Debt Cost of Equity Weighted Average Cost of Capital Operating Expenditure Non Aeronautical Revenues Tariff Structure
Lufthansa Cargo Lufthansa German Airlines	 Tariff Structure Regulatory Till Asset Allocation, Expenditure allocation Future Capital Expenditure Cost of Debt Cost of Equity Operating Expenditure Tariff structure
Sanjeev Dyamannavar	 Treatment of Land Hotel Dispute Regulatory Asset Base Asset allocation Treatment of Bad Debts

2.49 Apart from the above, the Authority had also received copy of letter written by the Chairman, Managing Committee of BIAL dated 3rd March 2014 addressed to the Hon'ble Ministry of Civil Aviation. Chairman BIAL has stated that:

"With growth in capacity and to cater to the future requirements, the next phase of terminal expansion needs to be taken up immediately by constructing second terminal. Additionally, airspace at Bangalore is constrained because of operations of two aerodromes, viz., Indian Air force and HAL, as there are restrictions on flying hours and additionally, because of procedures to be followed, the hourly movements are also restricted.

Because of the airspace restrictions as mentioned above, the construction of second runway to match the terminal capacity will also be very essential.

Even with the two runways, the capacity will still be restricted to 35-40 million passengers per annum. The Construction of second terminal, second runway and other related developments will cost around Rs. 10,888 crores. To achieve capacity beyond 35-40 million passengers per annum, the construction of a third runway along with second phase of second terminal will also be essential at appropriate point of time. The Management Committee of the Company, met on 28th February 2014 and discussed that KIA needs a third runway to serve demand beyond the two independent parallel runways capacity of 92 ATM's/hr in 2025-26. As per the updated traffic forecast, the demand at KIA will be 509,660 ATM's by 2031-32, which corresponds to about 55 million passengers per annum.

From the above, it may kindly be observed that because of both passenger growth and restricted nature of airspace, there is constant requirement of capacity addition at airport, thus resulting into constant funds requirements to implement the project. One of the main sources of funding of project cost are through internal accruals.

In order to, at least partially, meet continuous funds requirement of BIAL, MoCA had advised Shared Revenue Till to the Authority. However, as per Consultation Paper issued on 24th January, 2014, AERA has proposed to reduce difference between UDF under Single Till and Shared Revenue Till from RAB and also from ARR in the beginning of the next control period. This will result in availability of funds for expansion for a limited period thus negating availability of funds for expansions which, at KIA, have to continue in future due to reasons explained above.

We reiterate that this proposition of AERA is totally in contradiction to the advice of MoCA, hence does not address the issue of funding requirement for expansion on a continuous basis.

We hereby request you to kindly take into account the above facts and advise AERA appropriately so that the proposal of AERA to reduce RAB and carry out the adjustment from ARR of next control period, as mentioned above, is withdrawn while finalizing tariff for BIAL.

This is without prejudice to the fact that pursuant to the provisions of Concession Agreement AERA should have considered Dual Till as AERA Act vide Section 13 (I)(a)(vi) mandates, inter alia, that while determining the tariff AERA has to take into consideration the concession offered by the Central Government in any agreement.

2.50 From the letter of the Chairman of the Management Committee (a sub-committee of the Board of Directors) of BIAL to the Hon'ble Minister, MoCA quoted above, it appears that according to Chairman, Management Committee of BIAL, "to achieve capacity beyond 35-40 million passengers per annum, the construction of a third runway along with second phase of second terminal will also be essential". The Authority notes that GoK as well as AAI are represented in the said Management Committee. In this connection, the Authority however notes the response of GOK on CP 22 indicting that according to the understanding of the GoK with respect to traffic growth and master plan, BIAL is expected to have two runways with the ultimate capacity of about 50 million passengers as under:

"The Kempegowda International Airport at Bangalore is one of the fastest growing airports in the country. It is also envisioned to develop this airport as a hub for Southern Region and South East Asia. This calls for expansion of facilities at the airport from time to time in line with the traffic growth and master plan. Keeping this in mind, GOK has provided around 4008 acres of land to BIAL on lease basis to cater to the ultimate capacity of about 50 million passengers with the configuration of, two parallel simultaneously operable runways and the corresponding airside and landside facilities....."

2.51 Apart from the above, the Authority has come across relevant material in GVK's airport brochure taken from its website¹ which matches the traffic and master plan indications given in the letter of GoK. The relevant extract from this brochure states as follows:

"As part of immediate expansion, the existing terminal is being expanded to handle 20 million passengers. Airside infrastructure is also being further strengthened to cater to the increased number of passengers. The master plan envisages the construction of a new integrated passenger terminal and a new runway equipped with world-class technology to eventually manage up to 50 million passengers per annum."

2.52 From a combined reading of Para 2.50 and Para 2.51 above, the Authority notes that the Master Plan of the Kempegowda International Airport was designed to handle a capacity of 50 million passengers with two parallel runways. The issue of the requirement that the Airport would need to handle traffic beyond 50 million passengers, as alluded to by the

¹ At URL http://www.gvk.com/media/pdf/4GVK Airports Brochure kala.pdf accessed on 17th April 2014

Chairman, Managing Committee and requirement of the third runway therefore would need to be addressed later.

- 2.53 The Authority also noted Chairman Management Committee's comments in the letter referred to in Para 2.49 above that "...This will result in availability of funds for expansion for a limited period thus negating availability of funds for expansions which, at KIA, have to continue in future due to reasons explained above. We reiterate that this proposition of AERA is totally in contradiction to the advice of MoCA, hence does not address the issue of funding requirement for expansion on a continuous basis". The Authority has addressed this issue in Para 4.249 below and similar request for clarity on the Regulatory Till made by BIAL (Refer Para 9.111 below)
- 2.54 Comments were sought from BIAL on the Stakeholders' comments made to CP 14 and CP 22. Comments were received from BIAL on 31st March 2014 only on the Stakeholders' comments to CP 22. BIAL has not given any comments separately on the Stakeholders' comments to CP 14.
- 2.55 On comments received from Sanjeev Dyamannavar the Authority notes that BIAL has opined that:

"The response to consultation paper is issued by Mr. Dyamannavar an individual and hence he does not fall within the definition of 'stakeholder' as defined in Section 2 (o) of the Airports Economic Regulatory Authority of India Act (Act) read with the AERA's Guidelines on Stakeholder Consultation dated December 14, 2009 (as amended on March 24, 2011)."

2.56 On comments from BPAC BIAL has stated that:

"At the outset BIAL submits that BPAC is not a stakeholder as defined in Section 2 (o) of the Airports Economic Regulatory Authority of India Act (Act) read with the AERA's Guidelines on Stakeholder Consultation dated December 14, 2009 (as amended on March 24, 2011)

BIAL submits that the objectives of BPAC as available on its website at http://www.bpac.in/objectives do not specifically denote that BPAC represents the interests of passengers or cargo facility users of the airport. BPAC is therefore not a stakeholder and consequently they are not at liberty to submit any comments with regard to the consultation process initiated by the AERA.

BIAL submits that BPAC's submissions are undated unsigned and consequently no cognizance should be taken thereof by the AERA."

- 2.57 Comments have been received from BIAL for comments on Stakeholder received for CP 22 from:
 - 2.57.1 Sanjeev Dyamannavar
 - 2.57.2 GoK
 - 2.57.3 BPAC
 - 2.57.4 British Airways
 - 2.57.5 Cathay Pacific
 - 2.57.6 FIA
 - 2.57.7 IATA
 - 2.57.8 IOCL
 - 2.57.9 Lufthansa Cargo
 - 2.57.10 Lufthansa German Airlines
- 2.58 The Authority has carefully gone through the comments received from the stakeholders on the Authority's position on these aspects, presented in its CP 14 and CP 22. The Authority's reasoned decisions on these aspects are discussed in the following sections.
- 2.59 The Authority had carried out discussions with BIAL on 17th April 2014, 23rd April 2014, 21st May 2014 and 29th May 2014 on matters relating to Variable Tariff Proposal, Capital Expenditure etc.
- 2.60 Submissions received after CP 22 received from 30th January 2014 till the date of this Order (MYTO) have been uploaded on Authority's website vide Public Notice No. 3/ 2014-15 dated 3rd June 2014.
- 2.61 The remaining part of this Order is generally structured as follows. Discussion on each issue has been segregated into six sections.
 - 2.61.1 First section presents a summary of BIAL's submissions.
 - 2.61.2 Second section presents a summary of the Authority's discussion on the issue, as presented in CP 14 and CP 22.
 - 2.61.3 Third section presents the comments made by the Stakeholders to the Authority's position on the issue stated in the CP 14 and CP 22.
 - 2.61.4 Fourth section presents the response made by BIAL to the comments made by the Stakeholders on the issue.

- 2.61.5 Fifth section presents the comments made by BIAL itself on the issue in addition to its responses to the Stakeholder comments.
- 2.61.6 Sixth and the final section presents the Authority's examination of Stakeholders' comments, BIAL's responses and BIAL's own comments on that issue.
- 2.62 Decisions taken by the Authority on various issues in respect of BIAL are summarized in Para 28 below.

3 Framework for determination of Tariff for Kempegowda International Airport (Earlier Bengaluru International Airport), Bengaluru

- 3.1 The Authority is determining aeronautical tariffs in accordance with the policy guidance provided by the legislature under the provisions of the AERA Act. The Authority is required to adhere to this legislative policy guidance in discharge of its functions in respect of the major airports. These functions are indicated in Section 13 (1) of the AERA Act:
 - 3.1.1 Determination of the tariff for the aeronautical services;
 - 3.1.2 Determination of the amount of the development fees including User Development Fee;
 - 3.1.3 Determination of the amount of the passenger service fee levied under rule 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 Further to the specification of functions to be performed by the Authority, the legislature also provides policy guidance on the factors, which are to be considered by the Authority in performing those functions. Under Section 13 (1) (a) of the AERA Act, the legislature requires the Authority to determine tariff for the aeronautical services taking into consideration the following factors:
 - 3.2.1 the capital expenditure incurred and timely investment in improvement of airport facilities;
 - 3.2.2 the service provided, its quality and other relevant factors;
 - 3.2.3 the cost for improving efficiency;
 - 3.2.4 economic and viable operation of major airports;
 - 3.2.5 revenue received from services other than the aeronautical services;
 - 3.2.6 concession offered by the Central Government in any agreement or memorandum of understanding or otherwise;
 - 3.2.7 any other factor which may be relevant for the purposes of the Act.
- 3.3 The Authority, acting in accordance with the legislative policy guidance as above, had issued a white paper on "Regulatory Objectives and Philosophy in Economic Regulation of Airports and Air Navigation Services" on 22nd December 2009 and Consultation Paper No.03/2009-10 on 26th February 2010, as indicated in Para 2.3 above.

3.4 The GoI supported the White paper of the Authority and MoCA had given its comments at the stage of White Paper vide its letter No.AV.2011/003/2009-AD dated 9th March 2010, wherein it stated inter alia that "...the ultimate objective should be to reduce the burden on the end users (passengers)"

Components of ARR

3.5 The ARR under Single Till for the Control Period (ARR) will be calculated as under:

$$ARR = \sum\nolimits_{t = 1}^5 {(AR{R_t})} \; and$$

$$AR{R_t} = (FRoR \times RA{B_t}) + {D_t} + {O_t} + {T_t} - NA{R_t}$$

where	
3.5.1	t is the Tariff Year in the Control Period.
3.5.2	ARR_{t} is the Aggregate Revenue Requirement for year t.
3.5.3	FRoR is the Fair Rate of Return for the control period.
3.5.4	RAB_t is the Regulatory Asset Base for the year t.
3.5.5	D_{t} is the Depreciation corresponding to the RAB for the year $t. \label{eq:decomposition}$
3.5.6	$\ensuremath{\text{O}_{\text{t}}}$ is the Operation and Maintenance Expenditure for the year t, which includes \textbf{all}
	expenditures incurred by the Airport Operator(s) including expenditure incurred on
	statutory operating costs and other mandated operating costs.

- 3.5.7 T_t is the Taxation for the year t, which includes payments by the Airport Operator in respect of corporate tax on income from assets/ amenities/ facilities/ services taken into consideration for determination of ARR for the year t.
- 3.5.8 NAR_t is the Gross Revenue from services other than aeronautical services for the year
- In Authority's terminology, the Non-Aeronautical Revenue is normally that which is generated within the Terminal Building as well as on account of car parking and other items like Advertisement etc. The revenue that BIAL may obtain from Land monetisation is taken as Revenue from such monetisation and not included in the above formula as Non-Aeronautical Revenue, though such revenue is clearly "Revenue received from services other than the Aeronautical services" (Section 13(1)(a)(v) of the AERA Act). The Authority has noticed that in its discussion and some of the correspondences, BIAL regards Revenue from activities outside the Terminal Building (and particularly from land etc.) also as Non-Aeronautical Revenue. The Authority has in its framework in Airport Order and Airport Guidelines, given a separate

treatment for monies obtained from commercial exploitation of land. The letter dated 26th August 2013 received from GoK indicates the guiding principles for utilisation of land as contained in its various documents, the relevant extracts of which were also attached to the letter. The Authority has already analysed in detail the relevant documents and had detailed its analysis in CP 14. The Authority had therein felt that the proceeds from land monetisation should flow into the Airport Project for which one of the mechanisms indicated by the Authority was reduction from RAB.

3.7 BIAL in its MYTP 2013 submissions had also presented the computation of ARR under 30% Shared Revenue Till. It had thus taken into account 30% of Gross Revenue from Non-Aeronautical Services without considering costs associated thereto. Hence, under Shared Revenue Till, the ARR computation can be explained as under:

$$ARR = \sum_{t=1}^{5} (ARR_{At}) \text{ and}$$

$$ARR_{At} = (FRoR \times RAB_{At}) + D_{At} + O_{At} + T_{At} - \alpha \times NAR_{t}$$

where

- 3.7.1 t is the Tariff Year in the Control Period.
- 3.7.2 ARR_{At} is the Aggregate Revenue Requirement for Aeronautical Services year t.
- 3.7.3 FROR is the Fair Rate of Return for the control period.
- 3.7.4 RAB_{At} is the Regulatory Asset Base for the year t on the Asset Base related to provision of Aeronautical Services.
- 3.7.5 D_{At} is the Depreciation corresponding to the RAB for the year t on the Asset Base related to provision of Aeronautical Services.
- 3.7.6 O_{At} is the Operation and Maintenance Expenditure for the year t, which include expenditures incurred by the Airport Operator(s) including expenditure incurred on statutory operating costs and other mandated operating costs, for providing Aeronautical Services.
- 3.7.7 T_{At} is the Taxation for the year t, which includes payments by the Airport Operator in respect of corporate tax on income from assets/ amenities/ facilities/ services taken into consideration for determination of ARR for Aeronautical Services for the year t.
- 3.7.8 NAR $_{\rm t}$ is the Gross Revenue from services other than aeronautical services for the year t.
- 3.7.9 α is the percentage of Gross Non-Aeronautical Revenue taken into account for the purposes of calculation of Aeronautical Tariffs.

3.8 Framework on specific matters is summarised below:

RAB Boundary

- The AERA Act requires the Authority to take into consideration "Revenue received from services other than the Aeronautical Services" while determining tariffs for Aeronautical Services. Hence the Authority can take into calculation, all revenues arising from all the services other than Aeronautical Services. Such services could include even those outside the airport terminal and the ones that are generally associated with commercial exploitation of land leased to the airport operator that is in excess of requirement of airport (Generally referred to as Real Estate Development). The Authority had addressed this issue in its Airport Order (See Para 3.12 below) and after Stakeholders' Consultation, decided on the RAB boundary that it will generally follow in its tariff determination of Aeronautical Services.
- Regarding delineation of RAB boundary, the Authority has considered both aeronautical and non-aeronautical services that will be provided by BIAL. As an illustrative list, the non-aeronautical services and activities would include duty free shopping, food and beverages, retail outlets, public admission fee for entry into the terminal, hotel, if any provided inside the terminal building, banks, ATMs, airlines offices, commercial lounges, spa and gymnasium facilities, car parking, etc. The Authority is aware that this is not an exhaustive list. In addition to the above, individual airport operator may innovate and add more Non-Aeronautical Services so as to improve the passenger conveniences or enhancing ambience of the airport and terminal building.
- 3.11 The real estate development by the airport operator through commercial exploitation of land leased or granted to it, which is in excess of the airport requirement, would normally be outside the RAB boundary. This means that the revenues from commercial exploitation of such lands would, in normal course, **not** enter into the calculation of revenues required for aeronautical tariff determination. However, there may be such circumstances which the Authority may be required to take into account (like special covenants in the Concession Agreement or Lease Deed, etc.) that may require separate consideration for taking revenues from real estate development into calculation of aeronautical tariffs. An illustrative list of such developments would include hotels (outside the terminal building), Aerotropolis, convention centre, golf course, shopping complexes and residential areas, etc. Again this is not an exhaustive list and the airport operator may develop such real estate for

other uses. The Authority understands that the real estate development or for that matter commercial development on such land is subject to the relevant land zoning restrictions of the local bodies and in other specific covenants or special acts like the AAI Act, etc. They may also be governed, additionally, by the covenants of other agreements entered into by the public authorities with the airport operator (for example, OMDA or Lease Agreement, etc.). The treatment considered by the Authority in respect of land in excess of airport requirement for BIAL has been discussed in Para 11 below which talks about the Authority's approach in this regard.

- 3.12 The Authority, in its Airport Order, has outlined the principles for inclusion / exclusion of assets from the aeronautical RAB to be considered for tariff determination. The principles for exclusion of assets from RAB Boundary are presented below:
 - 3.12.1 The assets that substantially provide amenities/ facilities/ services that are not related to, or not normally provided as part of airport services, may be excluded from the scope of RAB;
 - 3.12.2 The assets that in the opinion of the Authority do not derive any material commercial advantage from the airport (for example from being located close to the airport) may be excluded from the scope of RAB;
 - 3.12.3 The Authority will not include working capital in the RAB.
 - 3.12.4 Work in Progress (WIP) assets would not be included in the RAB until they have been commissioned and are in use.
 - 3.12.5 The investment made from pre-funding levy (DF) would not be included in the RAB.

Asset Allocation of RAB:

3.13 The Authority had, for time being, based on the submissions made by BIAL on Asset categorisation and Terminal Building area, computed the asset allocation (aeronautical and non-aeronautical asset base or aeronautical and non-aeronautical RAB) given by BIAL while calculating the aeronautical tariffs under the option of Shared Revenue Till, and noted that such asset allocation may not be relevant for the purposes of Single Till. Since BIAL had made submission also under Shared Revenue Till (in addition to Single Till), the Authority examined its submissions under Shared Revenue Till for which the Authority took into consideration the asset allocation as computed by it. The Authority has however stated that the Authority would commission an independent study for the same.

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

- As per the provisions of the AERA Act, the Authority considers the services rendered in respect of cargo, ground handling and supply of fuel (CGF) as the aeronautical services. The Authority's approach towards recognition of revenue accruing to the airport operator in respect of the CGF services in CP 14 was that that if the service is being provided by the airport operator himself, the revenue accruing to it (along with associated costs) on account of the provision of the service would be considered as aeronautical revenue and if the service is outsourced by the airport operator to a third party concessionaire, the revenue accruing in the hands of the airport operator through revenue share / rental etc. from such third party concessionaire would be considered as non-aeronautical revenue.
- 3.15 Pursuant to MoCA letter dated 24th September 2013 (in response to CP 14), the Authority had considered revenue from CGF service provides as Aeronautical Revenues, irrespective of the person rendering the service. Accordingly, in CP 22 the Authority had proposed to consider the revenue from CGF service providers as Aeronautical Revenue.
- 3.16 The Authority has decided in this order, that revenues from CGF services, whether provided by the Airport Operator or third party concessionaire would be treated as Aeronautical Revenues in the hands of BIAL.
- 3.17 The Authority's detailed analysis on the same is presented in Para 20 below.

Consideration of Bad debts written off

3.18 The Authority, in line with its principles on Discounts and bad debts as has been elaborated in the Airport Order and Airport Guidelines, does not decide to allow for Bad Debts and Discounts as these are commercial decisions of the Operator. However, in case, there are specific circumstances of any write-off which in the opinion of the Authority can be considered to be a one-off event, the Authority may consider such write-offs as part of Operating Expenditure.

Consideration of CGF ISPs as Agents of BIAL

3.19 The Authority noted that BIAL, in its Appeal No. 12/2011 has stated that the ISPs are the agents of BIAL – The principal (as detailed in Para 2.7 above). The Authority also noted that BIAL, however, in its MYTP 2012 and MYTP 2013 had recognized only its share of revenues from these ISPs as part of its Non-Aeronautical Revenue. While BIAL had subsequently withdrawn its appeal, the Authority had, in CP 14 proposed to also examine the Multi Year Tariff Proposal submitted by BIAL, considering the revenues earned by BIAL's

agents as Revenue in the hands of the Principal – BIAL, which is in line with BIAL's submission in its Appeal No. 12/2011 (i.e. the ISPs are agents of Principal – BIAL).

- 3.20 Subsequent to BIAL's submission that the ISPs are not their agent (Refer Para 19.11 below), the Authority decides to consider the ISPs as third party concessionaires and not as BIAL's agent and accordingly decides to reckon the revenues received by BIAL from the CGF Service providers in computing the Aeronautical Tariffs.
- 3.21 The Authority's analysis is presented in Para 19 below.

Regulatory Framework

3.22 The Authority notes that BIAL has, even in its comments on Stakeholders' comments dated 3^{1st} March 2014, has referred the Order dated 15th February 2013 of AERAAT wherein BIAL has stated that:

"AERA has submitted that Order No. 13, Order No. 14 and Direction No. 5 are only indicative of the mind of AERA, prima-facie. The Appellate Tribunal disposed of the appeals by keeping all contentions and issues open. In view of the same, BIAL submits that AERA is not bound by Order No. 13, Order No. 14 and Direction No. 5 and at any event, the contents thereof are not final and binding..."

- 3.23 The Authority notes that AERAAT Order (also refer the sequence of events detailed in Para 2 above) state as under:
 - "5... when the matters came for disposal on merits it was found that in spite of the guidelines the directions issued pursuance thereto yet there would be no impediment for the AERA to consider all the relevant issues and then to finalise the order regarding the determination of tariff of airports."....
 - "6. If this is so, there would not be any question of proceeding with the hearing of these appeals at this stage since in spite of the impugned orders it will be open for the appellants to canvass all the contentions which they want to raise in these appeals and convince AERA about their merits.
 - 7. It has so happened that in spite of elapse of substantial time period the tariff has still not been determined which causes prejudice to both the concerned parties as well as the stakeholders.
 - 8. In that view, we would dispose-off these appeals with the direction to the AERA to complete this exercise of determination of tariff and while doing so, the AERA would give opportunities to all the stakeholders to raise all the plea and contentions and

consider the same. The impugned orders herein would not come in the way of that exercise. We would, however, request AERA to complete the determination exercise as expeditiously as possible. We have taken this view as we are of the firm opinion that it would not be proper to entertain the appeals on different stages of determination of tariff and to give the finality to the questions of final determination of tariff..."

3.24 It is only pursuant to the AERAAT Order that the Authority had examined all the submissions made by BIAL as part of MYTP 2012 and detailed its analysis in CP 14. One of the issues examined in detail was the Regulatory Till and BIAL had made its submissions under both Single Till and Dual Till. The Authority had proposed adoption of Single Till based on its detailed analysis in CP 14. Thereafter as detailed in Para 2 above, the Authority also took into consideration BIAL's letter to the Authority dated 30th July 2013 (suggesting 30% Shared Revenue Till as a workable solution) as well as letter received from MoCA dated 24th September 2013 suggesting inter alia, a 40% Shared Revenue Till and accordingly the Authority issued CP 22. Here the Authority had carefully examined all submissions made by BIAL in MYTP 2013 and provided its detailed analysis. Similarly the Authority is now examining all the submissions and comments made by various stakeholders (including BIAL) to CP 14 and CP 22, on all the Regulatory Building Blocks, including Regulatory Till and is issuing the Order. 3.25 Hence, the Authority has examined the various submissions made by BIAL and other Stakeholders including inputs and comments received on the Airport Order and Airport

Guidelines and is issuing this Order.

4 Consideration of Regulatory Approach and Till

a. BIAL's submission on Till and Authority's analysis in CP 14

- 4.1 In MYTP 2012, BIAL had made submissions under Single Till and Dual Till. BIAL had submitted that Dual Till had to be considered as the basis for determination of Aeronautical Tariffs.
- 4.2 The grounds considered by BIAL for supporting Dual Till Regime included:
 - 4.2.1 Concession Agreement contemplated Dual Till
 - 4.2.2 Manner of Adhoc UDF Determination of BIAL by MoCA
 - 4.2.3 Tariff determination Mechanism adopted in case of Mumbai and Delhi Airports
 - 4.2.4 Affidavit by Prof. David Gillen
 - 4.2.5 ICAO Policies on economic regulation
 - 4.2.6 Report submitted by Bridge Link Advisors to Government with reference to the Consultation Paper issued by the Authority
 - 4.2.7 Article written by Shri K Roy Paul
 - 4.2.8 Financial covenants and lender's letter
 - 4.2.9 Letter of Prof. Gajendra Haldea
- 4.3 BIAL had also submitted that the airports have to be first governed by the "Light Touch Approach".
- Further to the above, BIAL had also submitted a letter to the Hon'ble Minister, MoCA on 15th April 2013 requesting for MoCA "to make a policy on Till to be adopted and issue appropriate direction to AERA under Section 42(2) of the AERA Act, 2008" and a need to "issue policy directive under Section 42 (2) to keep any Real Estate Development revenue and expense out of the purview of tariff determination as AERA has no jurisdiction on such off airport development". In support of its submission BIAL had submitted various documents including Prof. David Gillen's affidavit, Article of Shri K Roy Paul on "Airport modernisation in India", Copy of Dr. Gajendra Haldea's letter to the Authority dated 6th October 2010, extracts from Project Information memorandum, Concession agreement and Letter dated 12th April 2013 issued by ICICI Bank to BIAL.
- The Authority had carefully examined the various submissions made by BIAL with respect to Dual Till. The Authority had analysed each main category of submission made by BIAL / documents submitted by BIAL and detailed its views on the same in the CP 14, which are given below:

Light Touch Approach

At the outset, the Authority noted BIAL's submission in the appeal before AERAAT regarding the adoption of Dual Till regulation. In its submission through an affidavit, BIAL had not indicated or proposed light touch regulation. However, subsequently vide BIAL's affidavit dated 12th January 2012, BIAL brought before the Tribunal what was termed as "testimonial affidavit" by Prof. David Gillen. The Authority noted that BIAL in its submission had requested that:

"BIAL proposes that, in the first instance, light touch regulation can be adopted and only in the event of evidence of misuse of supposed market power, resort to intrusive regulation. BIAL believes that the threat of regulation will be a sufficient deterrent for misuse of supposed market power."

4.7 In addition to the above, BIAL in a separate submission, requested that Dual Till approach be followed. BIAL had also submitted that:

"In order to contribute to the regulatory process, BIAL is also suggesting certain alternative regulatory mechanisms, which may not only be in full compliance with statutory requirements, but also aid in airport development and modernization."

- 4.8 The Authority needs to act within the mandate of the Act through which the legislature has given detailed policy guidelines as to the factors the Authority needs to take into account while determining tariffs for the Aeronautical services. Light touch regulation as contemplated by Prof. Gillen is not within the framework of the provision of the AERA Act and the Authority does not have the legal jurisdiction to follow this approach. Therefore, the Authority did not propose to follow the path of light touch regulation. The Authority therefore had analysed the implications of tariff determination both under Single Till and Dual Till approaches.
- 4.9 **Report of Commerce Commission New Zealand (Excessive Pricing):** On excessive pricing, the Authority had also noted a finding (Feb 8, 2013 of Commerce Commission New Zealand in its "Report to the Ministers of Commerce and Transport on how effectively information disclosure regulation is promoting the purpose of Part 4 for Wellington Airport" Section 56G of the Commerce Act 1986) wherein the Commission found that its information disclosure (ID) regime, had not prevented the Wellington airport from charging excessive airport rates that had enabled it to obtain more than fair rate of return on its investments and

that ID has not been effective at limiting excessive profits. The Authority noted that the Airport charges in New Zealand are under light handed regulation.

- 4.10 Report of Dutch Competition Commission (NMa): As regards the light handed approach adopted in Australia for regulating its airports, the Authority had also come across a report commissioned by the Dutch Competition Commission (NMa) through German Aviation Performance (GAP), titled "The economic market power of Amsterdam Airport Schiphol". The report was released in Jan 2012. Prof. Starkie reviewed the same on 23rd March, 2012 which is available on the Airneth website (www. airneth.nl) commenting on some aspects of the study and giving his opinion, inter alia about the experience of Australian regulation, the countervailing power (or absence thereof) of the airlines arresting the tendency of the airport (under light touch regulation) to charge excessive tariffs and the role of negotiations between the airport and airlines therein. According to Prof. Starkie, nonaviation activities may restrict the airport incentive to increase charges for aviation activities because aviation activities exert a positive externality on the non-aviation services. Prof. Dr. Andreas Polk on behalf of the GAP study team wrote a rejoinder thereto on 6th Sept 2010 and had countered the observations and comments of Prof. Starkie. Salient points of the comments of Prof Starkie as well as Prof. Polk's rejoinder are given below.
- 4.11 Commenting on non-aviation activities restricting the airport's incentive to increase charges for aviation activities, and the issue of **market power** Prof. Polk commented that

"To our understanding the author in fact argues that the non-aviation activities might restrict the airport's incentives to increase charges for aviation-activities, because aviation-activities exert a positive externality on the non-aviation services. The airport will internalize these effects by reducing charges. More simply stated: The more traffic the airport attracts, the more customers shop at the airport, which in turn increases revenue in the non-aviation shopping and parking business. Thus, according to this argument, a dominant airport will voluntarily not exercise market power. It has incentives to lower its airfares to a competitive level in order to internalize the externality and attract customers for the non-aviation business areas. So why discuss market power at all instead of releasing all airports from regulation? The argument may indeed play a role and the author correctly indicates at this possibility but in terms of regulation, the incentives to internalize must be very strong

and effectively restrain the market power of the airport. Furthermore, it would have to restrain the airport from exercising its market power in all relevant areas of aviation activities (i.e. O&D passengers, transfer passengers and cargo). From our point of view, this is not the case and during our investigations, we did not come over any indication that this aspect is strong enough to render regulation superficial. However, we agree that this aspect is indeed an interesting question and should be subject of further research. But even if we took this aspect into account, the comment confines itself to simply indicating at what could be a problem, but does refrain from giving any evidence or at least indication that the argument might indeed be important in practice and beyond mere theoretical ideas. "(Emphasis added)

4.12 As far as the issue of **light-handed regulation in Australia** is concerned, Prof. Polk in his comments called it "an interesting experiment", asking the question, namely, "but what does this prove?" Prof. Polk's comments on this issue are:

"Yes, the Australian approach towards airport regulation is different, as the comment correctly notes, and we think it's an interesting experiment. But what does this prove? The Australian system of income taxation and the Australian social security system also differ more or less from the European as well as from the American approach. Are they also superior, just because they're Australian? The Australian approach of (non) regulation is indeed an interesting experiment and we are sure will see future research on how it performs compared to the regulatory approaches used in so many other countries around the world. But without further research it appears too speculative from our perspective to solely rely on this argument, as long as there is no evidence that the internalization effect is strong enough to outweight all other indicators pointing towards the existence of market power of Amsterdam airport Schipol."

4.13 On the aspect of **negotiation and bilateral bargaining**, Prof. Starkie had commented that:

"Airlines have sunk costs at particular airports, that they are faced with high switching costs and therefore are vulnerable should an airport exercise pricing power. But airports too have sunk costs and are potentially vulnerable in the new era to possible capricious behaviour by airlines exercising their new found freedom of establishment. Fortunately, the world of commerce has development mechanism for dealing with this problem. It is for the respective parties to negotiate a contract

securing their respective long-term positions and there are now many examples of contracts between airports and airlines which stipulate prices, qualities of service and a commitment to invest on the part of the airport and to base aircraft on the part of the airline."

4.14 Prof. Polk had also given his comments as follows:

"The comments correctly indicate that the aspect of sunk costs may well work in both directions, but immediately finds relief in what David sees as one of the healing inventions of modern economic systems (its bilateral bargaining, not to put you on the rack). The proposed solution is simple: If the airport negotiates contracts with the airlines, the problem of market power vanishes into the air, just because there are negotiations! Those guys of you with kids may know the experience that bilateral bargaining may well be one-sided (the others, guess how!). So is the pure existence of bargaining really sufficient to render questions of market power superfluous? We think not.... (Emphasis added). Thus bilateral bargaining over the regulation domain is less attractive for the airport and it does not play a major role for the determination of aviation charges....The comment (of Prof Starkie) hints at some interesting questions for future research: Among these are the issue of costs and benefits of regulation, the appropriate approach towards it, or the lessons we can learn from the Australian experience (did I say experiment?) of freeing up airports."(Emphasis added)

- 4.15 The purpose of the above discussion was to indicate different views of experts as well as Regulatory and Competition Authorities regarding the Light Handed approach to the economic regulation of airports. The Authority would need to follow, in the Indian context, the provisions of AERA Act which embody the legislative policy guidance in this matter. The Authority had noted that it would thus be inappropriate to graft only one or two elements like Light Handed approach from other countries onto the Indian context.
- In the Indian context, the airport's viability (including requirements for Capital Expansion) is heavily contributed directly by the passengers (around two thirds or so) through the UDF as it directly impinges on the passengers. The Concession Agreement entered into between BIAL and GoI also requires the Authority to determine the User Development Fee. In as much as the UDF is a revenue enhancing mechanism to enable the Airport Operator to get Fair Rate of Return, calculations with respect to different building blocks in terms of the expenses, asset base as well as Fair Rate of Return become necessary under Schedule 6. This

is apart from the determination of other Regulated Charges like LPH and Passenger Service Fee.

- 4.17 One of the important objectives of economic regulation of airports is to protect the reasonable interests of the end users (viz. the passengers and cargo facility users) balancing it with the legitimate interests of the airport operator of getting a fair rate of return on his investment consistent with the risk profile with all the attendant risk mitigating measures proposed by the Authority. The Indian Legislation has given detailed policy guidance to the Authority in the matter of determination of Aeronautical tariffs. In its White Paper that outlined different alternatives of Economic regulation of Airports, the Authority had put up for Stakeholders Consultation that it would calculate the Yield per passenger (YPP) and leave it to the Airport Operator to decide on the Individual components that would aggregate to YPP in its discretion.
- 4.18 The Government in its response did not support this alternative and in its comments on "Form of Price Control and Tariff structure" had stated that:

"Individual tariff structure may be more appropriate as different charges would have different bearing on the end users. Any subjective decision by the Airport Operator, which most likely will be shrouded in ambiguity, would lead to unnecessary criticism at later stage"

4.19 Hence, GoI was averse to the Airport Operator having freedom to determine individual tariff for Aeronautical services subject to an overall Price Cap. Adoption of a Light handed Regulatory Regime of the type as operates in Australia or for that matter, in New Zealand, for India is not feasible.

Promises made to BIAL's Shareholders be respected:

According to BIAL, its Shareholders made commitments to develop a world class airport in Bengaluru on certain promises made and the framework in which the shareholders made their investments and commitments be respected and adhered to. The Authority understands the various agreements signed between BIAL with Authorities like GoK (Land Lease Agreement/ Deed, SSA), GoI (CA) as well as the SHA would constitute the framework as well as obligations for both the Shareholders of BIAL as well as Public Authorities. Coming specifically to the issue of Regulatory Till, the Authority had analysed the covenants of these documents and did not find any warrant to indicate that, as submitted by BIAL, that Dual Till

is "implied" therein. On the other hand, the Concession Agreement specifically refers to the formation of Independent Regulatory Authority (IRA). The proposals that the Authority had put up for Stakeholders Consultation took into account the need for giving a Fair Rate of Return as well as additional capital for funding the expansion. The proposals on the other hand also took into account the interest of the Passengers (lowering the charges directly impinging upon them viz. UDF) as well as taking into account the explicit provisions contained both in the Land Lease Agreement (purpose for utilisation of land granted by GoK) as well as the covenants in the Shareholders Agreement that according to the plea taken by BIAL, put restrictions on the possibility of further equity infusion.

4.21 BIAL had referred to the Airport Infrastructure Policy, 1997 according to which, one of the components was "revenue from non-aeronautical sources as an internal resource for financing of airport infrastructure". None of the agreements refer to the Airport Infrastructure Policy. Once an agreement is signed, it will need to be read with respect to the covenants contained therein. The Authority noted that in one of its submissions on position under AERA Act, BIAL has stated that "Authority's reliance on the Standing Committee Report is misplaced in law. A Parliamentary Committee Report on a bill cannot be a tool for interpretation of a subsequently enacted statute" and that it should "rely on the very words employed in Section 13(1)(a)(v), to cull out the true import of this Section.". The Authority had adequately addressed the issue of the history of AERA Act in Para 4.50 below and does not wish to repeat the same here. BIAL however had drawn inferences from Airport Infrastructure Policy (1997) that pre-dates the signing of the Concession Agreement by at least 6 years. BIAL's stated position regarding deliberations of the Parliamentary Standing Committee and at the same time reliance on Airport Infrastructure Policy, 1997 are mutually inconsistent. Hence, to interpret the express and unambiguous covenants in the Concession Agreement, reference to the Airport Infrastructure policy is unwarranted. Secondly, the Concession Agreement itself contains provisions for formation of IRA to regulate "any aspect of Airport activities". Services like CGF are included in the list of such "Airport Activities". CGF is also defined as Aeronautical Service under AERA Act. The Authority had, based on assessment of materiality, competition, user agreements etc., after Stakeholders Consultation, determined the tariffs for these services as were proposed by the respective Service Providers. The Authority thus did not feel that BIAL's shareholders need have any concerns on this count. The Authority thus felt that it's proposal of Single Till was in consonance with the AERA Act as well as having taken into consideration the different agreements.

Shri K Roy Paul's article on "Airport Modernisation in India

- 4.22 BIAL had also annexed an article by Shri K Roy Paul, the then Secretary of MoCA, dated 9th June 2003 that according to BIAL is an indication of Dual Till being contemplated in BIAL. From the relevant paragraph it would appear that the reference to Dual Till in case of BIAL is made in the context of ensuring that "the airport investor has greater flexibility to expand non aeronautical/ commercial operations which includes Airport Services and reduces pressure for increasing Airport charges". The Authority therefore inferred that the basic purpose was to improve airport services as well as to moderate airport charges.
- 4.23 Secondly, in BIAL's letter to the Hon'ble minister dated 15th April 2013, BIAL, while arguing about the ICAO policy not mandating Single Till, had made the following points:

"If ICAO policies on user charges had mandated Single Till, then the same would have been clearly mentioned in the policy documents (but this is not so)

(Secondly) if Single Till was propagated by CA it would have simply stated that Single Till would be adopted while determining Airport charges (again it is not so)"

The Authority noted that following the above argument made by BIAL with respect to Single Till, if the Concession Agreement had intended Dual Till, it would have clearly stated that Dual Till would be adopted while determining Airport Charges. However, this is not so. Furthermore, the Concession Agreement specifically refers to the formation of IRA. The CA also states that such Authority may regulate any aspect of Airport Activities. Airport Activities as mentioned in Part I of Schedule 3 and especially includes inter alia, the services of Cargo, Ground handling and fuel supply in addition to a host of other services that can normally be called "Non Aeronautical". Hence the CA itself clearly spells out the GoI intention that some or all of the Airport Activities may be regulated by the Proposed IRA. The Parliament has set up the Authority and given its legislative policy guidance to determine tariffs for aeronautical services. While so doing, it has also required of the Authority to take into account the "Revenue from services other than aeronautical services". Hence, Dual Till that does not take into account such revenue from services other than aeronautical would seem to run counter to the legislative policy guidelines and thus not implementable.

Adhoc UDF Determination

4.25 The Authority had noted the contents of the letter dated 15th April, 2013 from BIAL

to Hon'ble Minister of Civil Aviation regarding determination of Aeronautical charges of BIAL. In this letter, BIAL had given the background of determination of Adhoc UDF by MoCA. In this letter, BIAL had referred to two documents, namely (a) Concession Agreement dated 5th July, 2004 and AERAAT order dt. 15th February, 2013. In this letter, BIAL had indicated that it approached MoCA for allowing UDF for international and domestic departing passengers at Rs. 1070 and Rs. 675 per passenger respectively. As against this request, MoCA allowed UDF of Rs.1070 (inclusive of taxes) for international departing passengers and reduced UDF for domestic departing passengers to Rs. 260 (inclusive of taxes) per passenger. BIAL had stated that its application for UDF was based on Dual Till and that MoCA allowed UDF for international passengers based on Dual Till but for domestic passengers it considered cross-subsidisation of aeronautical charges from part of the non-aeronautical revenue. According to BIAL, the extent of cross-subsidisation was 30% in line with UDF finalized by MoCA for AAI airports, namely, Ahmedabad, Amritsar, Jaipur, Mangalore, Trichy, Udaipur and Varanasi.

- 4.26 The Authority had occasion to note MoCA's determination of UDF in respect of AAI airports (CP No. 9/2013-14 dated 21st May 2013). As has also been noted therein, as far as the airport of Ahmedabad is concerned, the UDF was determined not by MoCA but by the Authority vide its Order dated 18th May, 2010.
- 4.27 Secondly, the Authority noted that, in case of BIAL, the dates from which the International UDF determined by the Govt. became effective was 24th May, 2008 (vide its letter dated 3rd April 2008) while the effective date for adhoc UDF for domestic passengers was 16thJanuary, 2009 (vide its letter dated 9th January 2009).
- 4.28 Thirdly, since the UDF is a revenue enhancing measure, it's rate needs to have some reference to the period for which it is permitted to be levied.
- 4.29 Fourthly, BIAL's letter itself has stated that according to its information, the adhoc UDF for domestic passengers was not made on Dual Till but on 30% subsidization from non-aeronautical revenue (Shared Revenue Till). If this is the methodology followed by MoCA, the Authority observed that this was at variance from the stand taken by BIAL in its appeal before AERAAT that the Concession Agreement (CA) 'implies' Dual Till. BIAL did not appear to have challenged in any Judicial forum, the determination of Adhoc UDF by the Govt. for domestic departing passengers based on what BIAL would regard as incorrect reading of the CA, in that MoCA determined the adhoc UDF not according to Dual Till but Shared Revenue Till at 30%.
- 4.30 Fifthly, BIAL's statement that 30% shared revenue till, in case of BIAL, adopted by

Govt. was "in line with UDF finalized by MoCA for AAI airports" did not appear to be chronologically in order in as much as Government's determination of UDF in AAI airports was made in 2010 (that is to say, after January, 2009) and thus, the Government's determination of UDF for AAI airports did not predate its determination for BIAL.

Tariff determination for CGF

- Agreement, stating that Concession Agreement gives freedom, without restriction to BIAL and/or Service Providers Right Holders to determine such charges. The Authority has always maintained that it is required to take into consideration under Section 13(1)(a)(vi) of AERA Act any concessions granted by the Central Government and as such it would duly consider the provisions of the Concession Agreement. However, while so doing, it would also be bound by the specific legislative guidance with regard to the definition of aeronautical services.
- Under AERA Act, Cargo, Ground Handling and Supply of Fuel (CGF) to aircraft are regarded as aeronautical services, hence the Authority is required to determine the charges for the same. Appeal of BIAL before the Tribunal (Appeal No. 12 of 2011) challenging the jurisdiction of the Authority to determine the charges for CGF, was withdrawn by it after argument before AERAAT spanning two years. By the judgment of the AERAAT delivered on 3rd May 2013, AERAAT allowed the Bengaluru International Airport to do so and in its concluding part has directed that "implementation of tariff may now commence". This means that the tariffs for the three services of CGF as had been determined by the Authority under the AERA Act would come into operation. BIAL had not pressed the plea that the Authority had no such jurisdiction to determine charges in respect of CGF services in view of the Concession Agreement which does not classify these charges as regulated charges. Hence the charges for these services, as determined by the Authority in accordance with the provisions AERA Act had now become applicable as per AERAAT's order.
- 4.33 Furthermore, while in the instant case BIAL had stated in its letter to Hon'ble Minister as well as in its averments before AERAAT that the Concession Agreement should be followed, the Authority noted that its largest stakeholder, namely, M/s GVK Group did not have similar insistence of adhering to contractual agreements in respect of Mumbai airport. GVK Group had not wanted the provisions of the agreements like OMDA in respect of CSI Airport, Mumbai to be strictly followed wherein OMDA had stipulated that all finances of CSI

Airport, Mumbai must be brought by the joint venture company namely MIAL through equity and debt. Even so MIAL submitted application for grant of development fee first to the Government and thereafter to the Authority. The Government as well as the Authority considered the provisions of acts like Airports Authority Act (Section 22 A thereof) and AERA Act, 2008 (Section 13 (1) (a) (i) read with Section 13 (1) (b)) and determined DF giving primacy to the provisions of the Acts passed by the Parliament over stipulations made in contractual agreements. Thereafter, (vide para 4.122 below) Hon'ble Minister of Civil Aviation had "asked the AAI to take on priority the equity infusion with the purpose of abolition of ADF", expecting MIAL as well as DIAL to meet the present funding gaps through equity infusion and proportionate raising of loans so that ADF will stand abolished. Hon'ble Minister had also directed AAI to submit the proposal for equity infusion to the Authority. Accordingly, AAI submitted necessary proposals of its ability for equity infusion of Rs. 93 Crores in DIAL and Rs. 293 Crores in case of MIAL. Both DIAL and MIAL however represented to the Authority that the Private Shareholders were not in a position to contribute their share of additional equity. Both these companies also did not make any cash call for additional equity. The Authority noted that DIAL and MIAL had requested the GoI and later the Authority to follow and take recourse to the provisions of the Development Fee as contained in Section 22A of the AAI Act and Section 13(1)(b) of the AERA Act though according to OMDA as well as the subsequent development namely the press release by MoCA, Companies were expected to bring in additional capital in the form of equity / debt for financing the Project. Hence, it can thus be said that DIAL and MIAL did not want to adhere to the provisions of OMDA.

In the instant case, however, BIAL wanted to go by what is its interpretation of the Concession Agreement both in respect of Regulatory till (it has stated in its letter to the Hon'ble Minister for Civil Aviation that Concession Agreement means Dual Till) as well as its interpretation that under Concession Agreement the services like Cargo, Ground handling and fuel supply are not to be regulated (though these services are defined as aeronautical services under AERA Act according to which the Authority is required to determine the tariffs for these services). Apart from the clear and unambiguous provisions of the AERA Act (defining CGF services as Aeronautical Services) even within the Concession Agreement, it is expressly mentioned that the Government would set up an Independent Regulatory Authority (IRA) and that the IRA would be set up to regulate **any aspect** of Airport Activity. The services of Cargo, Ground Handling and Fuel Supply form part of the Airport Activities under the Concession

Agreement (vide Para 4.58 below). Hence, there did not appear to be any cause for grievance on the part of BIAL if the IRA were to regulate "any aspect" of the CGF Services which form part of the Airport Activities. With the enactment of AERA Act there can thus be no doubt that the Authority is required to regulate CGF services. BIAL's interpretation that under Concession Agreement the services like cargo, ground handling and fuel supply are not to be regulated appears to be a selective approach and convenient reading of the provisions of the Concession Agreements and the AERA Act.

Business Plan considered for financing / Bank's letter

- 4.35 The Authority had also noted the letter from M/s ICICI Bank dated April 13, 2013 which BIAL interpreted as supporting Dual Till in the financial business plan used at the time of funding of the initial phase of construction by the lenders in 2005.
- 4.36 The operative part of this letter stated that according to ICICI Bank, for the purpose of financial close for the project (a) it was assumed that airport charges will be regulated and is to be determined by the MoCA/Independent Regulatory Authority (IRA) and (b) other charges may be determined by BIAL.
- As far as (a) is concerned, these are the charges mentioned in the Concession Agreement as regulated charges. As regards (b), the Authority notes that it has found that provision of services of CGF, namely Cargo, Ground Handling and Fuel Supply are either competitive (Cargo, Ground Handling and Into plane services) or are supported by reasonable user agreements (Fuel Farm) at BIAL and thus adopted light handed approach (in accordance with its CGF guidelines) in its tariff determination for these services. As a consequence, it has determined, after Stakeholders' consultation, the charges as were indicated to it by the respective service providers.
- 4.38 The complete reading of Clause 10.3 of the Concession Agreement is as under: "BIAL and/or service provider, right holders, shall be free without any restriction to determine the charges to be imposed in respect of facilities and services provided at the airport or on the site, other than the facilities and services in respect of which regulated charges are levied."
- 4.39 Since the Service Provider Right Holder i.e. the ISPs had submitted their tariff proposals for CGF to the Authority and after examination the Authority had found that they operate in competitive environment, the Authority had approved the rates as were submitted

by these service providers. Hence purely from the standpoint of determination of other charges, the Authority did not feel the need to deviate (and lower) the charges proposed by the service providers in so far as the CGF is concerned.

- 4.40 However, BIAL itself went in appeal to AERAAT against the CGF Guidelines stating that the service providers are agents of BIAL and hence cannot approach the Authority for determination of tariffs for these Aeronautical services provided by what BIAL averred to be its Agents. BIAL however has not indicated at that stage (or even now) what are the charges for these services that BIAL intended to levy. BIAL averred that "The Concession Agreement excludes regulation of 'the services of Cargo Facility, Ground Handling and Supply of Fuel to aircraft" and thus had also challenged the jurisdiction of the Authority to determine charges for these services. On the averments of BIAL, AERAAT granted stay to implementation of the tariffs determined by the Authority for CGF. The stay continued from around October 2011 till May 2013 (when BIAL withdrew the appeal and AERAAT issued its Order dated 3rd May 2013, amended on 10th May 2013 stating that the tariffs should now be implemented). The tariffs determined by the Authority for these services were generally higher than the earlier tariffs and if they were implemented from October 2011, more revenue would have accrued to BIAL. Hence its professed concern for the requirement of ICICI Bank's letter did not appear to be rooted on sound financial considerations, especially when BIAL itself withdrew the appeal only after over a span of 1 ½ years. Apart from this, the Authority also observed that Schedule 6 of the Concession Agreement gave an option to BIAL to increase the regulated charges of Landing, Parking, Housing and PSF by inflation index from 2001 (the effective date of AAI tariff) upto the Airport Opening Date (the alternative option being to continue to levy the then prevailing tariffs as of the Airport Opening Date that are charged by AAI in its other airports). The Authority notes that BIAL, did not choose to increase the regulated charges by inflation index from 2001 to 2008. AAI had not increased its charges at the other Airports and hence they remained at the same level as on 2001. Therefore, BIAL opted to levy charges in 2008 as were existing in 2001.
- 4.41 As regards other charges (other than CGF), these can be generally called charges for non-aeronautical services (normally within the terminal building). The Authority had not determined the same as they are outside its legal mandate and jurisdiction under AERA Act.
- 4.42 In sum, the proposals of the Authority put forth in the Consultation Paper (CP 14), for Stakeholders' consultation addressed the issues indicated in the ICICI Bank's letter and

that concerns if any, of BIAL, on this account.

Tariff Determination done in Mumbai and Delhi Airports

4.43 BIAL had, in its letter dated 15th April 2013, to MoCA submitted that:

"Ignoring specific provision of the AERA Act concerning provisions of CA is in contrast to the fact that the same Authority has considered provision of State Support Agreement and other concession documents, while determining tariff for Delhi and Mumbai Airports."

- 4.44 The submissions of BIAL in this matter appeared to indicate that since the Authority had taken into consideration the covenants of SSA/ OMDA in determining tariffs for Aeronautical services for Delhi and Mumbai airports (and considered 30% of Shared Revenue Till), it should likewise take into account the covenants of the Concession Agreement while determining tariffs for BIAL. According to BIAL, the services of CGF are Non-Aeronautical, according to the Concession Agreement. Secondly, BIAL had in its appeal before AERAAT taken a position that Concession Agreement "clearly implied Dual Till".
- The Authority had elaborated its reasoning with respect to its tariff determination in Mumbai and Delhi airports extensively in its Order of aeronautical tariff determination in respect of Mumbai airport and the same are not repeated here. The Authority had given due consideration to the provisions of the AERA Act, the provisions of OMDA and SSA in determining tariffs for Delhi and Mumbai airports. The Authority proposed to do the same while determining the tariffs for BIAL also. It may be mentioned en-passant that appeals have been filed before AERAAT against Delhi and Mumbai Tariff determination orders stating that the Authority should have followed Single Till Approach for these Airports also.
- As far as treatment of CGF in the agreements vis-à-vis the provisions of the Act is concerned, the provisions of Act or any Statute take primacy over any other contractual agreement. Hence the question of giving primacy to a contractual agreement over the provisions of the Act does not arise. The Authority had accordingly determined the charges for the provisions of these services namely, CGF. The Authority had followed the same approach with respect to Mumbai and Delhi also where the services of Cargo and Ground Handling were categorised as "Non Aeronautical" according to OMDA signed between the GoI and DIAL/ MIAL and yet the Authority has determined the charges for the same in accordance with their definition as "Aeronautical Services" under AERA Act.

The alleged flawed reasoning by AERA

4.47 BIAL had made the following submission in its letter dated 15th April 2013 to MoCA with respect to its interpretation of Section 13(1)(a)(v)

"Another reasoning adopted by AERA, which again is flawed, is that AERA Act, 2008 vide Section 13 (1)(a)(v) stipulates that while determining tariff for aeronautical services it should take into consideration "revenue receipt from services other than the aeronautical services", but this reasoning totally ignores provisions under same Section 13 (1)(a)(vi) which mandate Authority to take into consideration the concession offered by the Central Government in any Agreement or Memorandum of Understanding or otherwise. Even under Section 13 (1)(a)(v) there is no mention of all revenue receipts. If AERA interpretation is correct then the question comes what happens to expense on services other than aeronautical services. Is it possible to consider all revenue receipts and ignore expenses altogether? It is humbly submitted that such interpretation will lead to an incongruous situation where revenue receipts go to subsidise aeronautical charges and expense are borne by the airport. Hence, even AERA Act provisions when refer to revenue receipts it implies not all revenue receipts."

- According to the above interpretation of BIAL, the Authority cannot take into consideration "revenues received from services other than aeronautical services" on the ground that, as BIAL had put it, "what happens to expenses on services other than aeronautical services". BIAL had further posed the question "is it possible to consider all revenue receipts and ignore expenses altogether?" It then deduced that "such interpretation will lead to incongruous situation where revenue receipts go to subsidise aeronautical charges and expenses are borne by the airport. Hence even AERA Act provisions when refer to revenue receipts, it implies not all revenue receipts".
- The Authority noted that the interpretation of BIAL, if accepted, would render a clear and express provision (viz. taking into consideration the revenue received from services other than the aeronautical services) nugatory on account of an imaginative inference based on an absent provision (viz. expense on such services). The Authority noted that in the State Support Agreement in respect of Delhi and Mumbai Airports it is expressly provided that in 30% shared revenue till, the costs in relation to such revenue shall not be included while calculating Aeronautical charges. Hence, taking only the revenues but not the costs does not

appear to be incongruous. Absence in Section 13(1)(a)(v) regarding the expenses associated with generation of revenues from services other than aeronautical, can also reasonably mean that the Authority may take no such expenses or all such expenses or only a part thereof while determining aeronautical charges. The Authority, on balance, had taken, in its calculation, all the expenses associated with "services other than aeronautical" while determining Aeronautical charges if it finally decided to adopt Single Till.

4.50 Apart from the above, the Authority had noted that, clause (v) of Sec 13(1)(a) requiring the Authority "to take into consideration the revenue received from services other than the aeronautical services" did not appear in the initial bill of AERA Act that MoCA introduced in the Lok Sabha on 5th Sept 2007. When the Bill was referred to the Department related Standing Committee, the Standing Committee made a recommendation that "...The economies of airport operation depend on both revenue streams i.e., aeronautical revenue and non-aeronautical revenue...... and Government may amend the Bill in order to include non-aeronautical services in the ambit of the Bill". In response, the Government stated that "it is important to notice that internationally major airports earn bulk of their revenues through non-aeronautical stream. This enables them to moderate the aeronautical charges. In India also, there is an increasing realization that the non-aeronautical revenue has to increase so that core airport user, i.e., airlines, passengers and cargo facility users do not have to bear high aeronautical charges. Keeping this in view it is felt that one of the factors relevant for consideration to determine the tariff for the aeronautical services could be the **revenue** generated by the subject airport operator through non aeronautical stream (emphasis added)." Accordingly, following clause was added in Section 13 (1) (a) of the Bill by way of official amendments:

"(v) Revenue received from services other than aeronautical services".

4.51 The intention of the legislature clearly was not only to regulate the non-aeronautical services but express recognition that "the economies of airport operation depend on both revenue streams i.e., aeronautical revenue and non-aeronautical revenue". The government's response also clearly stated that in order that the airport users do not have to bear high aeronautical charges, "one of the factors relevant for consideration to determine the tariff for the aeronautical services could be the revenue generated by the subject airport operator through non aeronautical stream." The Government had thus put the passengers'

interest firmly in focus while moving the official amendment accordingly.

4.52 BIAL had also given its interpretation of the words "Revenue from Services other than Aeronautical" as follows:

"Section 13(1)(a)(v) provides for consideration of revenue received from services other than aeronautical services. The provision does not indicate that all revenue must be included. Additionally, the proviso to Section 13(1)(a) indicates that any or all of the considerations specified in Section 13(1)(a) (i) to (vii) can be considered for determining different tariff structures for different airports. These two features visibly indicate that the AERA Act does not mandate a Single Till approach. Instead, the AERA Act provides the leeway to the Authority to apply appropriate mode of regulation, keeping in mind the factors prescribed in Section 13(1)(a)(i) to (vi)."

- 4.53 The Authority had examined the provisions of Section 13(1)(a)(v) in its Airport Orders dated 12th January 2011. BIAL has interpreted the Section 13(1)(a)(v) to mean that "all" revenue from services other than aeronautical need not be considered by the Authority while determining Aeronautical tariffs. Simultaneously, the Authority noted that BIAL has also stated in different fora (its appeal before AERAAT, its letter dated 15th April 2013 to the Hon'ble Minister, MoCA, and its submissions before the Authority) that according to it (a) the Concession Agreement should be adhered to and (b) the Concession Agreement implies "Dual Till". Read with this stated position of BIAL, its above submission would mean that since AERA Act does not use the wording "all" revenue, in fact, the Authority should take into account "no" revenue from services other than aeronautical. The Authority however did not consider that this would be the true interpretation of BIAL. Regarding "leeway to the Authority to apply appropriate mode of regulation keeping in mind the factors prescribed in Section 13(1)(a)(i) to (vi)", according to the Authority, its approach towards appropriate mode of regulation would balance the reasonable interest of both the Airport Operators with those of the Airport users (defined as Passengers and Cargo facility users in AERA Act).
- 4.54 That apart, the Authority noted that, Black's Law dictionary (9th Edition) defines "revenue" as "gross income". For a company, this is the total amount of money received by the company for goods sold or services provided during a certain time period.
- 4.55 According to Collins Dictionary, Revenue is defined as "The gross income from a business enterprise, investment, property, etc."
- 4.56 The Authority notes that the Merriam-Webster dictionary defines "Revenue" as:

- "1: the total income produced by a given source a property expected to yield a large annual revenue
- 2: the gross income returned by an investment
- A.57 The Authority, thus, had in its calculations under Single Till taken the (Total) Revenue from Services other than Aeronautical in respect of BIAL. Based on the above mentioned considerations, the Authority had also come to the conclusion that Dual Till that does not take into account any revenue from Services other than Aeronautical Services is not in consonance with the provisions of AERA Act. In its submissions before the AERAAT, BIAL has stated that it's Concession Agreement "clearly implies" Dual Till. From the above submission of BIAL, it would appear that it would like the Authority to use what according to BIAL is the "leeway" to apply appropriate mode of regulation, in adopting a Dual Till approach. The Authority did not find this line of reasoning tenable. The Authority believed that if at all it is required to use the "leeway" it should in the reasonable interest of the passengers, balancing it however with the interest of the Airport Operator.

Change in law

- BIAL had, in its submission stated that any changes to the Regulated Charges section by the Regulatory Authority will trigger a change in law (pursuant to the Concession Agreement) and that BIAL would be entitled to compensation. As far as the provisions of the Concession Agreement are concerned, the Authority did not find any warrant against its approach of Single Till were it to finally adopt the same. The Concession Agreement did not indicate that income from Non Aeronautical Services should not be taken into account in determination of Aeronautical tariffs. Furthermore, as far as CGF is concerned, the Authority noted that these were expressly included in Part I of Schedule 3 which gives out a list of "Airport Activities". As has been also mentioned elsewhere, the concession agreement also explicitly refers to the IRA that is set up to regulate "any aspect of airport activities".
- 4.59 As per "Words and phrases legally defined" (4th 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". Determination of charges for items included in

"Airport Activities" would thus fall under "any aspect" of the said Airport Activities, with wide interpretation of the word "any". Hence, determination of charges for "Airport Activities" is embodied within the framework of the Concession Agreement itself.

- The Authority also noted that under Section 2(a)(vii), Aeronautical Service means "any service provided for a stakeholder at an airport for which the charges, in the opinion of the Central Government for the reasons to be recorded in writing may be determined by the Authority". The Act also defined Stakeholder in section 2(o) of the Act. Hence, if the Central Government were to expand the scope of remit of the Authority to include some item that is included in Part I Schedule 3 Airport Activities of the Concession Agreement, as an Aeronautical Service, the Authority would be required to also regulate such a service (including if relevant, determining its charges). This scheme of things is also contemplated within the framework of the Concession Agreement itself.
- 4.61 The Authority has been established under AERA Act by the Parliament. The Act also specifies CGF as Aeronautical Services (that are expressly listed as Airport Activities in the Concession Agreement). The Authority's determination of charges for these activities therefore, is not contrary to the provisions of the Concession Agreement and hence cannot constitute a change of law.

Bridge Link Advisors' Report as referred to by BIAL

- 4.62 **Level Playing Field Argument:** M/s BIAL had relied on the level-playing field argument that was advocated by M/s BridgeLink Advisors to suggest a 30% shared revenue till in respect of private Greenfield airports. The Authority had analysed this argument in detail and gave its comments to MoCA vide its letter dated 6th September 2010.
- As far as the issue of level playing field for private Greenfield airport is concerned, the Authority had given its reasoning that 30% shared till in Brownfield Airports of Mumbai and Delhi cannot be taken as a benchmark for Greenfield Airports. This is because, what is important to consider in any discussion of Shared or Hybrid Till are the amounts of non-aeronautical revenues finally remaining in the hands of the airport operator.
- In case of Delhi and Mumbai, apart from 30% of the revenue share that is to be reckoned towards calculation of aeronautical tariffs, 46% of non-aeronautical revenue in Delhi and 39% in Mumbai are to be given to the AAI by the respective airport operators. These percentages of revenue share are not to be regarded as a cost pass through in regulatory

accounts. Not only that, the expenses incurred in providing the 30% of Non-aeronautical revenues that is reckoned towards determination of Aeronautical charges are also not to be factored as a cost pass through.

- 4.65 This means that 76% of the total non-aeronautical revenue in Delhi and 69% in Mumbai go out of the hands of the airport operator to (a) defray airport charges and (b) to the AAI. On the other hand, in case of BIAL, revenue share that the airport operator is required to give to GoI is 4% and that too is deferred for 10 years (upto 2018-2019) and furthermore this 4% is also regarded as a cost pass through.
- Hence in case of DIAL/ MIAL, between 76% to 69% of the non-aeronautical revenue is effectively taken out from the hands of the Airport Operator. If the expenses that Delhi and Mumbai airports incur in providing the non-aeronautical services is further considered, the amounts left in the hands of the airport operator on account of non-aeronautical income generated at the airport would be much less than 24% or so in Delhi and 31% in Mumbai.
- The comparable level playing field argument, if accepted, would similarly require at least corresponding percentages of Non-Aeronautical Revenue to be taken out from the hands of BIAL with similar treatments with regard to costs associated with them. Hence, if the cost associated with generating these non-aeronautical revenues are also not to be factored as a cost pass through, it would mean that such costs would also not be available to BIAL for the purposes of calculation of Non Aeronautical Revenue available with it. The Authority also noted that BIAL in its submission before AERAAT has stated that it's Concession Agreement "clearly implies" Dual Till. On balance therefore, the Authority was not persuaded to accept that 30% Shared Revenue Till should be followed for BIAL on the ground of "Level playing field".
- 4.68 The Authority also noted that BIAL indicated, quoting from the report of Bridge Link Advisors that "the level of 30% share has been considered on the basis of consideration used in the State Support Agreements for Mumbai and Delhi Airports". BIAL appears to infer that it should also be governed by the 30% Shared revenue till, as was done in case of Delhi and Mumbai Airports. The Authority noted that the concession agreement of BIAL was signed on 5th July 2004. The Authority had taken into account the various provisions of the Concession Agreement and has analysed the implications of Single Till and Dual Till on Aeronautical Charges (including UDF). It therefore felt that selectively taking into account only

one provision (viz. 30% shared revenue till) in SSA/OMDA (without regard to the other provisions contained therein, particularly those relating to the revenue share to AAI at 46% in case of Delhi and 39% for Mumbai) and thereafter drawing inferences from a such a later agreement (OMDA was signed in 2006) was not warranted. Provisions of an agreement signed after BIAL's Concession Agreement cannot be imported into the Concession Agreement of BIAL. Doing so will be altering the conditions of grant of the concession post signing of the Concession Agreement apart from the 30% Shared Revenue. The Authority had also analysed the differences between the Concession Agreement of BIAL with those in Delhi and Mumbai.

4.69 **Comparison of Project Agreements of DIAL/ MIAL and BIAL**: The following table summarises the differences between DIAL/ MIAL –Vs- BIAL:

Table 6: Comparison between Project Agreements of DIAL/MIAL and BIAL

Item	DIAL/MIAL	BIAL	Remarks
Airports coming up within a 150 kms of aerial distance	New airport permitted, but DIAL/MIAL have a right of first refusal within an aerial distance of 150 kms and can match the acceptable bid within 10%. SSA contains detailed formula for	Blanket embargo on any domestic or international airport coming up within the aerial distance of 150 kms (except for Mysore and Hassan Airports)	Insulation of BIAL from future competition is far greater than what obtains for DIAL/MIAL.
Structure of Tariff determination	determination of aeronautical tariff.	No such formulae given in Concession Agreement, except the statement for adherence to ICAO policies.	
Regulatory Till - 30% shared Revenue	30% shared revenue was a bidding parameter on which the revenue share by the airport operator to AAI was compared. The proportionate expenditure incurred to generate 30% of Non-Aeronautical revenue however, is not to be considered as a cost pass through for tariff determination.	No such bidding parameter nor any mention of 30% shared revenue or any other such percentage.	
Revenue share treatment	46%/ 39% of the Gross Revenue to be given as revenue share to AAI (DIAL and MIAL respectively) not allowed as a cost pass through. AAI is thus compensated for loss of revenue on account of transfer of these Airports to Private Operators.	4% of the Gross Revenue to be paid as Concession Fee to Gol. This is a cost pass through and also deferred for the first 10 years from the Airport Opening date (24 th May 2008). AAI is not compensated for loss of revenue on account of closure of the existing HAL	The % as well as treatment of the revenue share for DIAL/ MIAL and that of BIAL are entirely not comparable.

Item	DIAL/MIAL	BIAL	Remarks		
		Airport. (Refer Para 14.35.1 below)			
Agreement signing date	Agreement signed in 2006	Agreement signed in 2004	Since the agreement of BIAL pre-dates those of DIAL/MIAL, BIAL's Concession Agreement cannot be compared.		
Land Lease Deed	Clause 2.1 of the Lease Deed makes it clear that land is granted for "the sole purpose of the Project and for such other purposes as are permitted under this lease deed. The 'Project' is defined as "the design, development, construction, finance, management, operations and maintenance of the airport as provided for under OMDA." In the Lease Deed, therefore, financing the project, namely the Airport, is the sole purpose. The Authority notes that around 45 acres were commercially exploited for the purposes of financing of phase-I of Delhi airport yielding Rs. 1471 crore. Similarly, MIAL has also proposed to commercially exploit around 28-30 acres of land to generate Rs. 1000 crore. The remaining land permitted for commercial exploitation in Delhi would be used for future phases till 2026.	Lease Deed in respect of BIAL has express provision that the land in excess of the airport requirements has been given to make the project (airport) feasible.	Lease Deed Agreements expressly provide that the excess land is to be used for the purposes of Airport.		
Labour	OMDA prescribes that AAI manpower will be absorbed upto 60%. For those not absorbed, the retirement compensation is to be paid by DIAL/ MIAL to AAI.	No such provision.	Upon closure of the existing HAL airport at Bengaluru and consequent opening of Airport at Devanahalli the staff at HAL		

Item	DIAL/MIAL	BIAL	Remarks
			airport remained with AAI.
Financing of Project	Clause 13.1(a) of OMDA states that DIAL/ MIAL shall arrange for financing and/or meeting all financing requirements through suitable Debt and Equity contributions.	The concession agreement expressly provides use of UDF, for, inter alia funding Capital Expenditure. The state Support agreement with GoK states that BIAL will receive Interest Free loan of Rs. 350 crores of which Rs. 335.5 Crores was disbursed (that is more than the Initial Equity of Rs. 284.6 crores provided by the Private Promoters)	Reflecting the nature of the airports, DIAL/MIAL are regarded as Brownfield Airports and BIAL a Greenfield one.
Quality of Service Parameters	Prescribed in Chapter IX of OMDA, for Objective and Subjective Service quality requirements, ISO Certifications etc. Prescribes penalties for not adhering to standards at given percentages. Penalty amount to go to AAI.	Prescribed in Article 9.2 of Concession Agreement (substantially different from OMDA). Penalties in the form of Liquidated damages on account of drop in performance to be mutually discussed and to be deposited in Airport Development Fund. Monies from this fund to be utilized to fund improvements at the airport at the Direction of the Gol.	Prescriptions of standards for quality of service different for DIAL/ MIAL vis-à- vis BIAL.

4.70 The above table would bring out some of the differences in the Project structures including quality of service standards of BIAL as contrasted with those of DIAL/ MIAL. This comparison is made only with the objective that while structuring these projects, the Government had taken into account both the special characteristics and requirements of these airports. It would therefore not be correct to select only one element namely "30% revenue share" to be applied also to BIAL in the name of "level playing field". As has been explained by the Authority, in addition to 30% revenue share, additional percentages of

Revenues including "Non Aeronautical Revenues" - 46% (Delhi) and 39% (Mumbai) are required to be paid by the Private Airport Operator to AAI without being treated as a cost pass through. These percentages are much larger than 4% Concession Fee payable by BIAL to GoI and that too, is a cost pass through and in addition is also deferred for the first 10 years of Airport Operation.

- In its submissions immediately following the reference to the "Level playing field" at 30% shared revenue till, BIAL had stated that "our humble request is that provisions of CA need to be honoured by the Authority". It appeared to the Authority by the above, that, BIAL was requesting that instead of Dual Till, the Concession Agreement "implies" 30% Shared Revenue Till. The Authority however noted that BIAL, in its appeal before AERAAT had argued that the Concession Agreement contemplates Dual Till. It had not mentioned the concept of "level playing field" at 30% Revenue share in its submissions before AERAAT. The stand of BIAL before the AERAAT was thus not in consonance with that in the current submission, if BIAL argued in favour of a "Level Playing field" at 30% Share Revenue Till being consistent with the Concession Agreement.
- 4.72 **Risk Reward Considerations (Greenfield Risk)**: Recommendation of the M/s BridgeLink Advisers relied upon by BIAL was to treat revenues from cargo and Ground Handling services as part of Non-aeronautical revenues. The reason that M/s BridgeLink Advisers gave was that "it must be noted that giving fee share arrangement at these airport (BIAL) this will be fair in the context of the risk –reward considerations for investors given that they were subject to Greenfield risk during the development of these airports".
- 4.73 BIAL in its appeal before the AERAAT had averred that

 "The Authority has failed to appreciate that the ISPs are sub-contractors and consequently agents of the Appellant Principal and the Authority could not have regulated such agents directly."
- 4.74 The Authority noted that Cargo and Ground Handling services are defined as Aeronautical services under AERA Act. Going by BIAL's own averments before the AERAAT, BIAL would be regarded as a Principal providing these Aeronautical Services through its agents. Hence, the revenues generated by these Aeronautical services provided by BIAL would need to be reckoned as having accrued to it. These revenues in the hands of BIAL would thus need to be treated as "Aeronautical Revenues". The Authority had calculated the financial implication of this approach of BIAL taken before AERAAT separately. Under this

approach, the Authority was unable to accept the recommendation of M/s Bridge Link to treat the revenues from CGF as Non-Aeronautical revenues.

- The above position apart, as far as the "Greenfield Risk during the development of this airport" is concerned, the Authority noted that the initial promoters, namely, M/s Unique, M/s L&T and M/s Siemens as well as the State Promoters (GoK and AAI) could be said to have been exposed to the Greenfield risks during the development of these airports. The GoI as well as GoK had extended large number of risk mitigating measures that the Authority had outlined in Para 14.34 below. Furthermore, by grant of Adhoc UDF, effective 24th May 2008, the GoI had effectively mitigated the risks faced by BIAL. At any rate, the development stage was over by May 2008 when the Airport commenced its commercial operations. Thereafter, the new promoters namely the GVK Group acquired substantial stake in the company and is now the largest shareholder. The observations made in Bridge Link Advisors report regarding "Greenfield Risks" do not appear to be relevant any longer.
- Airport Beta captures only systematic risks and not project specific risks. Secondly, if there were certain such Greenfield risks, the capital structure of the company should reflect such assessment of risk in having higher proportion of equity than the existing 70:30 structure. Thirdly the GoK, by giving interest free loan of Rs. 335.5 crores had considerably mitigated the capital financing risk of the airport in question. GoK had also invested heavily on other supporting infrastructure at the airport. GoK had also acquired land in excess of the airport requirement and stipulated that such excess land can be used for Non-Aeronautical activities expressly to make the airport project feasible.
- 4.77 The current largest shareholder, namely, M/s GVK had acquired the stake in M/s BIAL in and around 2010 when the airport had already completed its development stage, commenced operations on 24th May, 2008 and was in successful operation. M/s BIAL had cash profits of Rs 16 Crore from first year of its operations, namely, 2008-09 itself. The new largest stakeholder, namely, GVK had also apparently seen the potential in BIAL airport and purchased stake in it at around 10 to 12 times the book value of the shares. These actions are not reflective of a perception of a high Greenfield risk.
- 4.78 The Government had also agreed to close down the functioning at the then existing airport popularly known as HAL Airport so that the new (Greenfield) airport is assured of traffic from the date it starts its operations.
- 4.79 The Government had also committed not to permit a civilian airport with the aerial

distance of 150 kms with the exception of Mysore and Hassan that were already been sanctioned and that the airports of Mysore and Hassan can only operate as domestic airports and not as international airports. This removed any traffic risk that could have been perceived at that point of time. In his article "Airport policy in Australia and New Zealand: Privatisation, light handed regulation and performance, Paper for Conference viz. Comparative Political Economy and Infrastructure Performance: Case of Airports; Fundacion Rafael del Pinto, Madrid, September 18-19,2006" Prof. Forsyth points out that "there is no viable alternative airport within 150 km - the airline simply has no alternatives". The Authority noted that according to Prof Forsyth, a distance of 150 kms is considered adequate to rule out any viable alternative to Bengaluru International Airport. The MoCA had prescribed that no civil airport will come within 150 kms of airports like Bangalore and Hyderabad as well as Delhi and Mumbai. Secondly, alternative means of transport like high speed rail or roads may not provide adequate alternatives. This would then have a result of eliminating competition and should thus considerably lower the riskiness of the airport in question.

4.80 The Authority, in CP 14, had proposed to mitigate/eliminate the risks on account of traffic, Revenue from Non-Aeronautical Services, Operating Expenses. These, in the assessment of the Authority, mitigated the risks that airport faces and a large part of the risk was transferred from the airport entrepreneur to the user, namely, primarily the passengers. The recommendations of M/s BridgeLink Advisers would need to be viewed in this context and thus the Authority was unable to accept their assessment that Bengaluru International Airport faces at the current moment, any Greenfield risk.

Letter of Prof. Gajendra Haldea

4.81 BIAL, in its submission to the Authority and to the Hon'ble Minister, MOCA vide its letter dated 15th April 2013 had indicated Mr. Gajendra Haldea's letter detailing the approach to be adopted. Extract of the letter to MoCA is given below:

"Even Mr. Gajendra Haldea, Advisor to Deputy Chairman of Planning Commission vide his Letter No.N-14033/3/2005-Infra dated 6th October, 2010 to Chairman, AERA in response to DO letter No. AERA/CH/2.21Till/2010/186 dated 8th September, 2010 of AERA Chairman, regarding the approach to be adopted for price cap regulation of airports has clearly favoured hybrid approach instead of Single Till. Detailed reasoning for the same has been provided by Mr. Haldea in the letter under reference. A copy of the letter is enclosed as Annexure 6.

- BIAL had in its submission to the Authority as well as its letter to the Hon'ble Minister MoCA highlighted Mr. Gajendra Haldea's letter. Hence it would appear that BIAL wanted the Authority to apply hybrid till in the determination of aeronautical tariff for Bengaluru International Airport. This request was not in consonance with its submissions before the AERAAT, where BIAL had stated that the Authority should adhere to the Concession Agreement and that Dual Till is implicit in the Concession Agreement. Before AERAAT, BIAL had made no submission regarding Hybrid Till. BIAL's reference to Mr. Haldea's letter seems to indicate that BIAL now appears to regard Hybrid till as also consistent with the Concession Agreement, a position which is at variance with its appeal before the AERAAT. In accordance with BIAL's submissions made to the Authority, the Authority had proceeded, in CP 14, with the examination of the submissions made by the Airport Operator, only under Single and Dual Till as in BIAL's MYTP 2012 submissions, no mention was made of Hybrid Till.
- 4.83 The Authority has referred to the Office Memorandum dated 18th January 2010 in which Planning Commission had supported Single Till as under:

"Planning Commission favours adopting the single till approach to determine the airport charges as it treats airport as an integrated business and sets tariff without making any distinction between aeronautical and non-aeronautical services. Single till approach comes closer to maximize welfare than the dual till approach as this approach takes all airport assets and costs into account while determining the tariff rates."

Apart from the Planning Commission, the Authority also understands that the Department of Economic Affairs has in October 2013 also concurred with the Authority regarding Single Till in the Economic regulation of the Airports. The Authority had carefully examined BIAL's submission having reference to the letter from Mr. Gajendra Haldea. BIAL had inferred from the letter that Mr. Gajendra Haldea assigns a great importance to the choice of economic regulation in achieving the investment goals and also that he has advocated need for a hybrid till. In its proposals of tariff determination for BIAL, the Authority had considered both the interest of the Airport Users (defined as Passengers and cargo facility users as per the AERA Act) as well as those of BIAL. The Authority has followed the principles of transparency and consistency in preparing its approach for determination of aeronautical tariff for major airports. To ensure the same, the Authority has involved the stakeholders at various stages and considered the views expressed by them in developing its approach.

4.85 A reading of the contents of the letter would indicate that Mr. Haldea has stressed transparency in the approach of the regulator and providing adequate incentives to the private airport operator, saying that "While dealing with private players, it is critical for the regulator to ensure transparency while protecting user interests and at the same time providing adequate incentives to the operators". His preference towards Shared Revenue Till stems from what according to him are the difficulties in segregation of costs between aeronautical and non-aeronautical services in single till (According to Shri Haldea, "In the case of single till, the regulator would need to determine the expenses and revenues relating to non-aero activities while arriving at the regulated tariff. Assessing the capital and operating costs as well as the net revenues from non-aero activities is fraught with significant hazards".) Mr. Haldea had further felt that these difficulties are avoided in shared till (He had suggested that "While some of the assets and operating expenses can be clearly identified as aero and non-aero, the problem arises with common facilities being used for both. In such cases, the demarcation could be on the basis of the ratio of revenues. Thus, if aero revenues account for 40% of total revenues of the airport, the common costs could also be segregated in the same proportion").

4.86 Mr. Haldea had however, not analysed the relative level of UDF in single till vs shared revenue till. The Authority had so far analysed the workings of the Airports like Delhi, Mumbai, Bangalore, Hyderabad, Chennai, Kolkata and Guwahati where the Authority has issued Tariff Determination Orders or Consultation Papers. The Authority's experience shows that the issues of separation of assets and Operating costs between Aeronautical and Non-Aeronautical services are far more vexatious in a Shared Revenue Till calculation than in Single Till calculation. Similar has been the conclusion of the Competition Commission, UK when it did not agree, in 2002, with the proposal of CAA to move away from Single Till (Refer Para 4.138 to 4.140 below). In the Authority's experience and view the observations and conclusions of CC / CAA in support of Single Till that have continued through the sixth quinquennium (till April 2014) are equally valid for Indian conditions. Secondly, the UDF in Single Till has been found to be lower than that in Shared Revenue Till. Hence, the Authority had noted that under Shared Revenue till there is a transfer of resources from the passengers to the Airport Operator. Unless there is some underlying public purpose justifying such transfer of resources, Shared Revenue Till, in the opinion of the Authority would not be appropriate.

- 4.87 Mr. Haldea had further stated in his letter that "As long as the airports were government-owned, the single till approach may work, but with increasing private participation, we need to recognise the complexities associated with determining the costs and profits of non-aero activities". The Authority notes that Section 11 of the Airports Authority of India Act expressly enjoins upon AAI to act so far as may be, on business principles in discharge of its functions under the said Act. Moreover, in the report of the Task Force for Financing Plan for Airports issued in July 2012 by the Planning Commission (Para 5.1.8) it is stated that "the Private entity will be expected to cross subsidise the expenditure on Operation and Maintenance of these Airports from the revenues that it would generate from Non-commercial activities. This would provide a mechanism for optimising on the overall operations of the Airport while reducing the costs to the public exchequer and the user"
- Reference has been made (vide Para 4.125 below) to the approach of the Planning commission with respect to Burden on Passengers as well as lowering of costs. One of the objectives of Private sectors' participation in Infrastructure sector, according to Planning Commission, is "lowering of costs". Even otherwise, the Authority notes that generally Planning Commission expects the public sector enterprises to act on commercial principles. There is thus no a-priori reason to believe that AAI should work on single till principle but the same treatment is inappropriate for private airport operators. As mentioned in Para 4.85 above, the calculations under Single Till are more straight forward in terms of determining the costs and profits of Non-Aeronautical activities than in Shared Revenue Till.
- In context of BIAL, the Authority observed that out of the said budgeted cost of Rs. 2,470 crores, Private promoters has brought in the equity of Rs. 284.6 crores, which is about 11.5% of the said project cost. In comparison to this, the GoK as well as AAI had supported through funding of Rs. 435 crores (Interest Free Loan of Rs. 335 crores from GoK and Equity of Rs. 100 crores Rs. 50 Crores by GoK and Rs. 50 Crores by AAI). Additionally, reference is made to the deemed support given to BIAL by AAI / GoI in not requiring it to compensate for the loss of surplus on account of closure of the existing and profitable HAL Airport (vide Para 14.35.1 below). Thus it can be seen that while Private sectors' equity investment is around 13% of the said project cost, the GoK and AAI have supported the project through their funding of around 17.6% of the project cost (even without considering the deemed support mentioned in Para 14.35.1 below). Thus once the reasonable expectations of the Airport Operator in terms of fair rate of return are duly taken into account, the direct charges on the

passengers should not be higher than what they need to be. The regulatory framework that balances the requirements of the Airport Operator and those of the Airport users is, in the assessment of the Authority most appropriate.

Project Information Memorandum (Detailed Project Report)

4.90 The Authority had also considered the contents of the Project Information Memorandum (PIM) referred to by BIAL in his letter dated 15th April, 2013 to Hon'ble Minister of Civil Aviation (as Annexure-3), which is given below:

"The project information memorandum that was shared with the bidders, at several points indicated that aeronautical and non-aeronautical services should be treated as distinct sources of revenue.

- 1. Part-II -Clause-1.2 para-I on page 046, states that modern airports around the world have a substantial quantum of revenue from activities which are not directly linked to aeronautical services. This quantum varies from 50-70% at major airports in the world. The present proportion for non-aeronautical revenues at BIAL is close to 40%, much below the international level. It is clear that unless non-aeronautical revenues are allowed to develop independently, there is no incentive for the airport operator to increase the proportion as the upside would be subsumed by a reduction in the aeronautical tariffs.
- 2. Part-II -Clause-1.2 para-2 on page 046 states that non-aeronautical activities are expected to significantly augment the revenues from the aeronautical services.
- 3. Part-II -Clause-1.4 sub c1ause-19 on page 048 highlights the fact that the airport shall have a distinct and significant commercial orientation to capitalize on the development potential of Bangalore and the region.
- 4. Part II Para 3.2 on, Page 052 clearly states that it is proposed that non-aeronautical operations shall form a distinct and significant component of the airport investment. It further states that land shall be optimally and innovatively used to maximize commercial and business revenue.
- 5. In Clause-3.3 para-2 on page 078, the government recognizes that private participation in commercial projects requires the projects to be commercially viable."
- 4.91 According to the said Annexure-3, the Project Information Memorandum, as referred to by BIAL appears to have issued to shortlisted parties in September, 1999. The Authority understood that pre-RFP meeting was held on 10th September, 1999 and the

concerns and apprehension of the 7 pre-qualified bidders were also discussed. After considerable deliberations, as have been indicated in the brief history Section, finally, the Concession Agreement was signed on 5th July, 2004.

- Agreement with KSIIDC were signed on 20th January, 2005. Hence once agreements are signed, the reference point would be the covenants contained therein. All the parties that are signatories to the agreement are normally expected to incorporate the appropriate covenants reflecting their mutual agreements. The Authority, therefore, took into account the covenants of the Concession Agreement.
- 4.93 In Annexure-3, apart from reference to PIM, BIAL had also referred to clauses in the Concession Agreement as well as State Support Agreement and Project financials. BIAL had also referred to lenders to BIAL having committed their investments to the project at the financial closure, and that the fundamental bidding assumptions should not be changed in any way lest it enhances the risk perception resulting in an increased cost of capital. The Authority noted that BIAL had proposed a cost of capital at 24.4% that the Authority has not found to be reasonable and the Authority had proposed to keep the same at 16%. The apprehension of BIAL regarding increase in the cost of capital, therefore, appeared to be unfounded.
- 4.94 Furthermore, the Authority noted that in one of its submissions on position under AERA Act, BIAL has stated that "Authority's reliance on the Standing Committee Report is misplaced in law, and that it should rely on the very words employed in Section 13(1)(a)(v), to cull out the true import of this Section." However, at the same time BIAL urges the Authority to rely on a Project Information Memorandum that pre-dates the signing of the Concession Agreement by at least 4 years. This, in the view of the Authority, was a mutually inconsistent submission. As far as the issue of the observations of the standing committee on "Non-Aeronautical Services" is concerned, the Authority had given its detailed analysis in Para 4.50 above.

Affidavit of Dr. David Gillen

4.95 BIAL's letter states that:

"AERA in its airport order quotes Dr. David Gillen (para 5.27 of the Order) in support of its view that ICAO propagates Single Till. According to Dr. David Gillen himself,

reference to such quote was out of context and not applicable. The detailed affidavit submitted by Dr. David Gillen is enclosed as **Annexure.-II.**

4.96 The Authority had carefully given its consideration to this argument. As has been elaborated in Para 5.27 of the Airport Order, the Authority had quoted Dr. David Gillen as per his interpretation appearing in his paper. The Authority had also fairly mentioned that Dr. David Gillen, according to its readings of ICAO generally, is supportive of Dual Till.

4.97 On perusal of Dr. David Gillen's affidavit, the Authority had not found the reference where he has stated or felt that the Authority has quoted him out of context. In Para 64 of his affidavit, Dr. David Gillen had clarified thus: "It is, therefore, my opinion that the conclusion reached by AERA in Order 13 at para 5.32 is incorrect. It quotes me from two papers at paragraph 5.27 and 5.28. The quote as argued above, was based on the then existing statement in ICAO Doc 9802 (probably Dr. David Gillen is referring to ICAO doc 9082) regarding the inclusion of all revenues. I was under a mistaken assumption and have since read carefully the texts of the relevant documents and researched the ICAO position further." BIAL in its letter dated 15th April 2013 submitted to the Hon'ble Minister MoCA, 4.98 had, inter alia, also indicated that ICAO "does not propagate that airports have to adopt Single Till though it suggests contributions from non-aeronautical revenues occurring from the tariffs of the airport to it should be considered". BIAL had also stated in this letter that "ICAO has no firm policy on the till to be adopted" and it has in its recent policy document (Doc. 9082/9th Edi.) has mentioned inter alia, "consistent with the form of Economic oversight adopted, these costs may be offset by Non Aeronautical Revenues". The Authority had emphasised that legislative guidance on the economic oversight in contained in AERA Act, and particularly Section 13(1)(a) thereof. The Authority had also given in detail the legislative history (including the response of the government to the recommendation of the Standing Committee regarding the regulation of Non Aeronautical services) of incorporating in the Act the requirement that "revenues from services other than aeronautical" is one of the factors to be taken into account while determining charges of aeronautical services. The Authority is aware of the ICAO's position in this regard. Further analysis of BIAL's submissions regarding ICAO's policies is given in Para 4.99 below.

ICAO Policies

4.99 BIAL, in its letter dated 15th April 2013 to Hon'ble Minister, MoCA had referred to

two documents of ICAO (a) Doc 9562 and (b) Doc 9082 as given below:

"Interpretation of Sub-Paragraphs 22(i) and 22 (vii) in the ICAO's Policies for Charges and Air Navigation Services (Chapter 4 Pages 13 of Doc 9562). The following guidance may be used when applying the above principles

- 1. The existence of air traffic activity is a necessary precondition for the generation of airport non-aeronautical revenues. Such revenues are then generated through management initiatives in offering suitable products and prices. All aeronautical and non-aeronautical revenues to defray the cost base for charges is an acknowledgement of the partnership between airports and users.
- 2. The non-aeronautical revenues in question do not normally include revenues earned by the airport from activities undertaken off -airport of those undertaken by the airport in full competition with other suppliers.
- 3. Given the different local circumstances and fast changing conditions, with respect to airport ownership and management, as well as regulatory regimes, there are likely to be a range of different appropriate treatments of non-aeronautical income by airports.
- 4. When determining the contributions from non-aeronautical revenues, high priority should be given to the investment needs of airports, taking into account paragraph 24 of Doc 9028/6, which addresses pre-funding of projects, while recognizing that there may be many alternatives to finance infrastructure development.
- 5. The appropriate return on aeronautical activities should reflect differences in the level of risk from non-aeronautical activities. Further, in order to provide incentives to the airport operator, high levels of service and efficiency in aeronautical activities may be rewarded with higher returns and vice versa.
- 6. When defining the contribution from non-aeronautical revenues, an accounting system should be in place to identify the relationship between costs and revenues of non-aeronautical activities (Doc 9082/6, sub-paragraph 17 vi) refers).
- 7. As stated in point 4 above, it may be appropriate for airports to retain non aeronautical revenues rather than use such revenues to defray charges. However, there is no requirement for airports to do so and, in appropriate circumstances; there may be solid grounds for charges to be lower, consistent with Doc 9082/6, sub paragraph 22 vii).

- 8. None of the foregoing should be interpreted as encouragement to airports to exploit unreasonably their market position relative to users."
- 4.100 ICAO document 9562 is the "Airport Economic Manual" and 9082 is the ICAO's Policies for Charges and Air Navigation Services. The Authority had analysed the statement made by BIAL with respect to both these documents regarding Doc 9082/6, 6th Edi. of Doc 9082 which is published in 2001.
- 4.101 Page 4 of BIAL's letter indicated BIAL's interpretation of sub-para 22(I) and 22(vii) of document 9082/6. Upon going through these, the Authority noted item 4 (on page 5 of BIAL's letter) which read as under:

"when determining the contributions from non-aeronautical revenues, high priority should be given to the investment needs of airports taking into account paragraph 24 of Doc 9028/6" (BIAL apparently seems to have been referring to 9082/6 which talks of pre-funding of projects while recognizing that there may be many alternatives to finance infrastructure development.)"

4.102 Subsequently, in point number 7, BIAL's letter stated as under:

"as stated in point 4 above, it may be appropriate for airports to retain non-aeronautical revenues rather than use such revenues to defray charges. However, there is no requirement for airports to do so and in appropriate circumstances, there may be solid grounds for charges to be lower consistent with doc 9082/6 sub-para 22 (vii). (probably BIAL is referring to page 4-27 of Doc. 9562 namely the Airport Economic Manual)

4.103 The Authority had gone into para 22(vii) of Doc 9082 referred to by BIAL. This para reads as under:

"airports may produce sufficient revenues to exceed direct and indirect operating costs (including general administration, etc) and to provide for a reasonable return on assets at a sufficient level to secure financing on favourable terms in capital markets for the purpose of investing in new or expanded airport infrastructure and where relevant, to remunerate adequately holders of airport equity."

4.104 The Authority also maintains that while determining charges for aeronautical services, the Authority is required to take into account the capital expenditure incurred and timely investment in improvement of airport facilities (section 13(1)(a)(i)). The Authority has indicated the provision in the CA regarding UDF for various purposes including "expansion of

the facilities at the Airport". It had also proposed to give a reasonable return on assets. Hence, as far as remunerating adequately, the holders of airport equity is concerned, a reasonable return on assets is sufficient for mitigating and incentivizing their equity investments.

Authority has noted para 2(i) of Doc 9082 (9th Edi (2012) relevant portion of which reads as, "consistent with the form of economic oversight adopted, these costs may be offset by the non-aeronautical revenues". It would, therefore appear to the Authority that ICAO is leaving the form of the economic oversight to the charging Authority and further explicitly stating that "costs may be offset by the non-aeronautical revenues". As seen from Para 4.97 above, BIAL had itself stated that "ICAO has no firm policy on the till to be adopted ...". The Authority had in its calculation of Aeronautical tariffs and especially the UDF, found that passenger burden is least in Single Till. Focus on lowering passenger burden has also been stated by the Gol as its objectives. As required by the Order of AERAAT issued on 15th February 2013, the Authority had made calculations based on both Single and Dual Till and taking into account the totality of circumstances, had finally proposes its regulatory approach for stakeholders consultation, noting however that as stated by BIAL, ICAO has no firm policy on the till and hence it cannot be said that it is against either Single Till or Dual Till. The final decision of the Authority with regard to Till would thus not be inconsistent with ICAO Policies.

Concession Agreement and Dual Till

4.106 The Authority notes that BIAL has submitted the Financial Model and the MYTP Submission both under Single Till and Dual Till. BIAL has stated in its submission that:

"... the operations and business of BIAL is governed by the terms and conditions of the Concession Agreement (C.A.) entered into between the Ministry of Civil Aviation (Government of India) and Bangalore International Airport Limited (BIAL) on 5th July 2004 and related project agreements. In accordance with the C.A., the regulated charges include landing charges, parking charges, housing charges, passenger service fee (PSF) and user development fee (UDF). The rest of the revenue items such as Aviation Concessions, retail, commercial are classified as non-regulated charges, among others.

Further, C.A. does not provide for any cross-subsidization of non-regulated charges for determining the tariff of regulated charges. Therefore, the financial statements and assumptions are developed taking this approach and the details of the formats, as required under MYTP, are presented in this document.

4.107 Also, the Authority noted that while the Concession Agreement, referred by BIAL lists the Regulated charges that can be collected, it also specifies that:

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

- 4.108 BIAL had stated that the Concession Agreement signed between BIAL and the Central Govt. "*implies*" Dual Till framework for determining the aeronautical charges at BIAL. The Authority had gone into the Concession Agreement dated 5th July, 2004 between BIAL and Ministry of Civil Aviation, Govt. of India. The Authority's observations were as follows:
- 4.109 At the outset, it is well settled that an agreement needs to be explicit and unless clearly stated, one may not be able to impute certain meaning as 'implied' into it. As far as the issue of Dual Till being implied in the agreement is concerned, the Authority noted that the Concession Agreement defines "Independent Regulatory Authority" or IRA to mean the "Airports Economic Regulatory Authority set up to regulate any aspect of airport activities set <u>up (i)</u> by way of an executive order provided the functioning of the IRA is not within the control of GoI or (ii) by an Act of Parliament or an ordinance or any rules made thereunder". The Act defines 'airport activities' to mean provision at or in relation to the airport, of the activities set out at Schedule-3 Part-1, as amended from time to time, pursuant to ICAO guidelines. Provisions of Ground Handling, Cargo Handling and Aircraft Fuelling Services are included in the list of 'Airport Activities" and not included in Part 2 of Schedule 3 that lists "Non Airport Activities". Hence, even going purely by the Concession Agreement, the Authority is to "regulate **any** aspect not only of these services but other items included in "Airport activities" if the GoI were to expand of the scope of the remit of the Authority under Section 2(a)(vii). At any rate, after the promulgation of AERA Act, there can be no doubt that it needs to determine tariff for these three services.
- 4.110 With respect to the charges that the parties have right to impose, the substantive provision is embodied in Clause-10 of that agreement. This Agreement states that:

"subject to applicable law, no person (other than BIAL, any service provider and the holder granted a relevant service provider right or the AAI) may impose any charge or fee (a) in respect of the provision at the airport or any facilities and/or services

which are included within airport activities or (b) in respect of the movement of passengers, or vehicular traffic at the airport or site."

- 4.111 It is noteworthy that the stated right of BIAL **et al** is specifically subject to applicable law. The applicable law is also defined in the Concession Agreement meaning as
 - "laws provided over or effected by Govt. or the State Govt. including rules and regulations and notifications made thereunder and judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the substance of this agreement of this Agreement."
- 4.112 The Airport Regulatory Authority Act is such an applicable law, and more so, is the specific mention of the 'IRA' which is expressly mentioned in the Concession Agreement itself as have been set up to regulate any aspect of airport activities.
- 4.113 The three services of Cargo Handling, Ground Handling and Fuel Supply find mention in the airport activities of the Schedule-3, Part-1 (i.e. as "Airport Activities"). However, they do not find mention in Schedule-6, namely that of Regulated charges. As per Clause 10.3, read with Schedule 6, of the Concession Agreement, BIAL et al is free to determine charges other than the regulated charges. Based on this permission to levy such other charges, BIAL appears to have inferred that the Concession Agreement implies Dual Till framework.
- 4.114 The Authority observed that such inference is unwarranted even within the interpretation of the Concession Agreement. Freedom to levy "other charges" is not to say that the revenues therefrom should not be reckoned towards determination of aeronautical tariffs. Furthermore, after passing of the AERA Act, according to AERA Act, services like Cargo, Ground Handling and Fuel Supply are defined as Aeronautical Services for which charges are required to be determined by the Authority. The Concession Agreement also stipulates that IRA can be set up to regulate any aspect of Airport Activities. Since Act takes primacy over the agreements, etc., charges in respect of Cargo, Ground Handling and Fuel Supply cannot be determined at will by BAIL et al but need to be determined by the Authority. The Authority had already done so with respect to Air India SATS, Globe Ground India, Indian Oil Sky tanking, Bharat Stars Services Private Limited and Menzies Aviation Bobba Bangalore the independent service providers that are providing these services at Bengaluru International Airport.
- 4.115 Apart from classifying the charges into regulated charges and other charges,

Consultation Agreement does not have any covenants with regard to the methodology for the determination of the regulated charges. On the other hand, the definition of Independent Regulatory Authority (AERA) states that such an Authority is to be set up to regulate 'any' aspect of the airport activities. Airport Activities as defined in Schedule 3 Part I of the Concession Agreement not only include the above three services, it also includes other activities like the duty free sales, restaurants, bars, Vehicle Parking, Conference centre, flight catering services, general retail shops etc. that are generally known as part of 'Nonaeronautical services'. Concession Agreement nowhere mentions that the revenues from the 'other charges' should not be reckoned during the determination of aeronautical tariff. The Authority also notes that the Non-aeronautical services have been concessioned out to third parties. The charges or tariffs of such third parties providing "Non Aeronautical services" are not regulated (except CGF service providers, as these three services are included in the Concession Agreement as part of "Airport Activities" and further defined as "Aeronautical Services" as per AERA Act). The determination of tariff for CGF by the Authority is therefore fully in accordance with the AERA Act as well as after considering the Concession Agreement. Furthermore, adoption of Single Till based on the Authority's assessment of the circumstances in the Indian context, would also be in accordance with the provisions of AERA Act after having taken into consideration the Concession Agreement.

4.116 Section 13(1)(a) of the AERA Act contains legislative guidance as to the factors that the Authority need to take into consideration while determining the tariffs for aeronautical services. The concession offered by the Central Govt. is one such factor. The Authority had thus taken into consideration the Concession Agreement dated 5th July, 2004 signed between the Central Govt. and BIAL. After analysing the covenants of the Agreement, the provisions of the AERA Act, its own framework developed after extensive stakeholders' consultation, the Authority had come to the conclusion that the Dual Till is nowhere implied in the Concession Agreement and the inference of BIAL that the Concession Agreement implies Dual Till is thus unfounded.

Unwavering focus of the Government to minimise passenger burden

4.117 **Pronouncements by Gol (MoCA) and some State Governments**: The Authority had observed that the Government, through its various pronouncements had put passengers and cargo users as its main focus for economic regulation of airports through its stated

objective of minimising passenger charges. Other pronouncements of Governments highlighting the unwavering focus of the government to minimise passenger burden, is given below.

- 4.118 Comments of the MoCA to the White paper: At the commencement of its work, the Authority had issued a White Paper indicating its general approach to such determination. MoCA had given its comments at the stage of White Paper vide its letter No.AV.2011/003/2009-AD dated 9th March 2010, wherein it stated inter alia that "...The ultimate objective should be to reduce the burden on the end users (passengers)." Taking note of the comments of MoCA as well as those of the Stakeholders the Authority adopted an approach of balancing the reasonable interest of the Airport users (defined as Passengers and cargo facility users) with those of the Airport Operator, keeping in view the legislative policy guidance given to it under Section 13(1)(a) of the AERA Act.
- 4.119 In response to a Consultation Paper on the Multi Year Tariff Proposal and Annual Tariff Proposal submitted by M/s Bhadra International India Ltd, for Ground Handling Services at NSCBI Airport, Kolkata, the Transport Department, Govt. of West Bengal has vide its letter No. 3993-STD/2012 dated 25th July, 2012, inter alia, stated "However, it may be mentioned here that the decision may be taken strictly as per norms and rules with minimum inconvenience/burden to the passengers."
- A dated 6th December 2012, in response to the Consultation Paper No. 22/2012-13 dated 11th October 2012, issued by this Authority in the matter of determination of Aeronautical tariffs at CSI Airport, Mumbai had stated that "since AERA is a statutory body set up an act of Parliament i.e. Airports Economic Regulatory Authority of India Act, 2008, (the AERA Act) and carrying out its function of tariff determination, AERA should take the best decision keeping in mind the interest of Mumbai airport passengers and developers"
- 4.121 MoCA's Press Release of 12th October, 2012 asked AAI not to ask for DF in the matter of tariff determination in respect of Kolkata and Chennai airports as under:

"Taking a strong view on the proposals of Airports Authority of India (AAI) to levy Airport Development Fee (ADF) on the passengers at the Chennai and Kolkata airports, Minister of Civil Aviation Shri Ajit Singh has directed AAI not to propose any such fee on the passengers. Accordingly the AAI has now submitted proposals to Airports Economic Regulatory Authority (AERA) without incorporating ADF. **The**

Minister's directive on ADF is in line with the stated objective of the Government to make the air travel affordable and to ensure that the passengers are not subjected to any extra burden." (emphasis added).

4.122 To minimize the burden on the passengers was also the publicly stated objective in the MoCA's Press Release of 16th October, 2012 when it asked AAI to contribute equity capital in DIAL as well as MIAL so as to do away with development fee with effect from 01-01-2013. MoCA had stated that:

"Emphasizing on the objective of the Government to make the air travel affordable and to ensure that the **passengers are not subjected to any extra burden**, (emphasis added) Shri Singh has asked the AAI to take on priority the equity infusion with the purpose of abolition of ADF. If the present funding gaps in case of MIAL and DIAL are met in terms of equity infusion and proportionate raising of loans by the airport promoter including AAI, the ADF will stand abolished. As per the directions of Shri Ajit Singh the proposal regarding equity infusion by AAI will be soon submitted to AERA"

- 4.123 According to the latest pronouncements of the Hon'ble Minister for Civil Aviation, the move to allow UAE city-state Abu Dhabi's airlines increased access to the Indian market, was made keeping "passenger convenience" in mind as more foreign carriers would increase options for fliers and **bring down airfares on overseas routes** (Emphasis added) (Anindya Upadhyay, ET Bureau May 1, 2013, 06.38AM IST), wherein the Government has emphasized the ultimate objective to be to reduce the burden on the end user (passengers). This unwavering focus of the Govt. on minimizing passenger charges has important implication in the regulatory till.
- 4.124 The Authority, therefore believes that its approach of balancing the interest of airport users (defined as passengers and Cargo users) and that of the Airport Operator and minimising the burden on the passengers, while determining aeronautical tariffs of the major airports, has MoCA's broad acceptance and is consistent with various government pronouncements made at various points in time.
- Approach of the Planning Commission: Burden on Passengers, ADF and UDF, lowering of costs: Apart from the various pronouncements of the MoCA, the Authority had noted that other policy level organisations of the GoI have also stated that lowering of costs is an important consideration. For example, it was observed that the Planning Commission had stated "lowering of costs" as one of the objectives of private sector's participation in the

infrastructure sector. Task Force constituted by the Planning commission on "Financing plan for Airports" issued its report in July 2006. The Task Force had observed as under"

"It was suggested by AAI that most of the projects being contemplated under the non-Metro airports development initiative pertain to Airside and Terminal Buildings and the projects are likely to yield either negative IRR or an IRR below the PIB norm of 12%. As such, levy of ADF/ UDF on passengers at these airports was proposed. The Task Force felt that users should not be burdened with ADF/ UDF for financing unviable projects. This is particularly important in the context of the policy objective to make civil aviation a mass rather than an elitist mode of travel and to make air travel more affordable. Accordingly, the financing plan does not include revenue from ADF/ UDF charges. Recourse to ADF/ UDF should be the last resort in individual cases after all efforts at implementation through PPP have not succeeded (Source: Report of the Task Force - Financing Plan for Airports issued in July 2006)"

- 4.126 The Authority noted that according to the Task Force, even unviable projects should not be burdened with ADF/ UDF. According to the Task Force Report of July 2006, the "policy objective to make civil aviation a mass rather than an elitist mode of travel and to make air travel more affordable" would not be achieved if the passengers were to be burdened by ADF/ UDF.
- 4.127 If an airport operator has "revenue from services other than aeronautical", to ignore those (as will be the case in Dual Till) and then calculate UDF to make the airport viable, in Authority's view, cannot be termed as "last resort" more so when the legislature has clearly and unambiguously stated that the Authority should take into account such revenues for the purpose of determining the aeronautical tariffs. It has been emphasized by the Task Force (Refer Para 4.125 above) that ADF/UDF add to the travel costs unnecessarily and the Task Force did not, therefore, recommend any new charges and that recourse to ADF/ UDF should be the last resort in individual cases after all efforts at implementation through PPP have not succeeded. It would thus appear that Planning Commission felt that ADF/ UDF would not be required under the PPP route. The Authority had noted that the date of this report namely July 2006 is much later than 1st July 2004 when the AAI Act was amended to incorporate Section 22A that expressly provided for levy of ADF. The provision for UDF in Rule 89 of Aircraft rules 1937 had been in existence much earlier than the report of the Task Force in 2006, and in fact even before 5th July 2004 when the Concession Agreement between BIAL

and GoI was signed and which specifically refers to UDF. This time sequence gives, in the opinion of the Authority, broad approach regarding the circumstances under which ADF and UDF can be imposed even after their incorporation in the relevant statute and regulation. The Task Force clearly stated that "...users should not be burdened with ADF/ UDF..." Hence, in a PPP mode, the Authority inferred that the ADF/ UDF should not be required to be resorted to, let alone it being the intention that higher UDF be granted that would give to the Private Airport Operator more than fair rate of return (as would happen in any Regulatory approach other than Single Till approach). Higher UDF (under Dual Till) would make Air Travel less affordable and consequently militate against the stated Policy objective mentioned in the Task Force Report (2006) namely to "make civil aviation a mass rather than an elitist mode of travel and to make air travel more affordable".

- In another report "Private Participation in Infrastructure, Published by Secretariat for Infrastructure, Planning Commission, Government of India" dated Jan 2010, Deputy Chairman, Planning Commission had observed that "Private participation would not only provide the much needed capital, it would also help to lower costs and improve efficiencies in a competitive environment". The expectation from the PPP mode was thus to lower costs. These should then translate into making air travel more affordable through lowering of charges and "make civil aviation a mass rather than an elitist mode of travel" (Task force Report of July 2006). If an adopted regulatory approach increases the costs to the passengers (Dual Till), this would not be in consonance with the expectations of the planning Commission from PPP route in infrastructure development.
- 4.129 The Authority thus inferred that the broad approach of the policy at the highest level, (with representation of senior most functionaries of the government) towards ADF and UDF is to use these measures as a last resort even for airports in the public sector.
- 4.130 In another report of the Task force of Planning Commission dated July 2012 on "Financing Plan for Airports" the Planning Commission had made important observations regarding what according to it appeared to be a high level of UDF charge. In Chapter 5.1 of this report, it examined the case of Metro Airports at Chennai and Kolkata. Taking the example of Chennai, the Task Force examined the tariff filling of AAI before the Authority. It noticed that AAI had proposed "to increase its present passenger fee from Rs. 77 to Rs. 237 (over three-fold increase) in case of domestic passengers and from Rs. 77 to Rs. 577 (over seven-fold increase) in case of international passengers". According to the Planning

Commission, "this would be very burdensome for the passengers and may also affect the growth in traffic. In case such an increase is not allowed, AAI is likely to make loss which will affect its operations elsewhere."

4.131 Making the case for following PPP Model in respect of Chennai and Kolkata airports, the Planning Commission felt that "if a PPP concessionaire was engaged, it could raise significant non-aeronautical revenue, which in turn would reduce the passenger fee significantly". The Authority, thus, noted that the Planning Commission had felt the level of UDF charges at Chennai for both domestic and international passengers as proposed by AAI very burdensome for passengers. The Planning Commission also felt that the increase in nonaeronautical revenues should enable the passenger fees to be reduced significantly. The Authority, since then, had finalised, under Single Till the UDF for the domestic as well as the International passengers, both for Chennai and Kolkata. The domestic UDF in Chennai was determined at Rs. 167 per departing domestic passenger and Rs. 600 per departing International Passenger. Figures of UDF for Kolkata are Rs. 400 per departing domestic passenger and Rs. 1000 per departing International Passenger. According to the recommendations of the Planning Commission in its report of July 2012 mentioned above, the Planning Commission had recommended the PPP model for Chennai and Kolkata Airports on the expectation that the private sector partner would raise significant Non-Aeronautical revenues and thereby be able to reduce the passenger fee significantly.

4.132 The Authority had noted that the UDF proposed by BIAL in case of Dual till as part of the MYTP 2013 submission is significantly higher than the UDF proposed by BIAL under Single Till. A comparative table of BIAL submission made as part of MYTP 2013 is as detailed below:

Table 7: Summary of UDF rates proposed by BIAL as part of MYTP 2013 submission

- (UDF Rates under Single, Dual and 30% SRT as proposed by BIAL*								
Type of Passenger	2013-14			2014-15			2015-16		
	Single	Dual	30% SRT	Single	Dual	30% SRT	Single	Dual	30% SRT
Domestic (Rs.)	664.2	1755.8	1260.3	590.1	1484.1	1090.6	600.6	1519.1	1115.0
International (Rs.)	2576.7	7023.0	5041.3	2360.5	5936.6	4362.4	2403.4	6076.5	4459.8

4.133 The Authority notes that BIAL's submission of MYTP 2013 expects the International UDF under Dual Till to be Rs. 7023 per passenger for 2013-14 gradually declining

to around Rs. 6000 for the next two years. The Authority also notes that these numbers constitute a substantial proportion (between 33% and 50%) of the round trip Economy Airfares for short distance International routes (for ex. Sri Lanka, Singapore, Kuala Lumpur, Bangkok).

4.134 It would also be seen that even under Single Till the UDF levels are much higher than what the Planning Commission had considered to be burdensome (Refer Para 4.130 above). The Authority observes that these observations of the Planning Commission are consistent with the broad approach of minimizing burden on the passengers. To minimize the burden of airport charges on the passengers have, therefore, been the focus of the economic regulation of major airports (albeit consistent with giving a fair rate of return to the airport operator).

A.135 The government through its various pronouncements have put passengers and cargo users as its main focus for economic regulation of airports and minimising passenger charges as its objective. The Planning Commission also stated "lowering of costs" as one of the objectives of private sector's participation in the infrastructure sector. MoCA had given its comments at the stage of White Paper vide its letter No.AV.2011/003/2009-AD dated 9th March 2010, wherein it stated inter alia that "...The ultimate objective should be to reduce the burden on the end users (passengers)." The Authority, therefore believes that its approach of lowering burden on the passengers while determining aeronautical tariffs of the major airports is fully in consonance with Government's approach of minimising the burden on the passengers as reflected in its various documents and pronouncements.

4.136 Transfer of Resources from the Passengers to the Airport Operator under Dual Till: The Authority had calculated the requirement of UDF amount under both Single and Dual Till (on the assumption that the LPH is kept at the level proposed by BIAL and the Service Providers of CGF are not considered as it's agents but as third party concessionaires and Independent Service Providers) for BIAL in CP 14 as per Table 107 which is reproduced below for easy reference.

Type of Passenger	Existing UDF Rates	Recomputed UDF Rates under Single & Dual Till as per Authority*						
		2013-14		2014-15		2015-16		
		Single	Dual	Single	Dual	Single	Dual	
Domestic (Rs.)	231.4	262.32	399.28	281.37	412.68	294.17	429.74	

Type of Passenger	Existing UDF Rates	Recomputed UDF Rates under Single & Dual Till as per Authority*						
		2013-14		2014-15		2015-16		
		Single	Dual	Single	Dual	Single	Dual	
International (Rs.)	952.3	1049.27	1597.14	1125.48	1650.73	1176.69	1718.95	

^{*} Proposed UDF levy is w.e.f. 01st October, 2013. The Authority would round off the above numbers to the nearest rupee.

4.137 The Authority had also calculated the UDF (averaged over domestic and international passengers over the balance period of the current control period) under Single and Dual Till. In Single Till the average UDF for the period was Rs. 467.62 per departing passenger and in Dual Till Rs. 688.78 per departing passenger. Taking the total number of departing passengers over the balance period of the current control period from October 2013 at 18.55 Million, under Dual Till, the transfer of resources from the passengers to the Airport Operator was calculated to be of the order of Rs 410 Crores over the control period. This increased to Rs. 970.99 Crores on re-computation taking Pre-control shortfall at Rs. 371 crores, under Dual Till. The Authority noted that it has addressed the issue of the "economic and viable operation" of BIAL in its computation under Single Till. Hence, the above amount of Rs. 410 Crores is over and above the requirement for economic and viable operation of BIAL and thus could be construed as unjust enrichment of the Airport Operator at the cost of passengers by extracting from them higher UDF through the operation of Regulatory framework of Dual Till based on Legal provision of UDF under Section 13(1)(b) of the AERA Act, 2008 read with Rule 89 of the Aircraft Rules, 1937. Successive Government pronouncements on protecting the interest of passengers and reducing the burden on them are also not in conformity with this.

4.138 **Single Till – vs – Dual Till - CAA analysis**: The Authority was also cognizant of the analysis of the two regulatory approaches viz. Single Till and Dual Till during the various Quinquennial Price Cap tariff determinations of the Civil Aviation Authority (CAA) / Competition Commission (CC) of UK. In 2002, the CAA had proposed a move from Single to Dual Till. The CC to whom this matter was referred, did not accept this proposal of CAA and instead recommended continuance of Single Till, giving its reasoning as under:

"Conclusions on single/Dual Till

2.221. Because the issue of single or Dual Till understandably preoccupied us and many of the parties to the inquiry in its internal stages, on 11 July 2002 we issued a

statement of our, then, thinking on the issue (see Appendix 2.3). We said we had found the arguments and current evidence for moving to a Dual Till at any of the three BAA London airports not persuasive. None of the evidence we subsequently received led us to change that view: we therefore believe it appropriate to retain the single-till approach in setting airport charges for Q4.

2.222. Our main reasons are as follows:

- (a) There is no evidence that the Single Till has led to any general under-investment in aeronautical assets at the three BAA London airports in the past, nor any expectation that it will do so over the next five years (see paragraph 2.122).
- (b) It is not clear that the Dual Till, as opposed to the Single Till, would be likely to lead to significantly better aeronautical investment in the future and in some respects is likely to be worse (see paragraph 2.122).
- (c) The Dual Till could improve the efficient utilization of capacity, but the benefits are unlikely to be more than marginal even at Heathrow, where they would not occur until Q5 (see paragraph 2.141).
- (d) Nor do we see significant benefits from any deregulation of commercial activities. We are not persuaded that the distinction between locational and monopoly rents is useful in this context. In so far as airport charges affect fares, the current relatively high profits from commercial activities are applied to the benefit of passengers; the dual-till approach is likely to require increased regulation of such activities (see paragraph 2.148).
- (e) The Dual Till could also risk unduly benefiting commercial activities, at the expense of non-capacity-enhancing aeronautical activities, which may not attract sufficient space, funds or attention (see paragraph 2.161).
- (f) It is difficult sensibly to separate commercial and aeronautical facilities. Commercial revenues at the three BAA London airports cannot be generated without aeronautical facilities: they should therefore be regarded as one business (see paragraph 2.170).
- (g) Since the successful development of commercial revenues requires airlines to deliver passengers to or from the airport, the benefits of commercial activities should be shared with airlines and airline users (see paragraph 2.171).
- (h) We believe that average fares would be affected at both congested and uncongested airports if airport charges were to be higher at the three BAA London

airports as a result of a switch to a dual-till regime, and we do not think that effect can be justified where it arises from application of dual-till regulation with little or no offsetting benefits (see paragraph 2.197).

(i) A move from the Single Till to the Dual Till would in the longer term mean a substantial transfer of income to airports from airlines and/or their passengers and be to their detriment, potentially undermining regulatory credibility and creating regulatory uncertainty (see paragraph 2.200).

2.223. We also note:

- (a) No useful inferences can be drawn at this time from overseas airports which use the Dual Till in whole or in part, as their circumstances are different from those of the three BAA London airports (see paragraph 2.74).
- (b) Nor are we persuaded that the dual-till approach would act as an effective incentive on BAA to maintain or improve performance by providing 'something to lose' (through reversion to a single-till approach) at future regulatory reviews should it fail to do so (see paragraph 2.121).
- (c) The CAA proposal of raising the price cap above single-till levels at Gatwick and Stansted in Q4 but not at Heathrow would be contrary to efficient resource allocation in Q4 (see paragraph 2.141).
- (d) It is difficult, in practice, to allocate both investments and operating costs between aeronautical and commercial activities. To the extent that some of the judgements that have to be made are arbitrary, future disputes about cost allocation could harm relations between the airport and its users (see paragraph 2.216)."
- 4.139 The CAA accepted this recommendation and proceeded to determine the relevant price cap under Single Till. Thereafter in the subsequent control period Q5, CAA did not reopen this issue and continued with Single Till and as per CAA's statements in its Economic Regulation of Heathrow and Gatwick Airports, 2008-20, (11th March 2008), Appendix E: Regulatory Policy Statement:

"in its December 2005 policy consultation, the CAA consulted on the view that its evolutionary approach to this review, the extensive discussion and analysis of the issue at the last (Q4) review and the resulting conclusions, mitigated against reopening the debate over the introduction of a Dual Till. Instead, it proposed that price caps for airport charges in Q5 be set on the basis of a Single Till. In its May 2006 publication, the CAA confirmed its intention to continue to develop policies and price

cap proposals consistent with its statutory duties within a Single Till framework (Para E 30)... In its October 2007 advice to the CAA, the Competition Commission restated its main reasons for retaining the Single Till approach in the last (Q4) review, and stated that **it had seen nothing to change its previous assessment of the issue**. (Emphasis added) The Competition Commission therefore recommended that airport charges should continue to be set on a Single Till basis. (Para E 31)"

- 4.140 The Authority further notes that CAA UK in its most recent (30.04.2013) price cap proposals in respect of Heathrow, Gatwick and Stansted for the sixth quinquennium (Q6) has decided to continue with Single Till.
- 4.141 It would thus be clear that the Competition Commission, UK as well as the CAA UK have found Single Till approach as consistent with its regulatory objectives. The reasons advanced by the Competition Commission UK, were, in the opinion of the Authority, relevant in the Indian context. The Competition Commission UK had stated that shift to Dual Till, inter alia, would result in large swing of revenues from airlines to airports. In the Indian context, the swing would be directly from the passengers to the private Airport Operators through the operation of higher passenger charge (User Development Fee). The quantum of such a swing from passengers to private Airport Operator over a five year period for BIAL was estimated at approximately Rs. 410 crores (calculated as the sum of differential revenue to be recovered from UDF for the balance years in the current control period)

Authority's view on Till to be adopted

- 4.142 Having regard to the focus on the interest of the passengers and cargo facility users, the Authority considered it appropriate to balance the interests of the Airport Operator with passengers in such a manner that once the airport operator is assured a fair rate of return (on equity) consistent with the risk profile (with various risk mitigating measures incorporated), the charges on the passengers would need to be minimized.
- 4.143 The Authority's approach to economic regulation of airport is that a comprehensive view of economic needs of the airport is to be taken into account. The Authority also stressed on the Government's objective of minimizing the charges on passengers (which in the airport tariff determination are the User Development Fee).
- 4.144 Since, UDF is imposed through operation of the Aircraft Rules, 1937 as well as the AERA Act, this can be considered as compulsory extraction of money from the travelling passengers to be put in the hands of the airport operator without any express purpose

attached to it, save to allow the airport operator to obtain returns substantially more than the fair rate of return. This can be viewed as unjust enrichment of the airport operators at the expense of the travelling passengers through operation of statutory provisions.

- 4.145 The Authority had given its detailed analysis on the various submissions made by BIAL both with respect to the individual building blocks with reference to single and Dual Till. It had also given the financial implications of both these approaches (single and Dual Till) on the passenger charges. Based on the above analysis, the Authority has come to the conclusion that Single Till does not cause any injury to the airport operator except not allowing him to obtain more than fair rate of return on the investment as he would reap under Dual Till. The Authority did not feel that the inability to reap such more than fair rate of return can be termed as injury. In fact, it can be termed as injury to passengers who would be required to pay more UDF only to enable the airport operator to get higher than fair rate of return under Dual Till.
- 4.146 The Authority had then summarised its analysis regards both single and Dual Till as under:
 - 4.146.1 The Authority's Single Till approach takes into account income from the non-aeronautical services within the terminal building (and car parking). This income from non-aeronautical services within the terminal building is generated by passengers whose contribution through direct charges in the form of UDF to give the airport operator fair rate of return is substantial.
 - 4.146.2 The Authority generally does not take into account real estate income in regulatory ambit of Single Till. Its treatment of real estate income to BIAL is a consequence of the Land Lease Agreement that states that the land is given to the airport operator to improve the viability of the project (airport). As indicated in Para 11.45 below, Authority had not proposed to subtract from RAB, any amount towards land monetisation (as commercial exploitation of part of land in excess of airport requirements and land that is situated outside the terminal building) as BIAL has stated that the Business Plan for Real estate has not been finalised.
 - 4.146.3 The Authority's analysis about UDF in Single Till and Dual Till shows that for a given LPH, Single Till results in lowest passenger charge. This is much higher in Dual Till.
 - 4.146.4 As long as fair rate of return is given to the airport operator, he should have no preference regarding Regulatory Till. In Dual Till, the airport operator gets more than fair rate of return directly at the expense of the passengers. To put it differently,

passengers are required to pay higher charges only to enable the airport operator get more than fair rate of return.

- 4.146.5 The Government's declared policy is to minimize passenger charges. The Authority had given detailed reasoning and various pronouncements in Para 4.117 above. Mention is also made wherein the Government has emphasized the ultimate objective to be to reduce the burden on the end user (passengers). Reference had also been made to the observations of the Planning Commission treating both ADF as well as UDF as measures of last resort on the ground that they impose additional burden on the passengers (Para 4.125 above). Airport Development Fee, at least, is a time-bound charge and depending on the quantum and the rate thereof, its burden on the passengers would expire after a certain period of time. User Development Charge (which is higher in Dual Till) is an on-going charge without any time limit, as long as the Aeronautical charges are not adequate to give fair rate of return to the Airport Operator. Single Till therefore is fully in consonance with the Government's publicly declared policy of minimizing the passenger charges. On the other hand, Dual Till goes against the declared policy as above.
- 4.146.6 Single and Dual Till are both consistent with ICAO's position in that ICAO does not prescribe either, leaving it to the Regulatory oversight. Different countries in the world pursue different regulatory tills. Hence different counties have adopted policies of regulatory till suitable for the particular country. The private operators wishing to operate in that country have conformed to regulatory till policy of that country.
- 4.146.7 The AERA Act gives Legislative policy guidance as to what factors are to be taken into account while determining the aeronautical charges. One of such factor is "the revenue received from services other than the aeronautical services". The Legislative background including the Government's response in introducing this clause clearly shows that both the Govt. as well as the Legislature intended that all the revenues from the services other than aeronautical services should be taken into account while determining aeronautical tariffs. This is also consistent with the professed Govt. objective of minimizing the passenger charges.
- 4.146.8 **Balancing the interests of Airport Users and Airport Operator**: The Legislature has also given the policy guidance to the Authority, regarding determination of aeronautical charges. The Authority had given its interpretation of the words "revenue from services other than aeronautical" vide discussion starting with Para 4.54 above.

- 4.147 The Authority noted that AERA Act defines "Airport User" meaning "any person availing of passenger or cargo facilities at the Airport". Single Till adequately balances the reasonable interests of the Airport Users and those of the Airport Operator. In view the above considerations, the Authority concluded that Single Till is preferable to Dual Till.
- 4.148 Based on the material before it and its analysis, the Authority proposed
 - 4.148.1 To determine the Aeronautical Tariffs in respect of Bengaluru International Airport under Single Till.

b. BIAL's submission on Till and Authority's analysis in CP 22

- 4.149 BIAL in its revised submission i.e. MYTP 2013 and related submissions stated as under on the matter regarding Till and other related aspects.
- 4.150 BIAL had requested the Authority to consider Shared Revenue Till and had in its letter dated 30th July 2013 submitted as follows:

"...As you are kindly aware, while submitting the tariff proposal, BIAL had submitted its proposal, based on its interpretation of provisions of Concession Agreement, on Dual Till basis. It also submitted its proposal on Single Till basis only as per directions of the Authority.

While determining UDF for BIAL, MoCA, though of the view that no cross subsidization from non-aeronautical revenue is provided in the Concession Agreement, finalized UDF on the basis of cross subsidization of 30% from non-aero revenue. UDF decided by MoCA in the year 2008/09 was on ad-hoc basis and continued till the commencement of first control period.

BIAL had submitted a letter dated July 5th 2013 to MoCA, as it had granted the concession, reiterating for dual till, based on its interpretation of the concession agreement.

BIAL had been consistently contesting that Concession Agreement does not envisage cross subsidization. However, in order to reach to a workable solution, BIAL intends to agree with the tariff on hybrid till model and accordingly is in the process of submitting calculations based on Hybrid Till model with 30% cross subsidization. It will not be out of place to mention that even with this model, funds requirement of BIAL for expansion and debt repayment might need a special consideration.

Additionally, BIAL will file its detailed response to Consultation Paper referred above. In the meantime, we request the Authority to kindly consider request of BIAL to

- consider Hybrid Till model for determination of tariff for Bengaluru International Airport...."
- 4.151 BIAL had subsequently on 19th August 2013, filed the revised MYTP 2013 under Single Till, Dual Till and what BIAL calls as 30% Hybrid to the Authority for consideration.
- 4.152 Authority had carefully examined BIAL's submission with respect to Till made in MYTP 2013 submissions as follows:
- 4.153 The Authority had noted the views of the MoCA with regard to the Capital needs of BIAL during the current Control period. MoCA has stated that:
 - "....The Ministry of Civil Aviation feels that the requirement of capital for the expansion during the current control period would be difficult to be met under a Single till approach. A Shared Revenue till of 40% would strike an appropriate balance between the needs of expansion of the airport as well as passenger interest, in terms of keeping the user charges at reasonable level. Therefore, 40% of gross revenue generated by BIAL from Non Aeronautical Services may be reckoned towards subsidizing Aeronautical charges and UDF...."
- 4.154 The Authority, in the normal course would have evaluated the comments received from Stakeholders only on CP 14 and proceeded to issue the appropriate tariff order. However, the Authority noted that BIAL, vide its letter dated 30th July 2013 (after the Stakeholders' meeting on 22nd July 2013), submitted proposals under Single Till, 30th SRT and Dual Till. The Authority had also extended the period of consultation from time to time and finally till 25th September 2013. The MoCA's letter regarding its views on the CP 14 (Refer Para 2.37 above) was dated 24th September 2013. The Authority had thus analysed the results under Single Till, 30% Shared Revenue Till and 40% Shared Revenue Till, in CP 22.
- 4.155 Furthermore, the Authority noted that according to BIAL's letter dated 30th July 2013 referred in Paragraph 4.150 above, BIAL has stated that:
 - "...in order to reach to a workable solution, BIAL intends to agree with the tariff on hybrid till model and accordingly is in the process of submitting calculations based on Hybrid Till model with 30% cross subsidization...."
- 4.156 The Authority therefore had not analysed the Dual Till Regulatory Approach submitted by BIAL as part of its MYTP 2013 submissions. The Authority had, in CP 14, concluded that in its view Single Till is the appropriate Regulatory approach.
- 4.157 The Authority further noted that BIAL in Page 8/55 of its MYTP 2013 submissions

under what it calls "Hybrid Till" has stated as under:

"...Further at the time of determination of ad-hoc tariff of UDF for BIAL and GHIAL were done on hybrid / shared till basis by MoCA and OMDA agreements of MIAL and DIAL are also got decided on hybrid / shared till basis which can be taken as a policy direction from the above..."

4.158 The Authority had analysed in detail the reference BIAL had made to the report of M/s BridgeLink Advisors in BIAL's letter dated 15th April 2013 to Hon'ble Minister MoCA. M/s BridgeLink advisors had advocated 30% shared revenue till in respect of private Greenfield airports on the analogy of DIAL/ MIAL. The Authority had given a detailed table (Table 6) outlining the differences of approach between DIAL/ MIAL and BIAL. In its latest submission to the Authority viz. MYTP 2013, BIAL had stated that according to it, the agreements with respect to DIAL and MIAL (incorporating 30% Shared Revenue Till) can be taken as a policy direction. The Authority had analysed this issue as under.

4.159 The Authority noted that the agreements were entered into by MoCA with BIAL and HIAL in 2004 whereas the agreements between MoCA and DIAL/ MIAL were entered into in 2006. Hence, it cannot be said that Agreements entered into in 2006 (i.e. at a later date) should form as a basis much less be termed as what BIAL has stated as "policy direction". Furthermore, there is no policy document by the Government, issued after these agreements of DIAL and MIAL, stating therein that any of these agreements or the contents thereof shall act as guiding principles for economic regulation of Aeronautical Tariffs of the Airports. It was also noteworthy that DIAL and MIAL are what are called "Brownfield Airports" and BIAL (as well as HIAL) are "Greenfield Airports". The only policy document after signing of agreements with DIAL and MIAL in 2006 that has been issued by MoCA was the "Greenfield Airport Policy of 2008". Even this Green field Airport Policy 2008 did not make any such pronouncement and leaves all matters relating to economic regulation to be decided by the Authority. Moreover, the Authority had analysed the differences in the agreements signed with DIAL/ MIAL and that signed with BIAL in its CP 14, reproduced above in Table 6. The Authority therefore did not consider it reasonable to infer that in the absence of any assertion by the Government, the component of 30% Shared Revenue Till would alone be cherry picked as a policy direction bereft of other components in the agreements of DIAL/ MIAL. Finally, MoCA in its letter dated 24th September 2013 had felt that 40% Shared Revenue Till would be appropriate in case of BIAL (as detailed in Paragraph 2.37 above) as striking an appropriate balance between the needs of expansion of the airport as well as passenger interest in terms of keeping the user charges at reasonable level.

- 4.160 The Authority has also considered the comments of GoK in response to CP 14. The GoK had stated that:
 - "... The CP recognises that BIAL needs a sum of Rs. 4027 Crore for requisite expansion.

 As per the proposals in the CP, a sum of Rs. 649 Crore is to be brought in as fresh equity share capital by the Shareholders to fund the expansion. The Government of Karnataka is not inclined to infuse any fresh equity capital into the company."
- 4.161 The Authority had already indicated in Paragraph 28.8 of CP 14 that the Board of BIAL on 16th May 2013 had resolved that "The Board deliberated the matter further and asked Management to closely work with the Regulator to arrive at the Tariff and on the issue of infusion of further equity, the Board Members stated that none of the Promoters would be in a position to infuse further equity into the project.". The Authority also noted that AAI is represented on the Board of BIAL at a Member level officer of AAI. BIAL has also on its Board Senior representation from MoCA. The Authority, in CP 14 also referred to the provisions of the Shareholders' Agreement and particularly the Equity Cap of Rs. 50 Crore on AAI's shareholding. As of now, AAI has already subscribed to its share (13%) of Equity and has reached the AAI Equity Cap (as defined in Clause 1.1 of the Shareholders' Agreement).
- The Authority had noted that the incidence of UDF is the lowest under Single Till, higher in 40% Shared Revenue Till and the highest in 30% Shared Revenue Till. The Authority had consistently kept the Passenger focus in its Economic Regulation of Airports including Regulatory Till, at the same time, keeping in view, the legislative policy guidance of "Economic and viable operation of Major Airports" (Section 13 (1)(a)(iv) of AERA Act) and according to which, Airport Operators should get a Fair Rate of Return.
- 4.163 The Authority had also noted the comments of GoK (vide its letter dated 26th August 2013) in response to CP 14 that:
 - "...The Government of Karnataka is of the opinion that the Passengers' interest is of paramount importance. Accordingly, User Development Fee (UDF) may be fixed..."
- 4.164 Having regard to all the above communications, the Authority had accordingly analysed the financial impact of different Regulatory Approaches (Single Till, 30% Shared Revenue Till as well as 40% Shared Revenue Till) on the ARR as well as the resultant Aeronautical Tariffs and UDF in CP 22. While calculating UDF, the Authority proposed to

accept the Landing, Parking and Housing Charges (LPH) as submitted by BIAL (BIAL has retained the LPH in MYTP 2013 as per its submissions in MYTP 2012). Hence, the resultant UDF in the three regulatory approaches as calculated by the Authority was as detailed below:

Table 8: Summary of Recomputed UDF based on Authority's proposals, keeping charges other than UDF as per BIAL's tariff proposal (w.e.f 1st April 2014) – CP 22

Type of Passenger	Current UDF	PSF (FC)**	Total current Pax charge	Recomputed UDF Rates under Single, 30% Shared Revenue Till & 40% Shared Revenue Till as per Authority*					
				Single	2014-15 Single 30% 40%			2015-16 Single 30% 40%	
Domestic (Rs.)	231.4	77.0	308.4	227.7	341.5	290.8	243.0	363.7	310.0
International (Rs.)	952.3	77.0	1029.3	910.9	1365.9	1163.4	972.0	1454.9	1240.0

^{*} Proposed UDF levy is w.e.f. 01st April, 2014. The Authority would round off the above numbers to the nearest rupee.

- A.165 Based on the above calculation of Weighted Average UDF of the remainder of the Control Period, the Authority had calculated the transfer of Resources from passengers to the Airport Operator in case of 30% Shared Revenue Till at Rs. 289 Crore and in case of 40% Shared Revenue Till at Rs. 160 Crore (over Single Till). The Authority noted that in MoCA's view, the 40% Shared Revenue Till strikes a proper balance between the requirement of funds for the Capital Expansion and keeping the user charges at reasonable level and hence, the Authority had calculated the various charges at 40% Shared Revenue Till.
- 4.166 The Authority has given careful consideration both to its general framework of determination of aeronautical tariffs (i.e. under Single Till) as well as letter of MoCA dated 24th September 2013 wherein MoCA has suggested for Authority's consideration to adopt 40% Shared Revenue till. The Authority had also taken note of the requirement of capital for expansion of the airport facilities at Bengaluru airport having regard to the trends of past growth in passenger number as well as its projected growth. The Authority had, therefore, considered the issue of making available some additional funds in the hands of the airport operator during the current control period for the purposes of carrying out such expansions.
- 4.167 The Authority had carefully considered all the above aspects and keeping in view of the same, the Authority had put forth for Stakeholders' Consultation the Aeronautical Charges and UDF computed under 40% Shared Revenue Till as in Table 8.
- 4.168 The computation of Aeronautical charges and UDF under 40% shared revenue till,

^{**} FC – Facilitation Component of Passenger Service Fee. For recomputed UDF rates by the Authority, this component of Rs. 77 is included or merged into proposed UDF.

as indicated by MoCA in its letter dated 24th September 2013 would place additional funds in the hands of the Airport Operator for Capital expansion during the current control period. The Authority was also cognizant of the fact that while calculating the charges for aeronautical services as well as for UDF, it has projected the components that go into the ARR for the current control period. As was requested by BIAL, the Authority had also proposed to true up components like Operating and Maintenance expenditure, Non-Aeronautical revenue, Traffic (both the passengers and ATM) etc. at the time of determination of Aeronautical tariffs and UDF for the next control period. Based on certain projections, as were available to the Authority, it has calculated the UDF required under Single Till (Rs. 1267 Crore) as well as under 40% shared revenue till (Rs. 1427 Crore). These numbers were then broken down into UDF rates for domestic as well as international passengers based on their relative share as well as a ratio of 1:4 between the rates of UDF per departing domestic passenger and the UDF rate per departing international passenger.

4.169 The Authority had noted that based on the above projections of the building blocks for the ARR, the estimated UDF collection under 40% shared revenue till was higher by an amount of Rs. 160 crores as compared to what will be required under Single till. This amount can thus be considered as transfer of resources from the passengers to the airport operator for the purpose of carrying out the expansion of airport facilities which in turn would be beneficial to the passengers and for which the passengers would be deemed to have made advance payment. The Authority, therefore, considered that such payment made by the passengers which would be available to the airport operator for current control period to put into expansion will require to be appropriately adjusted at the end of the current control period.

- 4.170 The process for true up of ARR and the amount to be adjusted in RAB at the beginning of the next control period (Refer Para 4.169 above) was proposed to be as under:
 - 4.170.1 The Authority had computed the ARR requirement for Kempegowda International airport for the current control period under (a) Single till (b) 30% Shared revenue till and (c) 40% Shared revenue till. However, as indicated in Para 4.165 above, the Authority has proposed to make computations of Aeronautical Tariffs as well as UDF in accordance with 40% Shared Revenue Till. Hence, the true up mechanism is given with reference to the 40% Shared Revenue Till as under.

- 4.170.2 According to the normal methodology, the Authority first estimated the requirements of different elements and components that are the building blocks and thus go into the computation of estimated ARR that the Airport Operator should get. The different building blocks for this purpose are:
 - a Fair rate of return on Regulatory Asset Base (RAB): This includes the computation of Average RAB and WACC.
 - b Depreciation
 - c Operating Expenditure
 - d Taxation
 - e Non-aeronautical Revenue
- 4.170.3 The sum of all these components, namely, the Regulatory Building Blocks, yielded the ARR for the Aeronautical Service under both Single Till and 40% Shared Revenue Till. These are the amounts due to the Airport Operator during the current control period. Let this estimated ARR under Single Till be 'A' and under 40% Shared Revenue Till be 'B'.
- 4.170.4 Since under Shared Revenue Till, only a certain percentage of Non-Aeronautical revenues are reckoned towards the building block, the ARR requirement under 40% Shared Revenue Till (**'B'**) is higher than that under Single Till (**'A'**)
- 4.170.5 Over the control period, the Authority had estimated what the airport operator would receive as Aeronautical revenues from different aeronautical services at the rate which is proposed by the Authority. The revenue streams in the hands of the airport operator are:
 - a Landing, Parking, Housing Fee
 - b Revenue from Cargo service, Ground Handling, Fuel Supply (Fuel farm, Into Plane service as well as Fuel throughput charge).
 - c Other aeronautical revenues. (Aerobridge, ICT etc.)
- 4.170.6 The sum total of the above Aeronautical revenues (Para 4.170.5 above) would yield the total estimated Aeronautical revenues that will be received by the airport operator. Let the sum total of such revenues be termed as **'C'**.
- 4.170.7 The Authority had noticed that **'C'** is generally lower than **'A'** as well as **'B'**. The difference, namely, **A** minus **C** or **B** minus **C** is the shortfall between what ARR is due to the airport operator and what the Airport Operator is estimated to receive from the sum total of different aeronautical services. This shortfall is "topped up" through

collection of User Development Fee (UDF). The amount **'C'** is the same for single till as well as 40% Shared Revenue Till because Authority had proposed to keep the same Aeronautical tariffs both under Single Till as well as 40% Shared Revenue Till. Hence the quantum of UDF under 40% Shared Revenue Till is higher than that under Single Till.

- 4.170.8 The amount of UDF that is required to top up the revenue receipts in the hands of the airport operator to match the estimated ARR is broken down into the rate or UDF per passenger, both domestic as well as international. With these computations and inclusion of proposed UDF, the estimated ARR (under single till as well as under 40% shared revenue till) equals the estimated revenue to be received by the airport operator under both these regulatory tills. The numbers 'A', 'B' and 'C' were thus estimates at the time of the proposals were presented in the Consultation Paper.
- 4.170.9 At the end of the control period, the contribution of different elements of the building block may be at variance from their projections. Hence, at the end of the control period, depending on the variations in different components, the ARR that is due to the airport operator is likely to be different from 'A' or for that matter 'B'. Taking an illustrative example, if the non-aeronautical revenue were to be higher than the projected amount (other elements remaining the same), because the nonaeronautical revenue is subtracted from contribution of all other building blocks, the Aggregate Aeronautical Revenue Requirement at the end of the control period would be lower than 'A'. Let the ARR due to the Airport Operator at the end of the current control period based on different values of the building blocks, after the true up process, under Single Till be called 'D'. (The Authority notes that the actual ARR at the end of the current control period would be different only if the Authority proposes to true up the different components of the building blocks. If none of the building blocks are proposed to be trued up, there would be no difference between what is computed as 'D' from the ARR computed as 'A').
- 4.170.10 Para 4.170.9 above was based on the values of the Building blocks that go into the calculation of ARR that could be due to the Airport Operator at the end of the current control period after the truing up process has been completed. Correspondingly, on the revenue side, the actual receipts from different revenue streams in the hands of the Airport Operator would be the same for Single Till and 40% Shared Revenue Till except the UDF. The UDF actually collected under 40% Shared Revenue Till would be

known because the Authority has proposed the computation of UDF rate under 40% Shared Revenue Till and the actual number of passengers would also be available at the end of the current control period. However, as far as the value of UDF under Single Till is concerned, this number would need to be computed from the average UDF per passenger that would have been determined under Single till (Had the Authority made computations in accordance with Single Till) and the actual number of passengers that would be the same as in 40% Shared Revenue Till. (The number of actual passengers at the end of the control period may be different from its projections or estimates made by the Authority at the time of issue of the Consultation Paper). This amount would be taken as the UDF that would have been actually collected under Single Till by the airport operator had the Authority computed the UDF under Single Till. Let the actual revenue receipts in the hands of the airport operator, under single till as computed above, be called **'E'**

- 4.170.11 Likewise, the actual revenue receipts in the hands of the airport operator (including UDF), under 40% Shared Revenue Till, would be available and let this number be called 'F'.
- 4.170.12 Adjustment to ARR in the next control period: Had the Authority proceeded with the tariff determination under single till, the truing up would have been done as the difference between 'D' and 'E', which is in consonance with the Authority's approach of truing up as indicated in the Airport Guidelines. This difference would then be added or subtracted (clawed back) from the estimates of ARR for the next control period. For example, if 'E' were to be greater than 'D', it would mean that the airport operator has actually received more revenues than what has been his entitlement and what was due to him according to single till. This difference, namely, 'E' minus 'D' would then be over recovery which would be ploughed back from the ARR computation during the next control period. Similarly, if 'E' were to be less than 'D', the difference between 'E' and 'D' would be negative meaning thereby the airport operator has under recovered for which he would need to be compensated during the next control period by adding this difference to the ARR computations in the next control period.
- 4.170.13 **Adjustment to RAB in the next control period:** Adjustments to ARR in the next control period as indicated in Para 4.170.12 above is one component of the true up process. The other component of the true up arises on account of extra UDF paid by

the passengers for capital expansion. The number 'F' gives the actual revenue receipts accruing to the airport operator under 40% Shared Revenue Till. The corresponding number under Single Till, as has been explained above, is 'E'. The difference between 'F' and 'E' (which is expected to be positive) is on account of the additional UDF that was determined under 40% Shared Revenue Till. This difference, namely, 'F' minus 'E' was thus proposed to be reduced from the RAB at the end of the current control period and the net RAB was then proposed to be taken as the opening RAB for the computation of aeronautical tariffs at the end of the current control period.

4.170.14 To summarise, the Authority had computed the Aeronautical tariffs and UDF as per 40% Shared Revenue Till for reasons mentioned above. Table 9 and stylised illustration given in Figure 1 (on page 108) summarise the various steps in the True up process that the Authority would adopt at the end of the current control period. It may be noted that the numbers in Figure 1 (on page 108) are for Illustrative purpose and thus would not exactly tally with the actual computations made by the Authority in its various tables. As has been indicated in the Table 9, the True up process is in two parts: (a) Adjustment to ARR as would have been required had the Authority computed the tariffs under Single Till and (b) Adjustment to RAB required on account of the transfer of resources from passengers to the Airport Operator under 40% Shared Revenue Till.

Table 9: Summary explaining the Authority's approach towards truing up

Legends used in this true up process	Brief explanation
А	Estimated ARR (due) computed under Single Till from the Regulatory Building Blocks.
В	Estimated ARR computed under 40% Shared Revenue Till from the Regulatory Building Blocks.
С	Sum total of Aeronautical revenue streams estimated at the time of Projections that are expected to be received by the Airport Operator. (Same for both Single Till as well as 40% Shared Revenue Till. C is less than A or B). C does not include estimated collections under UDF.
UDF	A minus C for Single Till and B minus C for 40% Shared Revenue Till.
D	Trued up ARR due to the Airport Operator under Single Till based on actual value of the building blocks at the end of the control period.
E	Sum of actual Aeronautical Revenues collected plus UDF collection had the UDF rate been based on Single Till (derived from A minus C).
F	Sum of actual Aeronautical Revenues plus actual UDF collected based on the allowed UDF rate determined under 40% Shared Revenue Till.

E-D	Over Recovery OR Under Recovery to be adjusted in the ARR at the beginning of the next control period.
F-E	Transfer of Resources from Passengers to Operator to be reduced from the Opening RAB at the beginning of the next control period.

Figure 1: Stylised Illustration of the proposed True Up Process (Refer Para 4.170 above)

Illustration explaining the methodology of	adjustment i	in the next o	ontrol period (a	amounts given are examples)		Amount	- Rs. Crore	
	Single Till Projected	40% SRT Projected		Details of changes in Actuals	Single Till	40% SR		
					Actuals	Actuals		
	F	Part A - Build	ing Blocks of Ag	gregate Revenue Requirement				
ARR ESTIMATES (Projections)				STYLISED TRUE UP (Only changing Non Aeronautical Revenue)				
Fair Rate of Return on Regulatory Asset				Fair Rate of Return on Regulatory				
Base		1500.00	1350.00	Asset Base	Assumed no change	1500.00		
Depreciation		750.00	675.00	Depreciation	Assumed no change	750.00		
Operating Expenditure		1700.00	1360.00	Operating Expenditure	Assumed no change	1700.00		
Taxation		275.00	220.00	Taxation	Assumed no change	275.00		
Non-Aeronautical Revenues		-1300.00	-520.00	Non-Aeronautical Revenues	Increase by Rs. 100 Cr	-1400.00		
Aggregate Revenue Requirement		2925.00	3085.00			2825.00		
		(A)	(B)			(D)		
Estimated Number of Passengers (in				Actual Number of Passengers (in	Increase in passengers			
Crore)		3.00	3.00	Crore)	by 10 lacs	3.1	3.:	
		Part B	Components	of Aeronautical Revenues				
REVENUE ESTIMATES (Projections)				STYLISED TRUE UP (Changed for Ir	ncrease in LPH and Passer	nger)		
Landing, Parking, Housing fee		1200.00	1200.00	Landing, Parking, Housing fee	Increase by Rs. 100 Cr	1300.00	1300.0	
Cargo, Ground Handling, Fuel Farm, Fuel				Cargo, Ground Handling, Fuel				
Throughput etc		400.00	400.00	Farm, Fuel Throughput etc	Assumed no change	400.00	400.0	
Other Aeronautical Revenues				Other Aeronautical Revenues				
(Aerobridge, ICT etc.)		100.00	100.00	(Aerobridge, ICT etc.)	Assumed no change	100.00	100.0	
Contribution by Aero revenues (C)								
Same under Single and 40% Shared								
Revenue Till	1700.00							
UDF (A-C under Single Till, B-C under 40%								
Shared Revenue Till)		1225.00	1385.00	UDF	Based on Passengers	1265.83	1431.1	
TOTAL		2925.00	3085.00	TOTAL		3065.83	3231.1	
						(E)	(F	
				Adjustment to RAB - Actual increr	nental UDF collection in		-	
Estimated incremental UDF under 40% Shared Revenue Till 16				40% Shared Revenue Till over Single Till (F-E).			165.3	
				Adjustment to ARR (E-D)		240.83		

- 4.171 As will be noted from Figure 1, on page 108, the estimated transfer of resources from Passengers to the Airport Operator under 40% Shared Revenue Till was estimated at Rs. 160 crores. However if the actual number of passengers increase by 10 lacs (as has been assumed for the sake of illustration in the Figure 1) the actual transfer of resources from the Passengers to the Airport Operator would turn out to be Rs. 165 crore which would be adjusted against RAB.
- 4.172 Based on material before it and its review, the Authority had proposed in CP 22:
 - 4.172.1 To calculate the Aeronautical Tariffs and UDF in respect of Kempegowda International Airport under 40% Shared Revenue Till as per Table 8 for the current control period.
 - 4.172.2 To note that the part of the Non-Aeronautical Revenue which would remain in the hands of BIAL under 40% Shared Revenue Till would be used by BIAL for Capital Expenditure needs towards Airport expansion during the current control period.
 - 4.172.3 To carry out adjustment to ARR for the next control period as indicated in Para 4.170.12 above.
 - 4.172.4 To note that the difference between the UDF collected under 40% Shared Revenue Till and Single Till during the remaining part of the current control period is currently estimated at Rs. 160 Crore. To further note that this amount represents the transfer of resources from passengers to the Airport Operator on account of the proposed adoption of 40% Shared Revenue Till to facilitate expansion of airport facilities by BIAL. Hence, adjustments were proposed to be carried out to RAB at the beginning of the next control period as detailed in Para 4.170.13 above.
 - 4.172.5 To true up the amounts of adjustments for ARR and RAB based on the recomputed ARR as well as revenues both based on actuals at the end of the current control period

c. Stakeholders Comment on Matters regarding Regulatory Approach and Till

- 4.173 Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14. Stakeholders have also commented on Regulatory Approach and Till in respect of BIAL. These comments are presented below.
- 4.174 On the issue of Regulatory Approach and Till, Zurich Airport had commented that "The AERA Consultation Paper suggests a Single Till for Bengaluru International Airport. However, this regulatory approach is not suitable for BIAL. A Dual Till

approach is preferable to the Single Till approach, the main reasons being the following:

A regulation's overriding objective is to prevent an airport from abusing its dominant market position in determining its fees. Accordingly, the regulation must be limited to those activities of the airport where, due to the dominant position, no direct competition exists. This is basically the case for aeronautical activities. However, this is not the case for the entire non-aeronautical activities including the parking and real estate development.

On one hand, the airport has a concession to establish and run aeronautical activities and accordingly has an obligation to provide certain services for flight operations. On the other hand, regarding the non-aeronautical activities, there are no clearly defined obligations. The decision to develop non-aeronautical activities is exclusively with the airport operator. The airport operator also bears the total risk of these activities.

ICAO leaves it open which type of regulation can be applied to airports. Internationally, there is a clear trend towards Dual Till and light-handed approaches. Single Till regulations are de facto only found in a few countries in which the airports are typically 100 % state-owned. The international regulators seem to have realized that a Single Till approach tends to lead to inefficiencies and does not incentivize quality development of airports.

With a Dual Till regulation, an airport operator can cover the costs of its aeronautical activities and make a reasonable profit. Moreover, there are economic incentives to manage the non-aeronautical activities in a profitable way and expand them if required. The development of non-aeronautical activities sends positive impetus from an economic perspective. It increases the attractiveness and becomes in particular a magnet for foreign companies and employers. At the same time, additional jobs will be created either directly at the airport or with the suppliers.

Regarding investments in a Dual Till regulation, the airport operators have an incentive to undertake necessary, value-creating investments for their aeronautical activities in order to maintain and possibly increase the attractiveness of the airport for airlines and passengers. These investments are not cross subsidized by the non-aeronautical sector, but compensated adequately through the fees raised for the aeronautical activities.

When regulated by a Dual Till approach, the owner of the airport operator is aware of the fact that the aeronautical activities can at the maximum achieve risk-adjusted

returns defined by the regulator. Accordingly, no excess returns can be achieved. Since the non-aeronautical activities are not regulated, the expectations of returns for the owners are not limited. They will be at the level of the returns of business segments of comparable companies. This form of regulation is justifiable from an owner's perspective. Despite regulation of the aeronautical activities, the basic economic principle of a risk-based return on investment is guaranteed.

The incentive for efficiency improvements under the Single Till approach is low. There is an imminent danger that the necessary aeronautical investments are not made or clearly delayed. This is not the case with a Dual Till approach"

- 4.175 AAI has stated that it follows Single Till
- 4.176 On Regulatory Till, APAO has stated that:

APAO submits that it is important that AERA reconsiders its approach of imposition of Single Till, since India could become something of an international outlier, with detrimental effects on its ability to attract major investment. It is clear that ICAO policies encompass the possibility of Dual Till and that one of the grounds that AERA has previously adduced for Single Till does not therefore stand. In these circumstances, AERA needs to reconsider whether Single Till is the most appropriate system for regulation of BIA. As identified above, Single Till is neither the system most commonly applied to major international airports, nor that which is most likely to generate the investment that the Indian aviation sector requires.

It is evident from Articles 10.2.1 and 10.3 that the Concession Agreement has clearly defined as to which charges would be regulated and which charges would be free from regulation.

The Authority's view conflicts with the Concession Agreement which clearly bifurcates the regulated and other charges. Bringing the other charges under the ambit of regulation by imposing the Single Till approach goes against the letter and spirit of the Concession Agreement which does not envisage cross subsidy from non-aeronautical revenues to defray aeronautical charges.

4.2.1.5 demonstrates the intention of the Government to protect the economic interest of shareholders and lenders investing in the airport project. Such shareholders/lenders committed their investment based on the financial model which was drawn up taking into consideration the provisions of the Concession Agreement which bifurcated the charges into regulated and other charges. The Central and State

Governments who were stakeholders to the financial closure have taken cognizance of this model which reflected an internal rate of return of 21.66%. Further, the business plan which was drawn up on the basis of the Concession Agreement was also shared with the Government. In case the fundamental bid assumption made at the inception of the Project change, the risk associated with the Project would change leading to an increased cos of capital. This would also lead to reduced cash flows which in turn would adversely impact the Operator's ability to repay its debts and undertake further expansion of the Airport.

Lastly, the Project Information memorandum for BIA which was shared with the bidders underscored the projects to be commercially viable

non-aeronautical activities were expected to significantly augment the revenues from the aeronautical services

non-aeronautical operations would form a distinct and significant component of the airport investment and land shall be optimally and innovatively used to maximize commercial and business revenue.

The ICAO policy does not specifically endorse Single Till regulation and leaves the choice of till to the member states based on their local conditions and circumstances. It also states that costs may be offset by revenues depending upon the form of economic oversight adopted.

It is APAO's view that it would be essential for the Authority to ensure that the till approach sought to made applicable to BIA is also in line with the Concession Agreement which does not seek to regulate the 'Other Charges' nor does it contemplate any cross subsidization either from non-airport revenues or from Other Charges as envisaged in concession. In light of this, APAO submits that the Authority's proposition to undertake such cross subsidization is not acceptable.

Under Section 13 of the AERA Act, the Authority is statutorily required to consider the concession offered to the airport operators by the Central Government, as well as the other agreements which form an integral and inalienable part of such concession.

Section 13(1)(a)(vi) of the Act requires the Authority to consider the concession granted by the Central Government while determining the tariffs.

The proviso to Section 13(1)(a) of the Act states that "different tariff structures may be determined for different airports having regard to all or any of the considerations specified at sub-clauses (i) to (vii)". In other words, the Act recognizes the flexibility given to AERA to determine tariff structures for different airports having regard to various considerations including the concession granted by the Central Government.

So even though the AERA Act empowers AERA to regulate tariff for Aeronautical Services as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is required to consider the terms of such concession. This is an exception to the mandate of the Act which is recognized and allowed by the Act itself.

In the case of BIA, the concession granted by the Central Government states that apart from the 'Regulated Charges', the Airport shall be free without any restriction to determine all Other Charges. This implies that AERA is only empowered to regulate the Regulated Charges as defined in the Concession Agreement.

It is understood that the Planning Commission has written a letter dated October 6, 2010 to the Authority in which it has stated that the choice of economic regulation is an important factor in attracting private sector investment. It has also opposed the Single Till approach.

The private sector would only be willing to invest in the airport sector provided it is incentivized in a manner which is attractive.

In the 12th Five Year Plan (2012-2017), the Planning Commission has projected an investment of Rs. 710 billion for the development of airport infrastructure in the country. Of this, Rs. 570 billion is expected to be invested by the private sector. It is therefore imperative that the regulatory framework is investor friendly. A case in point is that though as per the Government's liberalized policy, 100% Foreign Direct Investment (FDI) is allowed for the development of Greenfield airports, the airport sector hasn't managed to attract FDI. This situation underscores the need for a predictable and conducive regulatory environment which creates confidence in, and attracts, investors. It is particularly important to note this in light of the Prime Minister and Planning Commission Deputy Chairman both announcing over Rs. 20,000 Crore investment in Private Airports through PPP mechanism in June 2013.

There are global precedents where airports in several countries have adopted the Dual Till approach. In such cases, the costs of aeronautical services have been considered in the determination of aeronautical tariffs without offsetting from the revenues from the airport's commercial activities. These countries/airports include:

Germany- Hamburg and Frankfurt Airports

Greece- Athens Airport

Hungary- Budapest Ferihegy Airport

Italy- Rome, Milan and Venice Airports

Malta-Malta Valetta Airport

The Netherlands- Amsterdam Schipol Airport (although we understand that the process is under review and subject to potential change from 2016 onwards)

APAO is strongly of the view that the Dual Till approach, which has found acceptance and application globally amongst regulators, be made applicable to BIAL.

- 4.177 Further, Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 22. Stakeholders have also commented on Regulatory Approach and Till in respect of BIAL. These comments are presented below.
- 4.178 On the issue of Regulatory Approach and Till, BPAC stated that:

"We believe the observations, justifications and reason cited justifies why single till is the only choice to be considered for tariff determination of BIAL.

Authority may please seek clarifications regarding the intention of GoK in this regard vis-à-vis the investments and concessions in offer for BIAL, if those concessions are meant for the benefit of passengers or for accounting such earnings exclusively for the promoters' interest.

4.179 On the issue of Regulatory Approach and Till, IATA stated that:

IATA considered that the arguments put forth by the regulator in CP No 14/2013-14 on its tentative decision to adopt single till for tariff determination at BLR were sound. Submissions by various stakeholders expressing different positions on the till issue did not warrant a fresh discussion especially in the absence of any new policy directive from the government. BIAL's financing needs should not be extracted from airlines and passengers by a blatant change in the type of revenue till used for tariff determination. Therefore, IATA does not think that the switch in AERA's tentative decision to determine the aeronautical tariffs in respect of BLR from single till to 40% shared revenue till is justifiable.

The AERA Act clearly describes UDF as a revenue enhancing measure to enable the airport operator to earn a fair rate of return. There is no mention of UDF being used

as a pre-financing mechanism. The statement in the CA which states that UDF will be used for the development, management, maintenance, operation and expansion of the facilities at the airport should be read in harmony with the AERA Act. The statement in the CA should not be taken to mean that UDF can be used as a pre-financing mechanism. When read in harmony with the AERA Act, it should be interpreted that the fair rate of return that the airport earns as a result of implementation of UDF could be ploughed back for the development, management, maintenance, operation and expansion of the facilities."

4.180 IATA has also stated that:

"It is unclear why AERA needed to issue this consultation paper (No. 22/2013-14) as an addendum to CP No. 14/2013-14 since the airport operator had already submitted proposals based on single till and dual till. BIAL's subsequent letter of 30 July 2013 to AERA where it stated that 'However, in order to reach a workable solution, BIAL intends to agree with the tariff on hybrid till model' seems to suggest that the issue of till is a negotiable element between the airport and the regulator. AERA's approach and philosophy for tariff determination had been comprehensively researched, argued and consulted with the industry before the decision was arrived at to adopt the single till approach as the one most appropriate for determining tariffs at major airports in the Indian context. AERA has an obligation to consistently apply its adopted single till approach for tariff determination at all major Indian airports as it had done at CCU, MAA, GAU and HYD. Concerning the letter from the Ministry of Civil Aviation dated 24 September 2013, the Ministry as a stakeholder of the industry was expressing a view and not issuing a policy directive. IATA considers AERA's independence to be of paramount importance and trusts that AERA would consider the Ministry's view in a balanced manner together with the views of other stakeholders as well as consider the consonance of that view with AERA's adopted single till approach. Allowing the requirement of capital for airport expansion to drive the type of till to use is a dangerous precedent to set that will breach the sanctity of AERA's published approach and philosophy. In the first place, it is the responsibility of the airport to provide the financing for airport expansion. Refusal of the shareholders of the airport to inject additional equity to fund the airport's expansion does not mean that the burden of financing should then automatically fall onto the airlines and passengers through adjustment of the revenue till. It is also not obvious that the airport had considered other financing options such as issuance of bonds,

monetization of land etc. If a 40% shared till is deemed the right level to meet the current funding requirement for expansion, does it mean that for another occasion or at another airport where the funding requirement is different, a different shared till percentage would apply? Clearly, funding requirement for airport expansion cannot be the basis to adjust the till. If this becomes a precedent, the entire regulatory process will be thrown into chaos. IATA therefore urges AERA to preserve the sanctity of its regulatory approach and philosophy and to maintain the consistency of their application by using single Till."

4.181 APAO in its comments on Till has stated that:

"Concession Agreement: The Concession Agreement clearly bifurcated the regulated and other charges. Bringing the other charges under the ambit of regulation goes against the letter and spirit of the Concession Agreement which does not envisage cross subsidy from non-aeronautical revenues to defray aeronautical charges. Hence, it could be inferred that the concession agreement envisaged adoption of Dual Till.

AERA Act: The proviso to Section 13(1)(a) of the Act states that "different tariff structures may be determined for different airports having regard to all or any of the considerations specified at sub-clauses (i) to (vii)". In other words, the Act recognizes the flexibility given to AERA to determine tariff structures for different airports having regard to various considerations including the concession granted by the Central Government.

So even though the AERA Act empowers AERA to regulate tariff for Aeronautical Services as defined in Section 2(a) of the AERA Act, in case any concession has already been granted by the Central Government, AERA is required to consider the terms of such concession. This is an exception to the mandate of the Act which is recognized and allowed by the Act itself

Global precedents- in respect of Airports adopting the Dual Till approach

The Hybrid Till approach suggested by the Authority is not conventional, without precedent especially at greenfield airports and in emerging markets. It is crucial that any regulatory till sought to be applied at BIAL (and potentially at other airports in the future) provides an assurance to current and prospective investors that returns on their investment are commensurate with the risks they have borne. This is especially the case with respect to Greenfield projects where the risks are higher and investments take longer to break even. The absence of adequate returns risks

disincentivizing investment across India as investors pursue more remunerative opportunities both in India and more widely. The importance of this dimension is underlined by the potential for (and lack of success so far in attracting) FDI to Indian airports subsequent to the first round of investment in Indian airports between 2004 and 2006. The Regulator's judgment needs to take full account of this need to attract investment into the sector.

It is APAO's understanding that the Authority would be making the Shared Revenue Till approach applicable to BIAL only to enable BIAL to overcome its funding paucity for capital investment in the forthcoming consultation period. However, APAO would like to bring to the Authority's notice the fundamental issue that capital investment at BIAL is highly likely to be an ongoing and constant process for multiple consultation periods in the future given the forecast traffic demand levels and projected infusion of capacity (through capital investment) in order to maintain acceptable passenger levels-of-service. It is therefore unclear to APAO whether this approach is likely to be followed for each period in the future and if so whether the RAB will be constantly adjusted. If this is the case, it is not a sustainable approach for the airport operator given CapEx and OpEx forecasts and operational constraints. In addition, BIAL will need to have flexibility to use revenue accrued as the airport best sees fit.

The application of Shared Revenue Till approach during its period of application should be unconditional. Imposing conditions would end up disincentivizing BIAL and also adversely impact its ability to generate adequate returns to make the airport project financially viable. BIAL will be experiencing severe shortage of funds, even under proposed Shared Revenue Till by Authority, and hence needs to be given complete flexibility in deciding whether the funds generated through application of the Shared Revenue Till approach should be used for operations, repayment of debts or undertaking expansion.

The adjustments proposed by AERA to the Aggregate Revenue Requirement (ARR) and the Regulatory Asset Base (RAB) would effectively neutralize the benefits that would accrue to the operator from the adoption of the Shared Revenue till approach. Further, the adjustment to RAB would effectively mean that a permanent reduction in RAB would be made even before the assets were capitalized and put to use. As outlined earlier, this is of particular concern given the likely capital investment profile at the airport over the next few consultation periods in order to meet demand levels.

In addition, financing of such projects will be difficult with the approach proposed by the Authority."

4.182 On the issue of till, FIA stated that "Single Till approach proposed to be followed by Authority for tariff determination is in the right direction". FIA further stated that:

"In the context of MoCA's said letter, it is submitted that the Authority being an independent statutory auditor ought to act within the four corners of the law and not on the basis of suggestions of MoCA. It is noteworthy that in a matter pending adjudication before the Hon'ble Airports Economic Regulatory Authority Appellate Tribunal ("AERAAT"), MoCA had submitted by way of its Counter-Affidavit that the Authority is an independent regulator and suggestions of Government of India/MoCA are not legally binding on it. Further, it has submitted that MoCA has no role to play with respect to determination of aeronautical tariff. The Authority being a party to the said matter is aware of the contents of MoCA's Counter Affidavit in the said matter.

- 13. It is submitted that Single Till is premised on the following legal framework being:
- (a) Section 13(1)(a)(v) of AERA Act envisages that while determining tariff for aeronautical services, the Authority shall take into consideration revenue received from services other than the aeronautical services.
- (b) Clause 4.2 of AERA Guidelines recognizes Single Till approach which sets out the following components on the basis of which ARR will be calculated:-
- (i) Fair Rate of Return applied to the Regulatory Asset Base
- (ii) Operation & Maintenance Expenditure
- (iii) Depreciation
- (iv Taxation
- (v) Revenues from services other than aeronautical services
- (c) AERA in its Single Till Order has held that "Single Till is most appropriate for the economic regulation of major airports in India".
- 14. It is submitted that determination of aeronautical tariff warrants a comprehensive evaluation of the economic model and realities of the airport, both capital and revenue elements. BIAL's approach of Dual Till or Shared Till deserves to be discarded.

- 15. In the Single Till Order, Authority has strongly made a case in favor of the determination of tariff on the basis of 'Single Till'. It is noteworthy that the Authority in its inter alia Single Till Order has:
- (a) Comprehensively evaluated the economic model and realities of the airport both capital and revenue elements.
- (b) Taken into account the legislative intent behind Section 13(1)(a)(v) of the AERA Act.
- (c) Concluded that the Single Till is the most appropriate for the economic regulation of major airports in India.
- (d) The criteria for determining tariff after taking into account standards followed by several international airports (United Kingdom, Australia, Ireland and South Africa) and prescribed by ICAO.
- 16. The Authority in its AERA Guidelines (Clause 4.3) has followed the Single Till approach while laying down the procedure for determination of ARR for Regulated Services. 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 a enactment/statute, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities in as much as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations.
- 17. The fundamental reasoning behind 'Single Till' approach is that if the consumers/passengers are offered cheaper air-fares on account of lower airport charges, 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/passengers and that can be assured only by way of lower aeronautical charges. It is a productive chain reaction which needs to be taken into account by the Authority.
- 18. It is to be noted that Authority has indicated that part of the Non-aeronautical revenue which would remain in the hands of BIAL under 40% Shared Revenue Till would be used by BIAL for Capital Expenditure which is required towards airport expansion during the current control period. However, during the Stakeholders Consultation Meeting held on 10.02.2014, representatives of BIAL

objected to such condition (on using this revenue only for capex) being put for treatment of its Non-Aeronautical revenue. It is submitted that determination of aeronautical tariff on Shared Till basis for the first control period would set the tone and precedent for determination of aeronautical tariff in subsequent control periods contrary to the applicable legal framework. Thus, it is submitted that Authority should discard the option of determination of aeronautical tariff on Shared Till and follow Single Till scrupulously.

- 19. FIA therefore submits as under:
- (a) Single Till Model ought to be applied to ALL the 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 concession agreements as the same is mandated by the statute.
- (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.
- (c) MoCA's view(s) with respect to any issue at best can be considered as that of a Stakeholder and by no means are binding to Authority's exercise of determination of aeronautical tariff as is admitted by MoCA itself before the AERAAT.

In view of the above, it is submitted that the Authority ought to determine the aeronautical tariff of Kempegowda International Airport on Single Till model as the first tariff determination will not only set the precedent but also create erroneous signal to the Stakeholders of the privatized airports and yet to be privatized airports."

4.183 GoK submitted as under on the issue of Regulatory till:

"Addendum to CP No. 14 dated 26th June 2013 (CP No. 22 dated 24th January 2014) has proposed Aeronautical Tariffs and UDF as per 40% Shared Revenue Till.

... However BIAL has presented that the proposed methodology of reducing part of Non-Aeronautical Revenue which would remain in the hands of BIAL under 40% Shared Revenue Till from the RAB at the end of the control period tantamounts in effect, to making it a Single Till. Further deducting upfront market value of land used for commercial development might result in skewed cash flows. In need not be emphasised that for large infrastructure projects, especially for an airport like BIA which is currently undergoing expansion, adequate and healthy cash flows is an indispensable requirement. Any measure that severely chokes the cash flow would be

exposing the airport to enormous operational risks including the risk of plummeting standards of maintenance and inability to meet debt repayment covenants.

Considering all the above aspects, the Government of Karnataka would like to inform as under:

"GoK supports the view of MoCA and Shared Revenue Till of 40%.

Requests AERA to address the issue of BIAL with regard to proposal of reducing the part of Non-aeronautical revenue which would remain in the hands of BIAL under 40% shared revenue till and deducting upfront market value of land used for commercial development of the RAB...."

4.184 British Airways has stated that:

"British Airways has failed to understand the benefits to the interests of the passengers that has caused AERA to propose that you shall calculate the Aeronautical tariffs and UDF under a 40% shared Revenue till."

4.185 Cathay Pacific has commented that:

"The independent economic regulator established under the AERA Act is empowered to determine tariffs for major airports in India (including BLR and has through its Order 13/2011 determined after extensive consultation and sound analysis that single till approach would be most appropriate in the Indian context. CX is in full agreement with AERA on the use of single till approach for the tariff determination in respect of BIAL.

Cathay pacific reiterates that it is inappropriate for the Addendum to re-open the debate on the type of till for BIAL as AERA has released Consultation paper CP 14 in which it proposes a single till regulation that meets regulator's general methodology of tariffs determination."

4.186 Lufthansa has stated regarding the Till as follows:

"No reasons have been given by the Authority as to why it is considering the shared till MYTP of BIAL at such belated stage. The unwillingness of the other stakeholders of BIAL to bring in additional equity for the expansion of the airport is not an acceptable justification for considering the shared till model as proposed by BIAL. Authority cannot burden the users of the airport viz passengers and the airlines for the benefit of the operator and its shareholders. Even as per ICAO guidelines airlines and their passengers are only charged for the cost of services actually provided. It is unfair to place additional burden on airlines and passengers to pay for facilities that

they are not using. The Concession Agreement clearly states that tariffs would be determined by the Independent Regulatory Authority. AERA under the Act has to regulate in the manner that best serves the interests of the passengers.

AERA is an independent and autonomous body which and one of the functions of AERA is to see the economic and viable operations of the airports. It must consider the interest of passengers and the survival of the industry in determining the tariffs. The independent economic regulation of the airports improves efficiency and productivity throughout the industry. It encourages cost effective new investment and benefits all stakeholders. AERA should not come under the influence of any of the stakeholders. Re-doing the entire exercise of consultation after taking its position and giving its tentative decisions pursuant to due deliberations and analysis in the garb of giving a last opportunity to BIAL is illegal.

Today the airline industry is faced with challenges of financial sustainability. An effective regulatory framework is necessary requirement for these challenges to be met successfully."

d. BIAL's response to Stakeholders Comment on Matters regarding Regulatory Approach and Till

4.187 BIAL has stated regarding Lufthansa, British Airways, IATA and Cathay Pacific comment on Till that:

"BIAL reiterates its submissions made in reply to CP 14 wherein BIAL had stated the reasons and its requests for non-adoption of a single till regime. MoCA had received expert advice from M/s Bridgelink Advisors who had recommended a hybrid till model as most suitable for greenfield airports like BIAL. Further MoCA itself had used 30% shared till as a yardstick to determine domestic UDF and had applied dual till yardstick for determination of international UDF on adhoc basis pending finalization of capex. BIAL reiterates its submissions made in response to CP 14 and CP 22 in this regard.

BIAL further submits that the AERA Act mandates that the tariff determination exercise of a particular airport has to give due consideration for the viable operations of the airport as well as timely investment in the airport facilities. BIAL is the fastest growing airport in the country and is continuously investing in expansion of the airport. Hence 30% SRT as proposed by BIAL needs to be considered by AERA."

4.188 On IATA's comment that the UDF cannot be provided for financing Capital

expansion, BIAL has stated that:

"User development fee has been defined in the Concession Agreement to read as "means a fee collected from embarking passengers for the provision of passenger amenities, services and facilities and will be used for the development, management, maintenance, operation and expansion of facilities at the Airport." UDF should be construed such that the concessions provided in the Concession Agreement and provisions of AERA Act are honoured, BIAL's submissions in response to CP 14 and CP 22 are incorporated by reference."

4.189 On FIA's comment on Regulatory Till mechanism BIAL has commented as follows:

"BIAL submits that the Airports Economic Regulatory Authority of India Act 2008 ("Act") does not envisage Single till. Additionally the Act accords primacy to agreements executed and concessions granted to the airport operator prior to the enactment of the Act and therefore, there exists a statutory obligation to consider such agreements/concessions rather than otherwise. BIAL has therefore submitted its request for 30% SRT as a workable solution and requests that the same be considered. Moreover, as submitted by FIA the business and financial model of BIAL at the time of execution of the Concession Agreement and State Support Agreement is a relevant factor and the financial model was arrived at on the basis of 21.66% IRR and dual till model. In this regard, BIAL refers to and relies upon its detailed submissions made earlier in response to CP 14 and CP 22 as well as the submissions dated April 8, 2013. BIAL also incorporates by reference grounds urged in Appeal 2/2011 and Appeal 7/2011. BIAL submits that AERA is not bound by its previous orders namely Order No 13, Order No. 14, Direction No 5, Order No 5, Order No. 12 or Direction No 4 and in this regard, BIAL refers to the order dated 15.02.2013 passed by the Hon'ble Appellate Tribunal wherein AERA had submitted that Order No 13, Order No 14 and Direction No 5 are only indicative of the mind of AERA prima-facie. The Appellate Tribunal disposed of the appeals by keeping all contentions and issues open. In view of the same, BIAL submits that AERA is not bound by Order No 13, Order No 14 and Direction No 5 and at any event, the contents thereof are not final and binding."

4.190 On FIA's comments that Single till would lead to increase in volume of charges BIAL has stated that:

"The alleged reasoning is hypothetical and is clearly in the realm of speculation."

e. BIAL's Own Comments on Matters regarding Regulatory Approach and Till

- 4.191 BIAL's comment on Matters regarding Regulatory Approach and Till proposed by the Authority in CP 14 is as under:
 - "1. PROMISES MADE TO BIAL'S SHAREHOLDERS BE RESPECTED: It is relevant to submit that the Government of India made certain promises to shareholders of BIAL and denoted its intention that the terms and conditions for the PPP project, as recorded in the Concession Agreement, will remain sacrosanct. This is indicated by the following recital/articles of the Concession Agreement:
 - "(C) In the context of a project being undertaken through a public/private sector approach, it is critical that the terms and conditions upon which such a project will be implemented are set out and therefore the parties are entering into this concession agreement to reflect the terms and conditions."
 - "5.4.3. in recognition of the investment to be made by the shareholders, from time to time, of BIAL and the Lenders and subject to material compliance by such shareholders and the Lenders with all Applicable Law, GoI will not take any steps or action in contradiction of this Agreement which results in or would result in such shareholders or the Lenders being deprived or substantially deprived of their investment or economic interest in the Project except in accordance with the Applicable Law."
 - "8.9 Management of the Airport Business

BIAL shall, in accordance with Good Industry Practice and Applicable Law and as contemplated by the terms of this Agreement:

8.9.1 Manage and operate the Airport in a competitive, efficient and economic manner as a commercial undertaking;" (Emphasis supplied)

It is true that the Concession Agreement contemplates creation of an Independent Regulatory Authority ("IRA") as pointed out in paragraph 26.23 of the CP. However, inter alia article 10.2.4 of the Concession Agreement requires BIAL to seek approval of IRA only in relation to 'regulated charges'.

Concession Agreement distinguishes between regulated services and services that are not to be regulated. Concession Agreement as well as the State Support Agreement demarcates airport activities and non-airport activities. Concession Agreement prescribes regulation only in respect of certain services (regulated services) and not in respect of services other than regulated services. These

distinctions indicate that Concession Agreement does not contemplate single till. Moreover, article 10.3 of the Concession Agreement provides that BIAL shall be free, without any restriction to determine charges for services other than regulated services, which denotes a clear separation of regulated services and other non-regulated services and rules out single till.

The proposed tariff determination mechanism treats both aeronautical and non-aeronautical services similarly, which is contrary to the Concession Agreement and State Support Agreement. In paragraph 26.24 of the CP, it is stated that Authority is empowered to regulate "any aspect of airport activities" as defined in the Concession Agreement. BIAL respectfully submits that definition of 'airport activities' has to be interpreted keeping in mind the concessions that have been granted to BIAL under the Concession Agreement. Thus, it is BIAL's submission that insofar as regulation of its tariffs is concerned, as per the Concession Agreement, the IRA shall only determine charges for 'regulated services' and none other.

The Airports Infrastructure Policy is referred to in the statement of objects and reasons of the AERA Act. The statement of objects and reasons further states that, as a result of the policy, a Greenfield airport in Bangalore is being developed. BIAL therefore respectfully submits that the Airports Infrastructure Policy is very significant for determination of BIAL's tariff and tariff mechanism proposed should be in line with the Airports Infrastructure Policy.

2. SHRI K ROY PAUL'S ARTICLE: Shri K Roy Paul has stated as follows:

"The concept of dual till agreed to by GOI in the case of BIAL project ensures that the airport investor has greater flexibility to expand non-aeronautical/ commercial operations, which improves airport services and reduces pressure for increasing airport charges."

Per Shri K Roy Paul, Concession Agreement contemplates dual till. The Concession Agreement, although does not specifically use the expression 'dual till', 'hybrid till' or 'till', implies a till other than single till. As per the CP, by virtue of Section 13(1) (a) (v), dual till runs counter to legislative policy. Such an interpretation would render Section 13(1) (a) (vi), Section 13(1) (a) (vii) as well as proviso to Section 13(1) (a) otiose and this could not have been the legislative intent.

3. ADHOC UDF DETERMINATION: MoCA used 30% shared till as a yardstick for determination of ad hoc UDF for domestic passengers of BIAL. MoCA's policy decision that a shared till of 30% can be applied is an indicator of the fact that shared till

approach with 30% cross subsidization may be appropriate in respect of BIAL. Moreover, MoCA, in its affidavit filed as a part of Appeal No.7 before the Appellate Tribunal has stated that 30% cross subsidization formula has been utilized in determination of tariffs for many other airports in the country. BIAL respectfully submits that the policy guidance provided by MoCA as aforesaid be taken into consideration for determination of BIAL's tariff.

- 4. BUSINESS PLAN CONSIDERED FOR FINANCING / BANK'S LETTER: BIAL submits that financing of the project was done on certain considerations and the business plan was prepared accordingly. If such considerations are not taken into account, BIAL may suffer adverse financial implications. It is in this context that the letter dated April 12, 2013 of ICICI Bank assumes importance. BIAL submits that, as stated earlier, capping the returns or profits from non-aeronautical services or services other than aeronautical services is tantamount to regulation, albeit indirect.
- 5. INTERPRETATION OF AERA ACT: BIAL submits that parliamentary debates can be relied on for interpretation of a statute only if there is ambiguity. In the instant case, when AERA Act is read in conjunction with Concession Agreement, there is no ambiguity and therefore, parliamentary debates may not be relevant. The proposed interpretation in the CP that Section 13(1) (a) (v) indicates legislative intention that non-aeronautical revenues must be regulated may not be apposite. BIAL reiterates submissions made in this regard earlier.
- 6. CHANGE IN LAW: BIAL reiterates its submissions made earlier and hereinabove with regard to how, the proposed tariffs, will result in 'change in law' as defined in the Concession Agreement. The proposed tariff regulation mechanism regulates CGF Services directly and non-aeronautical services indirectly and is therefore, in modification of Regulated Charges. Therefore, the proposals in the CP will trigger 'change in law' provision resulting in liabilities being foisted upon the Central Government. BIAL submits that an interpretation of the AERA Act that does not result in creation of liabilities be preferred.
- 7. BRIDGELINK ADVISORS' REPORT: BIAL requests the Authority to consider the following factors in respect of Bangalore airport:
- (i) Mumbai and Delhi airports were fully operational airports as against Bangalore airport, which was built from scratch;
- (ii) Delhi and Mumbai airports are located in the heart of the respective cities. Whereas, BIA is situated far away from Bangalore city and is further saddled with

lack of proper connectivity and therefore requires enormous investments towards infrastructure development so as to attract investment;

- (iii) Development and operationalization of non-airport activities in BIAL requires entrepreneurial skills on account of the aforesaid challenges and BIAL runs the risk of not getting adequate return on its investments;
- (iv) In case of BIAL, there are two nearby competing airports at Mysore and Hassan in Karnataka besides, three other major airports in the southern region i.e. Hyderabad, Chennai and Cochin airports; and
- (v) BIAL requires huge further capital infusion in order to undertake expansion of terminal and undertake development of 2nd runway and terminal.
- 8. RISK REWARD CONSIDERATIONS: BIAL requests the Authority to consider the risks associated with Greenfield airports generally and BIA in particular. At the time when tenders for development of a Greenfield airport at Bangalore were issued, one of the criteria for selection was the amount of viability gap funding required from the State of Karnataka. This bidding criteria itself indicates the risk perception of development of airport. If construction of a Greenfield airport at Bangalore was not associated with any risk, the state government would not have offered any viability gap funding.

BIAL submits that evaluation of risk in the CP is post facto and BIAL requests Authority to evaluate risks associated with BIAL at the time of execution of Concession Agreement. Per paragraph 26.79, the CP acknowledges that initial promoters of BIAL could be said to have faced Greenfield risks. BIAL respectfully submits that the Concession Agreement has to be interpreted and understood in the context of such risks as existed then, i.e. surrounding circumstances. BIAL submits that since there were risks, the intention behind the Concession Agreement was to fortify the position of BIAL such that BIAL would have required returns. It is in this backdrop that Article 10.3 of the Concession Agreement provides that, BIAL shall be free, without any restriction, to carry on activities in respect of services other than regulated services. BIAL respectfully submits that subsequent market transactions are not relevant in construing the terms of Concession Agreement.

BIAL further requests Authority to consider the following risks associated with BIA:

(i) Growth of traffic – Traffic growth is uncertain and may get affected by various external factors such as policies of the Government, competition from AAI

airports (Chennai, Mysore) and neighbouring private airports. It requires entrepreneurial abilities to attract and retain traffic growth. However, despite best entrepreneurial efforts, the potential of BIA may remain underutilized due to impact on traffic as stated above. The vagaries of traffic growth may affect the forecasts of the airport, which may, in turn, result in the airport not being fully utilized;

(ii) Connectivity among neighbouring cities – The potential improvement in terms of connectivity with other cities like Chennai and Hyderabad poses greater risk to BIAL as traffic particularly the international passenger and cargo traffic may get diverted to other airports. It requires lot of effort on part of the airport to ensure the steady growth in traffic and always carries the risk of potential not being utilized.

9. LEVEL PLAYING FIELD

BIAL submits that interests and safeguards for airports have been addressed in the respective concession agreements, keeping in mind the distinctive factual scenarios in each case. These agreements are indicative of policy of Government of India at the highest level and therefore, the same be respected and implemented as such. In the case of BIAL, it is requested that express provisions of the Concession Agreement be given effect to, thereby ensuring BIAL a level playing field.

- 10. LETTER OF PROF. GAJENDRA HALDEA: According to Prof. Haldea, hybrid (shared) model presents the best alternative for airports in India and he recommended that hybrid (shared) till may be adopted keeping in mind the investment needs of the airports. It is in this context that BIAL has proposed determination of tariff at least on the basis of hybrid (shared) till in its letter dated July 30, 2013 for favourable consideration of Authority.
- 11. Further observations made by Authority in paragraphs 26.87-89 of the CP: In paragraph 9.10 of the CP, it is noted that overall capital expenditure is less in dual till on account of reduced financing through debt. On account of the single till proposed, BIAL will not be in a position to leverage its internal resources for expansion and development of BIA. Moreover, BIAL submits that, its shareholders, including State promoters, have, in a board meeting, indicated that they will not be in a position to infuse equity. BIAL therefore respectfully submits that a single till mechanism would not be appropriate to ensure that expansion and development needs of BIA are met. It may be relevant to submit that state promoters, i.e. Government of Karnataka and Government of India together hold 26% equity in BIAL. Further, as per the Concession Agreement, 4% of revenues are being paid as Concession Fees to Government of

India. Additionally, BIAL being a PPP project which was formulated on BOOT basis, a world class airport together with other facilities will have to be handed over to the Government of India in fully operational condition, on the completion of the tenure of the Concession Agreement. BIAL requests for appropriate consideration of the aforesaid for determination of tariffs of BIAL.

BIAL submits that, a world class airport would be in the interest of passengers. Therefore, if tariffs submitted by BIAL under dual till /hybrid (shared) till were to be accepted, the same would in fact be in the interest of the end passenger, since the revenues can be used for further expansion of the airport.

In view above various explanations, BIAL submits that Dual till was contemplated by Concession agreement which Authority has to consider. Although, BIAL maintains that Concession Agreement contemplates regulation by dual till, in addition to submissions under single till and dual till, as indicated in the letter dated July 30, 2013, BIAL has submitted MYTP on 30% hybrid (shared) till basis for kind consideration of Authority.

As you are kindly aware, while submitting the tariff proposal, BIAL had submitted its proposal, based on its interpretation of provisions of Concession Agreement, on Dual Till basis. It also submitted its proposal on Single Till basis only as per directions of the Authority.

While determining adhoc UDF for BIAL, MoCA, though of the view that no cross subsidisation from non- aeronautical revenue is provided in the Concession Agreement, finalised UDF on the basis of cross subsidisation of 30% from non-aero revenue. UDF determined by MoCA in the year(s) 2008/09 was on ad-hoc basis and such UDF determined by MoCA continued till the commencement of 1st control period and will change according to determination by the Authority.

Decision of cross subsidisation to the extent of 30% of non-aeronautical revenue was taken by MoCA to reduce amount of UDF.

After a thoughtful consideration, in order to meet funds requirement for expansion and other capital expenditure on the one hand and respectfully adhered to MoCA's approach towards tariff determination, BIAL accordingly submitted its revised proposal vide its letter no AERA/Finance/2013-14/03, dated August 19th 2013."

4.192 BIAL's comment on Matters regarding Regulatory Approach and Till proposed by the Authority in CP 22 is as under:

"TILL METHODOLOGY

BIAL has the following submissions in respect of the till methodology proposed:

i. Section 13(1)(a) does not contemplate or impose any conditions with respect to the manner in which tariffs collected by airport operator can be utilized by it. In view thereof, BIAL respectfully submits that the restriction in relation to the manner of usage of revenues is not in consonance with the provisions of the AERA Act.

ii. BIAL submits that the Concession Agreement contemplates dual till model of regulation. However, BIAL had, with a view to arrive at a workable solution, proposed 30% SRT model. BIAL respectfully submits that in order to respect the concessions granted to it, at the very least, 30% SRT model ought to be accepted.

iii. BIAL submits that MoCA, at the time of determination of domestic UDF which was adhoc pending Project cost verification, had considered 30% SRT along with dual till for international UDF. In this light, BIAL submits that, its request for determination of tariffs on the basis of 30% SRT is reasonable

iv. BIAL further submits that M/s. Bridgelink Advisors, who had been appointed by MoCA, also opined that 30% SRT would be appropriate for BIAL.

v. In the case of MIAL and DIAL, 30% SRT is understood to mean that there are no restrictions imposed with respect to the manner in which non-aeronautical revenues attributable to the airport operator are to be treated and that only 30% non-aeronautical revenue is utilized for cross-subsidization. Therefore, the treatments proposed by the Authority and in particular, the conditions proposed to be imposed with respect to reduction / adjustment from RAB and ARR, are contrary to recognized principles of SRT model of tariff determination.

vi. BIAL submits that the nature of treatment to non-aeronautical revenue share in the hands of BIAL and the proposed deductions from RAB and ARR are not in consonance with Section 13(1) (a) of the AERA Act or the Concession Agreement and is otherwise not in accordance with law. BIAL further submits that the aforesaid treatment negates the underlying philosophy of Shared Revenue Till and is tantamount to regulating BIAL by Single Till.

vii. The differential tariffs between Single Till Model and 40% SRT model does not lead to transfer of resources. In fact, a 30% SRT model leads to subsidisation of aeronautical tariffs from non-aeronautical revenues and acts as a vehicle to incentivize the airport operator to maintain and maximise efficiency levels.

viii. BIAL submits that 30% SRT model will appropriately incentivize entrepreneurship and investment in non-aeronautical services. Since 30% of the revenues and not profits will be taken into account for cross subsidization, only if BIAL can manage its non-aeronautical businesses with efficiency can BIAL ensure that its non-aeronautical businesses are rewarding. BIAL therefore submits that this approach is in line with the objective of the AERA Act and the Airports Infrastructure Policy, 1997 referred to therein.

- ix. Without prejudice to the aforesaid submissions and due to the peculiar nature of treatment proposed, BIAL requests clarity on the following:
- a. Accounting treatment to the non-aeronautical receipts (differential receipts between Single till and 40% SRT) are such receipts to be treated as capital receipts or revenue receipts?
- b. Will the "transfer of resources", as defined in the Addendum, be subject to tax?"

f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Consideration of Regulatory Till

- 4.193 The Authority has carefully examined the comments of the stakeholders including BIAL on the consideration of Regulatory Till in respect of KempeGowda International Airport, Bengaluru. The Authority notes the comments from IATA, BPAC and FIA supporting the Single Till as was proposed by the Authority in CP 14 and disagreement by APAO, BIAL, Zurich Airport and GoK to Authority's proposal to adjust the difference between computations made under 40% Shared Revenue Till and the amount trued up based on Single Till at the beginning of next control period. AAI has presented factors to be considered for choice of a till method as well as the factors, based on which AAI has been following Single Till.
- The Authority had analysed several aspects in its consideration of Single till and Dual till for determination of aeronautical tariff in respect of BIAL and presented its analysis in the CP 14 (Refer Para 4.5 above to Para 4.148 above). The Authority had, after the analysis proposed Single Till as the framework to be adopted for determination of Aeronautical Tariff for BIAL. Subsequently, the Authority had proposed to make computations under 40% Shared Revenue Till (SRT) taking into account the comment from MoCA vide letter dated 24th September 2013 and BIAL's request for additional capital for ongoing expansion. The Authority had also given clear methodology for truing up (as detailed in Para 4.170 above). In its analysis in CP 22, the Authority had clearly stated the reasons for making computations

under 40% SRT (Refer Para 4.166 above)

- 4.195 Authority's analysis of comments submitted by the stakeholders on consideration of Dual Till, 40% SRT and adjustment proposed to be made to RAB/ ARR is presented below:
- 4.196 The Authority notes comment of Zurich Airport that the regulation must "be limited to those activities of the airport where, due to the dominant position, no direct competition exists. This is basically the case for aeronautical activities. However, this is not the case for the entire non-aeronautical activities including the parking and real estate development." The Authority notes that the Authority did not propose to regulate the Non-Aeronautical Activities but to determine the Aeronautical Tariffs considering the Till that may be most suitable to BIAL. Consideration of part or full of the Non-Aeronautical Revenues to cross subsidize the Aeronautical charges does not construe as regulation of these Non Aeronautical charges by the Authority.
- 4.197 Under the AERA act, aeronautical services are defined and for which the Authority is required to determine charges. Any provider of an aeronautical service becomes a "regulated entity". Hence if a third party concessionaire is providing an aeronautical service (e.g. cargo, ground handling and fuel supply), the rates that such a third party concessionaire can charge are subject to regulation and the Authority is required, under the provisions of the Act, to determine the same. However, if such a third party concessionaire is providing a nonaeronautical service (retail, food and beverage or duty free shop), such a third party concessionaire is free to fix such rates and the rate that such a concessionaire is charging to the customers is NOT regulated by the Authority. The important point is that this distinction of determination of charges for Aeronautical services but not for non-aeronautical services is regardless of the regulatory till. Hence to say that single till "indirectly" regulates nonaeronautical services is incorrect. This will also be clear from the fact that the legislature (Standing Committee) wanted the Authority to regulate the non-aeronautical services but the Government in its Action Taken Report submitted that regulating non-aeronautical services is not appropriate but stated that a clause will be added to the Bill to the effect that "revenue from services other than aeronautical" will be a factor that the Authority will take into account while determining aeronautical tariffs.
- 4.198 Government's wording in the Action Taken Report is given below

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

aeronautical charges. In India also, there is an increasing realization that the non-aeronautical revenue has to increase so that core airport user, i.e., airlines, passengers and cargo facility users do not have to bear high aeronautical charges. Keeping this in view it is felt that one of the factors relevant for consideration to determine the tariff for the aeronautical services could be the **revenue generated by the subject airport operator through non aeronautical stream** (emphasis added)." Accordingly, following clause was added in Section 13 (1) (a) of the Bill by way of official amendments:

"(v) Revenue received from services other than aeronautical services"

- 4.199 The government therefore clearly made a distinction (accepted by the legislature) between (a) regulating non-aeronautical service and (b) taking into account the revenue from non-aeronautical service towards calculating aeronautical tariffs. The Government stated that while (a) is not appropriate, (b) is in order and accepted the same. In adopting Single Till approach, the Authority has followed the legislative guidance in this behalf.
- 4.200 The airport operator normally focusses on the core activities of running the airport and generally farms out both the non-aeronautical activities as well as aeronautical ones to third party concessionaires. (In some cases, the airport operator may himself render the aeronautical services but seldom non-aeronautical ones). In normal concession agreements (for both aeronautical as well as non-aeronautical ones) the concessionaire contracts to give a revenue share to the airport operator. So the revenue in the hands of the airport operator on account of farming out aeronautical and non-aeronautical services at an airport consists predominantly of this revenue share (other elements could include rental or even dividend provided the concessionaire is a Joint Venture with the airport operator) The revenues in the hands of the airport operator on account of non-aeronautical service rendered at an airport are taken in full towards determination of aeronautical charges. This cannot be termed as regulating a non-aeronautical service or its charges.
- 4.201 When the arguments of the BIAL in favour of dual till was not proposed by the Authority, they offered an alternative argument that at least shared/hybrid till be adopted where only a certain percentage of the non-aeronautical revenues are taken into account while determining aeronautical tariffs. As a preliminary observation, such a compromise that is generally suggested by the private sector operators begs the question, if according to the private sector airport operators, single till indirectly regulates the non-aeronautical activities,

a shared or hybrid till, by necessary inference partially regulated the non-aeronautical services depending on the percentage of non-aeronautical revenues (30% or 40% etc.) that is taken into account in determining aeronautical tariffs. Hence the logical conclusion is that from the standpoint of private sector operators, it is all right to indirectly *partially* regulate the non-aeronautical services but it is not all right to indirectly fully regulate them (Refer Para 4.199 above regarding the distinction between regulating non-aeronautical service and taking into account revenues from non-aeronautical service towards calculation of aeronautical tariffs).

A.202 It may also be noted that under the Concession Agreement itself, the Independent Regulatory Authority (IRA) is stated to be able to regulate <u>any</u> aspect of Aeronautical activity. The Concession Agreement itself enumerates a large number of Airport activities that include the Aeronautical services like Cargo handling, Cargo terminals, Ground handling services, ground handling equipment, Aircraft fuelling services. Additionally, the Concession Agreement also includes, under Airport activities, certain what are normally called Non-Aeronautical Activities like Airline lounges, Banks/ ATM, Business Centre, Vehicle Parking, Flight Catering services etc. Under strict and literal interpretation of the Concession Agreement itself, this could be interpreted to mean that AERA can regulate charges for such services also. However, in line with the provisions of the Act, the Authority has confined its remit to the Aeronautical services that are defined in the Act.

The Authority also notes that Zurich Airport has commented that "Single Till regulations are de facto only found in a few countries in which the airports are typically 100 % state-owned" and has stated that "With a Dual Till regulation, an airport operator can cover the costs of its aeronautical activities and make a reasonable profit". The Regulatory Till adopted by the Authority ensures that the interest of the Airport Operator and that of the Airport users are appropriately balanced. The interest of the Airport Operator is taken into account by ensuring that the Airport Operator gets a fair rate of return on its investment. The Authority is analysing the Stakeholder comments and making a decision on the Cost of Equity it considers reasonable to provide a Fair Return of Return to the Airport Operator (in Para 14 below). That would ensure that the "reasonable Profit" that the Airport Operator is expected to earn is given to the Operator. Once the reasonable interests of the Airport Operator are taken into account (by providing fair rate of return on equity) the Authority has put the interest of the passengers into focus in its framework for economic regulation of airports. The

Authority's decision on Regulatory Till is therefore predicated upon the conditions obtaining in India and the general policy statements that Privatisation of Airports under PPP mode is to, inter alia, lower costs.

4.204 The Authority also notes Zurich Airports view that "When regulated by a Dual Till approach, the owner of the airport operator is aware of the fact that the aeronautical activities can at the maximum achieve risk-adjusted returns defined by the regulator. Accordingly, no excess returns can be achieved. Since the non-aeronautical activities are not regulated, the expectations of returns for the owners are not limited. They will be at the level of the returns of business segments of comparable companies. This form of regulation is justifiable from an owner's perspective". From this statement, the Authority understands that under Dual Till mechanism the Airport Operator will be able to achieve more than normal profits and the expectations of the returns are not limited. The legislative provisions of AERA Act do not allow implementation of a Dual Till. Secondly, the additional profits under any Regulatory till other than Single Till must have some underlying public purpose because apart from Single Till, any other Regulatory till results in higher UDF which directly impinges on the passengers. This is the reason why the Authority is unable to be persuaded by the statement of Zurich Airport that "These (Aeronautical) investments are not cross subsidized by the nonaeronautical sector, but compensated adequately through the fees raised for the aeronautical activities". According to Authority's computations, the incidence of Airport charges are lowest in Single Till and Highest in Dual Till.

4.205 The Authority also notes the comment from GoK to CP 22 and CP 14 wherein the GoK has stated that

...(please refer our letter dated 26th August 2013) wherein we have stated that passenger's interest is paramount

- 4.206 The Authority also notes MoCA's response to Authority's whitepaper wherein MoCA had commented that "...the ultimate objective should be to reduce the burden on the end users (passengers)".
- 4.207 A Regulatory Framework which gives more than the fair rate of return to the Airport Operator consistent with the risk profile, at the expense of the passengers, in Authority's view cannot be justified. That is why the Authority had in CP 22, proposed computations under 40% Shared Revenue till together with appropriate truing up mechanism

(Refer Para 4.166 above and Para 4.170 above)

The Authority has noted Zurich Airport's comment that "The incentive for efficiency improvements under the Single Till approach is low. There is an imminent danger that the necessary aeronautical investments are not made or clearly delayed". The Authority has also noted a similar comment by BIAL that "a 30% SRT model leads to subsidisation of aeronautical tariffs from non-aeronautical revenues and acts as a vehicle to incentivize the airport operator to maintain and maximise efficiency levels". The Authority is required to take into consideration the timely investments in the Airport under Section 13(1)(a) of the Act. Furthermore, the Concession Agreement specifies the required efficiency levels which the Airport Operator has to maintain. The Authority presumes that both the Capital investments as well as the Operations and Maintenance Expenditure proposed by BIAL take into account the expenditures required to maintain such levels of service as well as the efficiency expected from BIAL in the Concession Agreement. The Authority therefore concludes that its framework of Regulatory Till is fully consistent with the expectations from BIAL as reflected in the Concession Agreement.

APAO has stated that "India could become something of an international outlier, with detrimental effects on its ability to attract major investment" based on the imposition of Single Till. APAO has also commented about the 12th Five Year Plan and stated that "it is therefore imperative that the regulatory framework is investor friendly". In Authority's view, if India needs to give a boost to the Aviation sector, it would need to ensure that charges on the passengers are minimized, albeit at the same time giving a fair rate of return to the airport operator, be it a public sector like AAI or private sector operator under PPP. Single till, in the considered view of the Authority, strikes such a balance minimizing the charges on the passengers.

4.210 The Authority also notes APAO's second set of comments to CP 22 wherein APAO has stated that "It is crucial that the regulatory till sought to be applied at BIAL (and potentially at other airports in the future) provides an assurance to current and prospective investors that returns on their investment are commensurate with the risks they have borne. This is especially the case with respect to Greenfield projects where the risks are higher and investments take longer to break even. The absence of adequate returns risks disincentivizing investment across India as investors pursue more remunerative opportunities both in India and more widely. The importance of this dimension is underlined by the potential for (and lack of success so far in

attracting) FDI to Indian airports subsequent to the first round of investment in Indian airports between 2004 and 2006". The Authority's regulatory framework and mechanism of determination of aeronautical tariff, including that of the Till applied, ensures that the Airport Operators are provided Fair Rate of Return balancing the interest of the Airport Operator with that of the Airport users. As regards APAO's observation that FDI has not been attracted to the Aviation Sector, the Authority notes that post 2006, till about 2009 the Authority had not come into existence and hence non influx of investment of FDI into India post 2006, cannot be attributed to the issue of Regulatory Till. The Authority further notes that according to its understanding, the Government had not put forth additional proposals for PPP mode after 2006 and that only recently (September 2013 onwards) the Government has under its consideration privatisation of six AAI Airports.

- 4.211 With respect to the comment made by APAO that "Bringing the other charges under the ambit of regulation by imposing the Single Till approach goes against the letter and spirit of the Concession Agreement", the Authority has already stated in Para 4.114 above that freedom to impose charges for the activities other than those specified under "Regulated Charges" does not indicate or imply Dual Till approach being envisaged by the Concession Agreement.
- 4.212 With respect to the documents relating to financial closure and the Internal Rate of Return assumed in it, the Authority has already made clear that Concession Agreement, once executed is binding wherein it specifies that an IRA would be appointed to determine the charges. The concession agreement also expressly mentions that IRA can regulate <u>any</u> aspect of Airport activities which includes, apart from Cargo, Ground Handling and Fuel Supply even activities like duty free shopping, food and beverages, retail outlets, banks, ATMs, airlines offices, commercial lounges, spa and gymnasium facilities, car parking, etc. that normally are called Non Aeronautical activities. The framework of tariff determination of the Authority has already been laid down in the White Paper, Airport Order and Airport Guidelines. This matter has also been analysed by the Authority in detail in CP 14 reproduced above.
- 4.213 The Authority notes that APAO has stated that "the Central and State Governments who were stakeholders to the financial closure have taken cognizance of this model which reflected an internal rate of return of 21.66%. Further, the business plan which was drawn up on the basis of the Concession Agreement was also shared with the Government". The

Authority has already stated that once an agreement (here 'concession agreement) has been entered into, the matters and discussions preceding the agreement cannot be brought to bear on either the interpretation or consideration of the relevant Concession Agreement. The Authority notes that the final concession agreement does not mention 21.66% IRR as a factor indicated by APAO. The Authority had noted that, on the contrary, the Concession Agreement has stated about forming of IRA to regulate any aspect of the Airport activity. The Authority also notes that ICAO guidelines neither mandate Dual Till nor specify any specific IRR to be maintained for an Airport Project.

- APAO has commented that a change in bid assumption would adversely affect the risk associated with the Project and increase the cost of capital which would adversely impact the Operator's ability to repay its debts and undertake future expansion of the Airport. The Authority has in its CP 14 laid down the various risk mitigation measures that the Authority had proposed. The cost of debt that the Airport Operator may incur is also a cost considered by the Authority in determination of Aeronautical Tariffs. Considering the various risk mitigation measures laid out by the Authority, the Authority would only deduce that the cost of capital may in fact, reduce, if the lenders were to consider the risk mitigation measures existing in the Airport business.
- APAO has also commented that Planning Commission has written a letter to the Authority wherein it has opposed Single Till approach. Contrary to what has been stated by APAO, the Planning Commission in its comments to the Authority vide Letter dated 18.01.2010 (Para ii) has supported Single Till. Perhaps APAO is referring to the letter dated 6th October 2010 from Mr. Gajendra Haldea, which has been addressed in Para 4.81 to 4.89 above.
- 4.216 The Authority notes the various comments made by BIAL and the arguments made by it in support of the Till mechanism. The Authority has considered all these aspects put forth by BIAL as part of the analysis in CP 14.
- 4.217 The Authority notes that BIAL in its comments has reiterated that "the Airports Infrastructure Policy is referred to in the statement of objects and reasons of the AERA Act. The statement of objects and reasons further states that, as a result of the policy, a Greenfield airport in Bangalore is being developed. BIAL therefore respectfully submits that the Airports Infrastructure Policy is very significant for determination of BIAL's tariff and tariff mechanism proposed should be in line with the Airports Infrastructure Policy".

4.218 The exact wording appearing in statement of objects and reasons of the AERA Act are as under:

"Most of the civil airports, including civil enclaves at Defence Airports, are presently controlled by the Airports Authority of India (Airports Authority) in the Ministry of Civil Aviation. The Airports Authority, with the approval of the Central Government, fixes the aeronautical charges for the airports under its control, prescribes the performance standards of all airports and monitors the same. The Airport Infrastructure Policy formulated in 1997 provides for the private sector participation for improving quality, efficiency and increasing competition. As a result of this initiative, Greenfield airports are now coming up at Bangalore and Hyderabad in Public-Private-Partnership. A private airport is already fully operational at Cochin. Delhi and Mumbai Airports are also being restructured through the Joint Venture route for modernization and development. The trends indicate growing competition and a requirement of level playing field amongst different categories of airports in future."

4.219 The Authority notes that the Airport Infrastructure Policy referred to in the statement of objects and reasons in the Act is of 1997 and does not indicate any specific Regulatory Till. Thereafter in 2008, MoCA issued Greenfield Airport Policy wherein also there is no specific mention of Regulatory Till. On the contrary, it clearly mentions that "economic regulation of all airports would be governed by the proposed Airport Economic Regulatory Authority (AERA) as and when enacted". In the meantime, as indicated in the statement and objects in the AERA Act 2008, the Airports Economic Regulatory Authority of India Bill of 2007 was formulated that finally got passed as Act 27 / 2008 (5th December 2008). The Act came into force on 1st January 2009 except Chapter 3 regarding Tariff Determination which came into force on 1st September 2009. This chapter incorporates the legislative guidance in the matter of determination of Aeronautical Tariffs. The Authority also notes that the Concession Agreement of BIAL singed on 5th July 2004 also expressly indicates the Government's intention of establishing IRA that would regulate any aspect of the Airport activity. The Concession Agreement does not indicate any particular Regulatory Till. On the contrary, the AERA Act gives specific legislative guidance to the Authority as to the factors that it needs to take into consideration while determining charges for Aeronautical services. The legislative intent in taking into account "revenue from services other than Aeronautical services" vide Section 13(1)(a)(v) have been fully given in Para 4.198 and 4.199 above. It would thus be clear that the wording in the Act are sufficiently clear and AERA's framework of Regulatory Till is fully consistent with the Regulatory guidance and policies of the Government. In view of the Authority therefore, BIAL's reliance on the statement and objects as allegedly supporting a Dual Till approach is therefore misplaced.

- BIAL has also noted that "As per the CP, by virtue of Section 13(1) (a) (v), dual till runs counter to legislative policy. Such an interpretation would render Section 13(1) (a) (vi), Section 13(1) (a) (vii) as well as proviso to Section 13(1) (a) otiose and this could not have been the legislative intent". The Authority notes that the Authority has always held that the provisions of the Act would take primacy over those of an agreement. At any rate, the Authority has taken into account the provisions of Section 13(1)(a) read with the provisions of Concession Agreement clearly stating that IRA would be formed to regulate any aspect of the Airport activities. Moreover, the Concession Agreement has no warrant for Dual Till. As regards the proviso to Section 13(1)(a), this is an enabling provision and the Authority's Regulatory framework renders it neither nugatory nor otiose as alleged by BIAL.
- 4.221 On the provision of "change of law" the Authority has noted BIAL's comment that "The proposed tariff regulation mechanism regulates CGF Services directly and non-aeronautical services indirectly and is therefore, in modification of Regulated Charges. Therefore, the proposals in the CP will trigger 'change in law' provision resulting in liabilities being foisted upon the Central Government. BIAL submits that an interpretation of the AERA Act that does not result in creation of liabilities be preferred". The Authority notes that Concession Agreement states that IRA will be formed and IRA may regulate any aspect of Airport Activities. The activities performed by the Authority in determination of tariff for Aeronautical services is in line with the activities of IRA as stated in the Concession Agreement. The same can hence not be considered as "change of law". The Authority has already analysed the same in CP 14 which has been reproduced in Paras 4.58 to Para 4.61 above.
- 4.222 BIAL has commented that "evaluation of risk in the CP is post facto and BIAL requests Authority to evaluate risks associated with BIAL at the time of execution of Concession Agreement". In Authority's view, the regulation has to be based on the conditions prevalent in the period for which regulated charges are being levied, considering the applicable risks and the mitigating measures.

- 4.223 The Authority also notes BIAL's comments to CP 14 wherein BIAL has stated that "...Therefore, if tariffs submitted by BIAL under dual till /hybrid (shared) till were to be accepted, the same would in fact be in the interest of the end passenger, since the revenues can be used for further expansion of the airport (emphasis added)". Further the Authority has noted APAO and BIAL's comments to CP 22, which are contradictory to this comment of BIAL. APAO has, in response to Consultation Paper No. 22/ 2013-14 dated 24th January 2014 stated that "The application of Shared Revenue Till approach during its period of application should be unconditional. Imposing conditions would end up disincentivizing BIAL and also adversely impact its ability to generate adequate returns to make the airport project financially viable. BIAL will be experiencing severe shortage of funds, even under proposed Shared Revenue Till by Authority, and hence needs to be given complete flexibility in deciding whether the funds generated through application of the Shared Revenue Till approach should be used for operations, repayment of debts or undertaking expansion".
- 4.224 The Authority also notes BIAL's comment and submission made in the presentation made in the Stakeholder meeting, stating that:

"Usage of Rs. 160 crores cash restrained from any other use except for funding future expansion has further aggravated the risk of non-compliance of DSCR as it results in DSCR lower than 1.0

BIAL submits to consider tariff determination with 30% SRT and to ensure generation of adequate internal accrual which can confirm the meeting of minimum DSCR of 1.4.

BIAL submits to consider tariff determination with 30% SRT with cost of equity @ 24.4% assuring sufficient generation of internal accruals for funding of <u>future</u> <u>expansion and as well meeting regular operational requirements</u> of Airport"

- 4.225 The Authority also notes BIAL's comment to Consultation Paper No. 22/2013-14 dated 24th January 2014 wherein BIAL has stated that "i. Section 13(1)(a) does not contemplate or impose any conditions with respect to the manner in which tariffs collected by airport operator can be utilized by it... …proposed deductions from RAB and ARR are not in consonance with Section 13(1) (a) of the AERA Act or the Concession Agreement and is otherwise not in accordance with law…".
- 4.226 The Authority also notes that even in its comments to CP 22, BIAL has stated that: "OBSERVATIONS AND SUBMISSIONS ON ADDENDUM

- a. The above table with 40% SRT indicates an amount of Rs. 492 crore of additional equity infusion requirement for future expansion & operational requirements for first control period. Therefore, the additional equity infusion concern still persists and with 40% SRT it has marginally reduced from Rs. 649 crore to Rs. 492 crore.
- b. BIAL restates the imminent requirement of capacity creation / future expansion needs & priority of the Airport based on traffic growth projections submitted to Authority and also, the inability to infuse additional equity denoted by GoI and GoK, as well as private promoters."
- 4.227 The Authority is not persuaded by the comments of APAO and BIAL with respect to the use of Rs. 160 crores also for Operational expenses etc. as well as proposed adjustments to be carried out to RAB and ARR.
- 4.228 At the outset it must be recognised that in the normal course, the funds for the airport expansion should be the sole responsibility of the shareholders of the company developing the airport. However, in the present case, the GoK as well as GVK have expressed their inability to pump in more equity.
- 4.229 The Authority calculated the aeronautical charges based on 40% shared revenue till. While making these calculations, the Authority noted that under 40% shared revenue till, the amount of UDF that needs to be collected from the passengers came to a higher figure of Rs. 1,427 crores as compared to Rs. 1,267 crores if the passengers were required to pay UDF purely to fill in the revenue gap under single till. That part and portion of the assets that the airport operator would construct from this excess amount (Rs. 160 crores) can thus be regarded as having been contributed by the passengers. The Authority, therefore, treated the excess amount of Rs.160 crores as a transfer of resources from the passengers to the airport operator purely to meet the needs of the capital for expansion. This amount is available to the airport operator during the current control period to be applied towards expansion.
- The amount of Rs.160 crores, if continued to be part of the RAB would expose the passengers to a kind of "double charge" whereby they would have pre-paid part of the capital cost in advance for the expansion needs and even after the expansion is complete, they would be required to pay additional airport charges on the same cost paid for by them since Weighted Average Cost of Capital (WACC) as well as depreciation would be calculated on the enhanced Regulatory Asset Base (RAB) that would also include Rs. 160 crores effectively paid by the passengers only because the shareholders are unable to infuse additional equity or

other means of finance like land monetisation, additional loan etc. There is no reason why the passengers should be burdened for the inability of the shareholders to bring in additional funds through equity, debt or land monetisation. After all, the State Government has acquired land and allowed it to be used for commercial purposes with the express public purpose to make the airport financially viable. Despite this, requiring passengers to pay additional amounts through operation of legal provisions of UDF would be viewed as an unjust enrichment of the airport operator at the cost of the passengers, without any underlying public purpose. The Authority also notes in this regard that the Concession Agreement expressly provides for UDF to be used, inter alia, for expansion of the facilities at the airport. 4.231 The apprehension of "double charge" is not new only in case of Bangalore. For instance, in the book "Managing Airports – An International Perspective" by Prof. Anne Graham, page 110 (4th edition, 2014), it is commented that "a further important airport-airline" issue is the pre-financing of future airport infrastructure through airport charges. Prefinancing has traditionally not been an acceptable principle for a number of reasons. First, there is no guarantee that the airlines paying the charges will actually be the airlines that will benefit from the new infrastructure. Also there may be no certainty that the airport charges will be spent efficiently to provide new facilities. The airlines tend to be fearful that they will pay twice for the infrastructure, both before it is built and once it is operational". In case of Bangalore, however, the Authority has enjoined upon the airport operator that whatever additional UDF (on account of 40% shared revenue till) as compared to single till that is collected by the airport operator, this amount must be used for expansion needs. Unlike in other regulatory regimes that are being referred to by Prof. Anne Graham in the above quotation, the additional charges are paid directly by the passengers through UDF. It is only to alleviate the fear of "paying twice for the infrastructure, both before it is built and once it is operational" that the Authority has proposed to reduce Rs. 160 crores from RAB. This, in the opinion of the Authority, would ensure that BIAL gets inflow of additional (extra) funds for capital needs for expansion, at the same time, keeping the user charges moderate once the expansion is complete.

4.232 Organising the Means of Finance for the Project or its expansion is the primary responsibility of the Airport Operator. Tariff determination is based on the costs associated with such means of finance as may be organised by the Operator. The Authority notes the contrary statements made by BIAL in its submissions to CP 22. The comment made by BIAL

referred in Para 4.226 above is contrary to BIAL's own submission in the Stakeholder meeting and comments that the usage of the additional funds for other than the purpose of expansion has further aggravated BIAL (See Para 4.223 above).

- The Authority notes the internal inconsistency in BIAL's own submissions on the need for consideration of a Shared Revenue Till. If there is lack of clarity on this issue, the Authority may be well within its rights to disregard BIAL's request and the Authority's computations made under 40% Shared Revenue Till. However, the Authority notes that in spite of the shifting stand of BIAL on the need for Shared Revenue Till for funding expansion, BIAL is undertaking substantial expansion that requires additional Capital. The Authority has therefore considered making some funds available to the Airport Operator for the purpose of expansion and has accordingly decided to make computation of Aeronautical Tariff and UDF under 40% Shared Revenue Till. The Authority reiterates that the additional funds placed in the hands of the Airport Operator is to be used for the purpose of Capital expansion and for no other purpose.
- 4.234 The Authority notes that IATA, FIA and BPAC have reiterated that Single Till should be considered by the Authority for KempeGowda International Airport, Bengaluru.
- 4.235 The Authority notes that BPAC has commented that "Authority may please seek clarifications regarding the intention of GoK in this regard vis-à-vis the investments and concessions in offer for BIAL, if those concessions are meant for the benefit of passengers or for accounting such earnings exclusively for the promoters' interest". The Authority notes that comments received from GoK clarifies this aspect, where GoK has stated that Passengers interest is of paramount importance. Hence the Authority has accordingly, while computing the Aeronautical Tariffs and UDF under Shared Revenue Till has proposed to true up and make adjustments of the additional amount placed in the hands of the Airport Operator, by reducing the same from RAB.
- 4.236 The Authority notes IATA's comment that "Submissions by various stakeholders expressing different positions on the till issue did not warrant a fresh discussion especially in the absence of any new policy directive from the government. BIAL's financing needs should not be extracted from airlines and passengers by a blatant change in the type of revenue till used for tariff determination". IATA has also commented that "The statement in the CA should not be taken to mean that UDF can be used as a pre-financing mechanism. When read in harmony with the AERA Act, it should be interpreted that the fair rate of return that the airport

earns as a result of implementation of UDF could be ploughed back for the development, management, maintenance, operation and expansion of the facilities".

- 4.237 IATA has also objected to application of Shared Revenue till stating that "...seems to suggest that the issue of till is a negotiable element between the airport and the regulator..... IATA considers AERA's independence to be of paramount importance... Allowing the requirement of capital for airport expansion to drive the type of till to use is a dangerous precedent... If a 40% shared till is deemed the right level to meet the current funding requirement for expansion, does it mean that for another occasion or at another airport where the funding requirement is different, a different shared till percentage would apply? Clearly, funding requirement for airport expansion cannot be the basis to adjust the till. If this becomes a precedent, the entire regulatory process will be thrown into chaos".
- 4.238 The Authority is required to evaluate the specific requirements at each airport and accordingly decide on the applicable Regulatory Framework. In order to provide some funds for expansion, the Authority had proposed computation of aeronautical tariffs and UDF under 40% SRT and the additional transfer of resources from the passengers to the Airport Operator that such computation entailed was also proposed to be adjusted in the next control period.
- 4.239 On the query from IATA if there would be, in a different airport, in another occasion a different shared till percentage would apply, the Authority would not be able to answer the query without having clarity on nature of circumstances and details of the "another airport" and "another occasion", which will need to be examined at the time of determination of Aeronautical tariffs for "such airport"
- The Authority has noted BIAL and APAO's comments that the additional funds made available by computations made under 40% Shared Revenue Till should not be reduced / adjusted from RAB. The GoK's had requested the Authority to address this issue. The Authority notes that non adjustment such additional amount made available to the Airport Operator as part of a pre-financing mechanism would lead to a circumstance where passengers have pre-financed expansion to the extent of an estimated amount of Rs. 160 crores and would thereafter be still required to give fair rate of return on this amount as well as depreciation to the Airport Operator in the course of subsequent tariff determination. Hence, in the absence of such reduction from RAB as proposed by the Authority, the passengers would thus have to bear additional charges in future to provide return on that part of RAB which was indeed contributed by the passengers to start with, in the form of

increased UDF.

4.241 As far as GoK's request to the Authority to address the issue of BIAL on "deducting upfront market value of land used for commercial development of the RAB", the Authority notes that reduction from RAB has been one of the mechanisms proposed by the Authority to ensure that and any revenue from land monetisation where land has been provided by GoK for improving the viability of the Airport Project should be ploughed back to reduce passenger charges. (Refer discussions on the issue of Treatment of land in Para 11 below)

4.242 The Authority also notes BIAL's request to consider the specific factors relating to Bangalore Airport. The Authority notes that BIAL has stated that "Whereas, BIA is situated far away from Bangalore city and is further saddled with lack of proper connectivity and **therefore** (emphasis added) requires enormous investments towards infrastructure development so as to attract investment". The Authority notes that the above submission consists of two parts. First is the distance between Bangalore City and the Airport and lack of connectivity. Secondly, BIAL states that in view of the first part, therefore, enormous investments towards infrastructure development are required so as to attract investment. Noting the distance between the city and the Airport, the Authority has noted that GoK has invested to the tune of Rs. 680 crores in creating the expressway/ flyover connecting the city and the Airport (Source – The Hindu report dated 3rd January 2014) thereby substantially reducing the time distance between the city and the Airport and improving the connectivity. Hence, BIAL is not expected to make any further investments to improve connectivity. The Authority has also come across the Corporate Brochure of the GVK Group available on GVK's website on BIAL Airport (file name "7Bangalore International Airport.pdf2") wherein the following information is given:

"Visitors, both international and domestic, are pouring in; airlines are introducing new routes; real estate is rapidly developing around the Airport (emphasis added); and to sustain these developments, Bangalore International Airport Limited has envisaged growth plans and will suitably expand existing infrastructure to provide its services at greater magnitudes and to operate more efficiently."

4.243 The brochure also mentions that "existing terminal building will be expanded on the east and west side". It would thus appear that even before the expansion of existing

-

² At URL http://www.gvk.com/media/pdf/7Bangalore_International_Airport.pdf accessed on 17th April 2014.

Terminal building was completed, real estate was rapidly developing around the Airport. The elevated road from Bangalore city to the Airport had not been completed at that point of time (which is now complete). The Authority has given these details only to highlight that BIAL's argument that there is lack of connectivity does not appear to be in consonance with ground reality. The Authority hence, is unable to appreciate that there is lack of connectivity which is **therefore** requiring enormous investment towards infrastructure development

- 4.244 Perhaps, what BIAL intends to say (though it has not said so clearly) is that to bring the land within the Airport upto the level at which it can be commercially exploited, BIAL would need substantial investments into land development works like roads, water supply, sewage lines etc. The same brochure also states that "215 acres of land has been earmarked for the first phase of commercial real estate development". Hence, the requisite expenditure on land development would already have been factored into by BIAL in the overall planning. At any rate, such expenditure as may be required cannot be factored in the economic regulation of Airport in determination of charges for Aeronautical services.
- 4.245 The Authority had already noted that the Government has also provided a State Support Loan of Rs. 335 crores and has invested in the Equity of BIAL to the tune of Rs. 100 crores. The Authority also notes that the investment made by BIAL in establishing the connectivity from Airport to the National highway (called *Trumpet interchange*) done before opening of the Airport, has already been considered as part of Opening RAB to provide return on the same. In this connection of Real Estate Development, where BIAL had submitted to the Authority that the Real Estate plans have not been firmed up, the Authority noted the following information available in Public domain:

4.245.1 Indian Express, on 16th December 2013 stated that:

"In keeping with the recommendations made by the Airport Regulatory Authority in June, Bangalore International Airport Limited (BIAL) — the consortium that owns Bengaluru International Airport now renamed Kempegowda International Airport — will come up with a real estate development plan before increasing user fees to fund expansion.

BIAL officials said at the renaming of the airport and opening of extensions to terminal-1 on Saturday that a plan to use excess land, out of the 4,008 acres acquired for the project, would be in place shortly.

GVK Reddy, co-chairman of BIAL, said the consortium in which the GVK group is the majority stake-holder, would "start real estate development shortly".

"As part of the airport development, we will hopefully by 2014 work on a real estate development plan — the phases, the investment and various other things. We are waiting for certain government approvals which we need before taking up projects," BIAL managing director G V Sanjay Reddy said on the sidelines of the event.

The real estate development plan at the international airport will involve all aspects of integrated cities, including hotels, Sanjay Reddy said.

"We have identified areas where we will develop real estate. Anywhere in the world development occurs towards the airport. This is a natural phenomenon we are seeing in Bangalore as well," he said."

The Authority also notes BIAL's comment that "In case of BIAL, there are two nearby competing airports at Mysore and Hassan in Karnataka besides, three other major airports in the southern region i.e. Hyderabad, Chennai and Cochin airports". The Authority notes that the three airports in Hyderabad, Chennai and Cochin were already existing at the time BIAL was incorporated and the condition on airports operating at Mysore and Hassan was already stated in the Concession Agreement. Hence, the Authority notes that this is not any new point to be agitated by BIAL and that GVK Group, the largest shareholders of BIAL were aware of this when they bought the stake in BIAL from earlier promoters in 2009 / 2010 at 10 to 12 times the book value of the shares.

A.247 The Authority has also noted APAO's comment that "Further, the adjustment to RAB would effectively mean that a permanent reduction in RAB would be made even before the assets were capitalized and put to use". The Authority has proposed that the accounting of the additional monies accruing to BIAL on account of computations made under 40% Shared Revenue Till is to be done over the control period. The Authority has therefore proposed to carry out the adjustment (estimated at Rs. 160 crores at the time of CP 22) at the beginning of the next control period by reducing the RAB. The Authority also notes that BIAL has proposed assets to be capitalised during 2014-15 and 2015-16 which are likely to be in excess of Rs. 160 crores.

4.248 The Authority notes that BIAL in its comments, has stated that it "requires a fair indication of regulatory approach in the next control periods especially because its Concession Agreement extends to an initial period of 30 years....." During the consultation meeting held

on 10th February 2014, BIAL had specifically requested the Authority to "spell out whether the regulatory approach outlined in the Addendum will apply for the future control periods as well. BIAL respectfully submits that the CP and the Addendum do not provide certainty with regard to the future control periods and in view of such regulatory uncertainty, BIAL will not be in a position to plan and/or execute developmental activities extending over the entire concession period. BIAL therefore humbly requests that clarity be provided on the aforesaid issue...."

4.249 In this regard, the Authority notes the Authority's general regulatory framework and principles were clearly laid down in the Airport Order and the Airport Guidelines, which BIAL had appealed against. As indicated earlier, the Authority considered calculations also in accordance with Dual Till submissions of BIAL in CP 14 and detailed its reason for not considering Dual Till as its Regulatory approach, and later on computed under 40% Shared Revenue Till for the current control period till March 2016 in CP 22. Considering the need for capital for the ongoing expansion plans proposed by BIAL, the Authority had proposed to compute Aeronautical Tariffs and UDF under 40% SRT. MoCA in its letter dated 24th September 2013 had given its comments that this will strike an appropriate balance between the interest of the passengers as well as capital needs for expansion. However, in the Stakeholders meeting (as detailed in Para 4.224 above), BIAL has contradicted its own request for a Shared Revenue Till which was sought by it for the purpose of Capital expansion (Refer comments from BIAL in CP 14 also, referred to in Para 4.223 above). As indicated in the Chairman of the Management Committee's letter (Refer Para 2.53 above), the requirement of Capital for the next control period would need to be assessed and then properly addressed. The Authority expects BIAL to firm up its expansion plans based on the observations of the Authority for the next control period and submit its Multi Year tariff proposal for the next control period. Only thereafter, can the Authority be in a position to consider the same while determining the Aeronautical Tariffs and UDF for the next control period.

4.250 In view of the above analysis, the Authority has decided to make computations under 40% Shared Revenue Till and carry out adjustments to ARR and RAB as per the methodology detailed by the Authority in CP 22.

Decision No. 1. Regulatory Till

a. The Authority decides

- To compute the Aeronautical Tariffs and UDF in respect of Kempegowda International Airport under 40% Shared Revenue Till as per Para 4.166 above for the current control period.
- ii. To carry out adjustment to ARR for the next control period as indicated in Para 4.170.12 above.
- Till and Single Till during the remaining part of the current control period is currently estimated at Rs. 116 Crore. (Refer Para 25.90 below). To further note that this amount represents the transfer of resources from passengers to the Airport Operator on account of computation under 40% Shared Revenue Till to facilitate funding of Capital expansion of airport facilities by BIAL. These adjustments will be carried out to RAB at the beginning of the next control period as detailed in Para 4.170.13 above.
- iv. To true up the amounts of adjustments for ARR and RAB (detailed in Para ii and Para iii of Decision No. 1 above) based on the recomputed ARR as well as revenues both based on actuals at the end of the current control period. The true up amounts would be reckoned while calculating ARR for the next control period.

5 Pre-Control Period losses

a. BIAL submission on Consideration of pre-Control Period losses

- 5.1 BIAL had claimed Pre-control period shortfall in its MYTP 2012 submission and in MYTP 2013 submission.
- 5.2 BIAL's MYTP 2012 submission of pre-control period shortfall under Single Till consisted of two components viz. (a) Shortfall of Rs. 53.30 Crore from the date of inception of BIAL viz. 2001-02 till the Airport Opening date 24th May 2008 and (b) Shortfall of Rs. 188.30 Crore (under Single Till) from the date of opening of Airport till the commencement of the first control period viz. 31st March 2011.
- 5.3 BIAL had, in its revised submission MYTP 2013 claimed Pre-Control period Shortfall as under:

Table 10: Details of revised Pre-Control Period Shortfall claimed by BIAL - MYTP 2013 - Rs. Crore

Till	Amount claimed			
Single Till	178.70			
Shared Revenue Till at 30%	496.64			
The amounts include both the components (a) and (b) as detailed in Paragraph 5.1 above				

5.4 In its response to CP 14, BIAL had stated as under:

"...BIAL submits that, in accordance with Concession Agreement and especially article 10.2.2 read with Schedule 6, BIAL was required to seek approval of MoCA with respect to regulated charges, which includes LPH charges. As per discussions and in agreement with MoCA, BIAL did not increase LPH charges at the time of airport opening. Further, BIAL had also sought increase in LPH charges at the time of levy of UDF. However, MoCA approved adhoc UDF only and did not approve increase in LPH charges. BIAL could therefore, not charge higher LPH charges. BIAL has not had the opportunity to increase LPH charges to recoup its pre-airport opening date losses and Authority is requested to take this into account and allow pre control period losses..."

b. Authority's Examination of BIAL submissions on Consideration of pre-Control Period losses

The Authority had, based on its analysis detailed in CP 14 proposed to consider Pre-Control Shortfall from the date of Airport Opening till 31st March 2011 as detailed by the Authority in Table 10 of the CP 14. The final Pre-control period shortfall proposed to be considered by the Authority in CP 14 is reproduced here.

Table 11: Table 10 of Consultation Paper No. 14/2013-14 - Recomputed Pre-control period shortfall claim considered by the Authority - Rs. Crore

Particulars	2008-09	2009-10	2010-11	Total
Fair Rate of Return on RAB	132.62	164.27	161.39	458.28
Depreciation	113.46	134.40	135.31	383.17
Operating Costs	146.26	163.60	176.10	485.96
Income Tax	0.86	8.78	29.61	39.25
Aggregate Revenue Requirement (Rs. Crore)	393.20	471.06	502.40	1366.66
Less: Revenue from Operations (Aero Revenue, Non- Aero Revenue and Interest Income)	(315.41)	(474.01)	(559.91)	(1349.33)
Net Shortfall	77.79	(2.96)	(57.51)	17.32
Add: Calculation of Concession Fee and OMSA Fee on the Pre-Control Shortfall	4.34	(0.17)	3.21)	4.17
Total claim	82.13	(3.12)	(60.72)	18.29
Compounding factor	1.18	1.09	1.00	
Compounded Value	97.30	(3.41)	(60.72)	33.17

- 5.6 The Authority had carried out a detailed analysis of the submission made by BIAL in its MYTP 2013 in CP 22 and had detailed its views as given below:
- In its CP 14, the Authority had noted that "BIAL has adopted the then prevailing rates at AAI airports although it had the option of adopting higher of AAI tariff effective 2001 duly increased with inflation index upto the Airport Opening Date". In its response to CP 14, BIAL has stated that BIAL had, as per discussions and in agreement with MoCA, BIAL did not increase LPH charges at the time of Airport Opening, as detailed in Para 5.4 above. In addition, the Authority notes that BIAL itself, vide letter dated 12th November 2007 stated that they are not increasing the Landing and Parking charges.
- 5.8 The Authority had analysed the various submissions made by BIAL to MoCA, the contents of the concession agreement and had noted that:
 - 5.8.1 BIAL had in November 2007 submitted a letter to the MoCA asking for UDF, calling it a "net deficit to be recovered through UDF" at Rs. 955 per international departing passenger and Rs. 675 per departing domestic passenger stating that "projected revenues from present aeronautical charges without UDF are grossly inadequate to cover costs for providing airport infrastructure and facilities to passengers at the new airport at international standards".
 - 5.8.2 In consideration of this request, the MoCA sanctioned UDF both for per international departing passenger @ Rs. 1070 and Rs. 260 per departing domestic passenger.
 - 5.8.3 BIAL commenced commercial operations on 24th May 2008.

- 5.8.4 BIAL represented to the MoCA on 9th January 2009 and 18th February 2009 stating that the quantum of the UDF sanctioned by the MoCA is inadequate seeking its enhancement. The MoCA forwarded the same to AERA for necessary action.
- 5.8.5 The Concession Agreement between the GoI and BIAL stipulates that BIAL can charge UDF for the purposes of provision of passenger amenities, services and facilities and the UDF will be used for the development, management, maintenance, operation and expansion of the facilities at the Airport.
- 5.8.6 The AERA Act came into being on 1st January 2009 when the GoI notified AERA Act. The powers of determination of charges of aeronautical services as well as UDF, etc. were conferred to the Authority by the GOI on 1st September 2009 when Chapter 3 of the AERA Act was notified.
- The Authority, therefore, proposed that it would take into account only the period from 1st September 2009 till 31st March 2011 i.e. the period during which the Authority had been given the powers of determining tariffs for Aeronautical Services including UDF. The Authority also proposed that it would review the loss that may have been incurred by BIAL during this period and that it would not consider the period prior to 1st September 2009. The books of accounts of BIAL indicated that for both the years 2009-10 as well as 2010-11, BIAL did not post any loss in its Profit and Loss statements. The Authority therefore proposed that there would be no occasion to reckon any loss to be added to the ARR for the current control period for determining tariffs for Aeronautical services as well as UDF in case of BIAL.
- 5.10 Hence the Authority, in its CP 22, proposed that no pre-control period losses be reckoned in case of BIAL for the current control period.

c. Stakeholder Comments on Issues pertaining to Consideration of pre-Control Period losses of BIAL

- Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14. Stakeholders have also commented on Consideration of pre-Control Period losses in respect of BIAL. Comments were received from IATA, FIA and AAI. These comments are presented below.
- 5.12 On the issue of Pre-control period, British Airways had commented that:

"...on the issue of pre-control period losses, AERA should not have retrospective jurisdiction over the period prior to its formation in September 2009, as there was already a regulator during that period (the Ministry). AERA should therefore exclude the period up to September 2009 when assessing pre-control period losses..."

IATA in its comments relating to Pre-control period losses has stated that:

"AERA was established by the Indian Government through notification no GSR 317 (E)

dated 12 May 2009. Prior to the establishment of AERA, the Ministry of Civil Aviation

was the de facto economic regulator. IATA is of the strong view that legally, the

Authority does not have jurisdiction over the period prior to its establishment and

especially since there was a separate entity performing the regulator's role at that

time i.e. the Ministry. Therefore, in assessing the pre-control period claim, the period

between 24 May 2008 (the airport opening) and May 2009 (the establishment of

AERA) should be excluded. This principle should be observed notwithstanding the

magnitude of the pre-control period claim. Therefore, the Authority's proposed pre
control losses of Rs. 33.17 Crore should be re-computed..."

5.14 AAI in its comments stated that:

"It is felt that AERA should consider actual operational loss for the previous periods instead of calculating it on ARR method. The consideration of loss effective 2008 on ARR method implies shifting of control period effective 2008..."

5.15 FIA commented that:

- "43. As noted above, Authority has proposed to allow BIAL to recover the Precontrol period losses to the tune of Rs. 33 crores under the Single Till Model by adding the same to the ARR of BIAL thereby stretching the present tariff prior to 01.04.2011. There seems to be no legal or regulatory basis for:-
- (a) Firstly, to allow the alleged losses suffered by BIAL prior to the control period;
- (b) Secondly, to allow the carrying costs of Rs. 14.89 crores on alleged losses.

 It is submitted that levying such Pre-control period losses in current control period would unreasonably burden the passengers travelling from 01.10.2013 to 31.03.2016"
- 5.16 Further subsequent to the Stakeholder Consultation process on CP 22, the Authority has received comments / views from various stakeholders on the issue of precontrol period losses of BIAL. While FIA, British Airways and Cathay Pacific have supported

Authority's decision on not to consider Pre-Control losses, Authority's proposal has been disagreed by APAO and another view has been expressed by IATA. These comments are presented below:

5.17 IATA stated that

"IATA supports the Authority's proposal to consider the pre-control period as one between 1 September 2009 (the date that AERA was given the authority to determine airport tariffs) and 31 March 2011. Any shortfall or surplus in revenue collection against the Aggregate Revenue Requirement should be accounted for in the first control period starting 1 April 2011.

It is noted from Table 3 on Page 19 that in the fiscal year of 2009-10 and 2010-11 (which overlaps with the pre-control period considered by the Authority for tariff determination), the airport actually collected a revenue surplus against ARR amounting to INR 83.36 crores. Consistent with what the Authority would do if there were to be a pre-control period loss, the Authority would need to take this pre-control period surplus into account in determining tariffs for the first control period"

5.18 APAO on the issue of pre-control period losses stated as under:

"APAO would also like to bring to the Authority's notice the fact that the losses made by BIAL in the initial control period have not been taken into account in the calculations of return on investment and this needs to be factored into any calculation of returns at the Airport"

5.19 British Airways welcomed the Authority's proposal on pre-control losses. Cathay Pacific and FIA have supported the Authority's proposal on Pre-control losses.

d. BIAL's response to Stakeholder Comments on Issues pertaining to pre-Control Period losses

- Subsequent to the receipt of comments from the Stakeholders on CP 14 and CP 22, the Authority forwarded these comments to BIAL seeking its response to these comments.

 BIAL has provided responses to the Stakeholders' comments, which are presented below:
- 5.21 On British Airways, IATA and Cathay Pacific comment on Pre-control losses, BIAL has stated that:

"BIAL submits that the present tariffs were approved by MOCA on adhoc basis subject to finalization of project cost and to be finalized by the Independent Regulatory Authority (AERA). BIAL reiterates its submissions made in response to CP 22 that precontrol period shortfall including losses as on AOD be allowed."

5.22 On FIA's comment on Pre-control losses, BIAL has stated that:

"BIAL requests for consideration of pre-control period losses and detailed submissions have been made in response to CP 22."

5.23 On British Airways response, BIAL has stated that:

"BIAL submits that the present tariffs were approved by MOCA on ad hoc basis subject to finalization of project cost and to be finalized by the Independent Regulatory Authority (AERA). BIAL reiterates its submissions made in response to CP 22 that precontrol period shortfall including losses as on AOD be allowed."

e. BIAL's own comments on Issues pertaining to pre-Control Period losses of BIAL

5.24 On the issue of pre-control period losses as detailed by the Authority in CP 14, BIAL has commented that:

"BIAL submits that, it has suffered losses prior to airport opening date for the purpose of developing airport infrastructure. The pre airport opening date losses have been quantified by auditors and BIAL requests that the same be accepted as such and reimbursed. In normal course, any business would have recouped such losses in due course. Likewise, BIAL requests that such losses be permitted to be recouped in this control period. If such losses are not allowed to be recouped, BIAL will be forced to bear the losses although the same was incurred for the purpose of airport development. Therefore, it is requested to consider pre airport opening date losses." "In paragraph 6.18 of the CP, the submission of BIAL that it should be compensated for aeronautical losses, without taking into account non-aeronautical revenue is not favourably considered. BIAL submits that there is no subsidization of aeronautical charges by reference to non-aeronautical revenue and vice versa in view of the concessions granted under the Concession Agreement. Hence, BIAL submits that Authority to consider computation of pre-control period shortfall based on Till adopted for tariff computation."

5.25 On the issue of pre-control period losses in CP22, BIAL stated that:

"In the Addendum, the Authority has proposed not to consider pre control period losses incurred from the airport opening date, whereas, in the CP, Page 5 of 24

Authority had proposed to consider pre control period losses from airport opening date. Authority has arrived at this proposal on the following basis:

- (i) That MoCA may have adopted certain framework in this behalf while sanctioning UDF;
- (ii) That the powers of determination of charges of aeronautical services as well as UDF, etc. were conferred on the Authority by the GOI on 1st September 2009 when Chapter 3 of the AERA Act was notified.

BIAL humbly submits that, MoCA, while approving international tariff determination was ad hoc in nature and a final determination at the hands of MoCA did not take place. At any event, Authority has proceeded on the basis that MoCA may have taken the same into account and BIAL humbly submits that no decision be taken to its detriment on an uncertain premise.

BIAL submits that Authority is empowered to take into account pre-airport opening date losses. BIAL submits that assets that were created as on airport opening date are taken into account to determine RAB. By similar logic, losses incurred for creation of such assets need to be taken into account to determine the resultant financial position of BIAL. If not, as stated in response to the CP, BIAL will be forced to bear all the losses although such losses were incurred for the purpose of airport development. BIAL further submits that Authority is required to consider the capital expenditure incurred and timely investment in improvement of airport facilities as per section

BIAL respectfully submits that the Tariffs that are determined will be levied prospectively and for this reason as well, it is within the powers of the Authority to consider Pre Airport Opening Date Losses.

EIL REPORT

13(1) (a) of the AERA Act.

BIAL respectfully submits that the EIL Report cannot be relied on by the Authority. BIAL firstly submits that EIL did not provide any opportunity to BIAL to explain the facts and circumstances under which certain expenditures were incurred. Therefore, principles of natural justice were not complied with. Additionally, EIL in its report at Paragraph 11, concludes that, "... The overall impact with respect to the cost of the project may seem to be minor in nature....". EIL report also concludes with respect to a large number of items that, "...costs are less than or equal to normal costs...". In case expenditure incurred is more than costs estimated by EIL, EIL has provided a

calculation of the differential. The observation of EIL is relatable only to such costs which are more than the estimates of EIL. Whereas, if cost incurred is less than or equal to costs estimated by EIL, the differential is not even set out. Moreover, as stated above, EIL concludes that the overall impact with respect to cost of the project is minor in nature. The statutory auditors of BIAL have accepted the project costs. It has also been adopted by the Board. BIAL therefore, respectfully submits that no deductions be made on the basis of EIL's report.

In view of the aforesaid, BIAL respectfully submits that Pre Airport Opening Date Losses and losses incurred from Airport Opening Date be kindly considered for the purposes of Tariff determination."

f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to pre-Control Period losses

- The Authority has carefully examined the comments made by the Stakeholders as well as BIAL on the issue of consideration of pre-control period losses in the tariff determination for the current control period.
- 5.27 The Authority has already considered the comments of IATA, British Airways and AAI received towards CP 14 in its addendum Consultation Paper CP 22.
- The Authority notes that IATA has stated that the revenue surplus made by BIAL is Rs. 83.36 crores and consistent with what the Authority would do if there were to be a precontrol period loss, the Authority would need to take this pre-control period surplus into account in determining tariffs for the first control period.
- The Authority, while listing down the Pre-control period loss computation in CP 22 had done so, only to provide a comparison with the previous values considered by the Authority in CP 14. The Authority had noted that any adhoc UDF granted by the MoCA would not be with a focus of making losses and hence the Authority had accordingly reviewed the Financial results of BIAL for the period from commencement of operations to 31st March 2011 only with a view to evaluate if there has been a loss which needs to be considered by the Authority in determination of Aeronautical Tariffs for the current control period.
- 5.30 The Authority had in its CP 22, proposed that, as the First control period is effective from 1st April 2011 only, it would consider the loss if any incurred by BIAL from 1st September 2009 to March 2011 and add that with carrying cost, to be considered along with the ARR for the current control period and accordingly, as BIAL has not incurred losses, no amount had

been considered towards reckoning along with the ARR for the current control period. Hence the Authority decides not to evaluate the results of the period.

- 5.31 The Authority also notes that in case of BIAL, the Authority had requested BIAL to submit details for computation of Adhoc UDF which BIAL had not provided to the Authority. (Detailed chronology of events in this regard have been listed in CP 14). In case of HIAL, the Authority had determined Adhoc UDF and had to review the results of the period from which the Authority came into existence and considered the losses incurred.
- The Authority also notes that AAI, MoCA or the GoK have not had any specific comments to Authority's proposal on Pre-control period shortfall detailed in CP 22 and the Authority accordingly understands that AAI, MoCA and GoK are in agreement with the Authority's proposals detailed above.
- The Authority notes BIAL's comments regarding the Pre-control period that the losses incurred before Airport Operation should be considered as part of Pre-Control period loss. The Authority has examined this in detail and provided its comments in CP 14. Also further, as the Authority's jurisdiction begins only from the period September 2009, when the Authority was formed (as elaborated in CP 22) the Authority does not propose to consider any financial results before September 2009 leave alone the period before the commencement of Airport Operations.
- The Authority notes that BIAL has stated that the tariff determined by MoCA was adhoc and the final determination of the tariff did not take place. The Authority notes that MoCA has not provided any directive to the Authority to carry out an analysis of the adhoc tariff that had been determined by MOCA. Hence, as elaborated in CP 22, the Authority decides not to reckon, in the current tariff determination any period before the Authority's powers were notified effective September 2009.
- The Authority also is surprised to note BIAL's comment that "assets that were created as on airport opening date are taken into account to determine RAB. By similar logic, losses incurred for creation of such assets need to be taken into account to determine the resultant financial position of BIAL. If not, as stated in response to the CP, BIAL will be forced to bear all the losses although such losses were incurred for the purpose of airport development". The Authority had considered the value of assets that are in use as of the beginning of the Control period as part of RAB on which the return is due to the Airport Operator. The Authority is unable to understand the parallel reasoning provided by BIAL that

the corresponding loss incurred (prior the Control period and also prior to the commencement of Airport Operations) have to be similarly considered to be compensated in the tariffs to be computed in the first control period.

5.36 The Authority decides not to consider any Pre-control period losses to be reckoned in computation of Aeronautical Tariffs for the current control period.

Decision No. 2. Pre-Control Period losses of BIAL

a. The Authority notes that from the date the powers of the Authority under Chapter 3 of the Act were notified (this date being 1st September 2009) BIAL has not posted any losses in its Profit and Loss statements for the period 2009-10 and 2010-11. Hence the question of considering any Pre-control period shortfall for the purpose of determination of Aeronautical Tariffs for the current control period does not arise.

6 Control Period

a. BIAL submission on Control period

- In terms of Airport Guidelines issued, Control Period means a period of five Tariff Years, during which the Multi Year Tariff Order and Tariff(s) as determined by the Authority pursuant to such Order shall subsist and the first Control Period shall commence from 1stApril 2011.
- As per the guidelines, BIAL had furnished details / information and particulars relevant for the MYTP for the First Control Period from 1st April 2011 to 31st March 2016 along with the shortfall estimated by it for the pre-control period.

b. Authority's examination of BIAL submission on Control period

- 6.3 The Authority noted that over 3 years out of the 5 year control period has elapsed and the tariff determined is to be recovered over the balance tenure of the Control Period.
- 6.4 Based on the material before it and its analysis, the Authority proposed
 - 6.4.1 To consider the first Control Period in respect of determination of tariffs for aeronautical services in respect of Bengaluru International Airport to be from 01.04.2011 up to 31.03.2016.

c. Stakeholder Comments on Issues pertaining to Regulatory Period

- Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14. Stakeholders have also commented on regulatory period to be considered. These comments are presented below:
- 6.6 On the issue of Regulatory Period, FIA stated that the Regulatory period ought to be determined prospectively. FIA commented that:
 - "In the present consultation, the Authority has tentatively decided the tariff for the years control period starting from 01.04.2011 which is likely to come into effect from 01.10.2013. As such, the Authority will be determining the tariff, retrospectively from 01.04.2011 exceeding its jurisdiction.
 - 42. The Authority is overlooking that the BIAL 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 30 months from 5 years;
- (b) Led to exponential increase (76% to 160% on a component to component basis) in aeronautical tariffs (excluding UDF) of Bengaluru International Airport with the past charges of last 30 months recoverable in the next 30 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. It is noteworthy that airlines cannot recover such past-cost from its passengers who had travelled in the period gone by.
- 44. 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 quickfix 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 legally invalid"
- 6.7 On the issue of Regulatory Period, FIA again, in response to proposal in CP 22 stated that:
 - "III. Regulatory Period and Recovery of ARR ought to be determined prospectively
 - 29. In the CP No.14/2013-14, the Authority had tentatively decided the tariff for the 5 years control period starting from 01.04.2011 which is likely to come into effect from 01.10.2013. In the CP No.22/2-13-14, Authority has not clearly indicated as to from what prospective date the aeronautical tariff will come into effect. However, Authority has indicated in Table No.62 of the CP No.22/2013-14 to reckon the date of 01.04.2014 in its computation of UDF. It does not indicate the effective date of aeronautical tariff.
 - 30. It is submitted that in determining the tariff in the year 2014 for the control period of 01.04.2011 to 31.03.2016, the Authority will be compressing the recoverable period of legitimate 60 months to merely 24 months.
 - 31. The Authority is overlooking that the BIAL has caused inordinate delay in submitting its tariff proposals (thereafter revising the proposal from time to time) and relevant information for determination of aeronautical tariff which has:

- (a) Diminished the effective Control Period to 24 months from 5 years (60 months);
- (b) Led to exponential increase (76% to 160% on a component to component basis) in aeronautical tariffs of Kempegowda International Airport with the past charges of last 48 months recoverable in the next 24-26 months from the future passengers and consumer. This approach is unacceptable as it would increase the operational expenditure of the airlines and render its operations economically unviable. It is noteworthy that airlines cannot recover such past-cost from its passengers who have travelled in the period gone by.
- 32. 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 CP No. 14/2013-14 and CP No.22/2013-14 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 for the period of 5 years and compressing the recovery in 2 years is imprudent and detrimental to the interests of Stakeholders including the airlines and the passengers."

d. BIAL's response to Stakeholder Comments on Issues pertaining to Regulatory Period

Subsequent to the receipt of comments from the Stakeholders on CP 14 and CP 22, the Authority forwarded these comments to BIAL seeking its response to these comments.

BIAL has provided responses to the Stakeholders' comments, which are presented below:

"BIAL has made submissions within prescribed timelines. The regulatory philosophy has made it clear that any shortfall / excess in a given control period will be trued up for the next control period. Considering that development of Greenfield airport is capital intensive and the varying user base, truing up is only balancing mechanism in the current regulatory framework.

As regards increase in LPH charges, BIAL submits that there has been no increase in LPH charges in the last 10 years and airlines have had the benefit of low LPH charges for these years. Therefore, considering normal inflation over the last ten years, the proposed increase in LPH charges is reasonable.

e. BIAL's own comments on Issues pertaining to Regulatory Period

6.9 BIAL has not provided its own comments on the issue.

f. Authority's Examination of Stakeholder Comments on Issues pertaining to Regulatory Period

- 6.10 The Authority has carefully examined the comments made by FIA on the issue of regulatory period.
- The Authority notes that FIA has stated that "the Authority will be determining the tariff, retrospectively from 01.04.2011 exceeding its jurisdiction". The Authority would like to clarify that the Authority was established on 12.05.2009 and the powers and functions of the Authority were notified by the Government on 01.09.2009. Post notification of its powers and functions by the Government, the Authority finalized the approach in the matter of Regulatory Philosophy and Approach in Economic Regulations of Airport Operators as per its Airport Order and the Authority decided that the first control period for determination of tariffs for airport operators will be the five year period from 01.04.2011 to 31.03.2016. Accordingly, the Authority has decided the first control period for BIAL to be from 01.04.2011 to 31.03.2016. The jurisdiction of the Authority towards determination of aeronautical tariff at the major airports is effective the date of notification of its powers and functions and thus the determination of aeronautical tariff at Kempegowda International Airport for the first control period commencing from 01.04.2011 is within its jurisdiction.
- The Authority notes FIA's submission on truncation of the Control Period from the five year period to 31 months on the ground that BIAL has delayed submission of the MYTP. The Authority also notes that FIA has not submitted any details of how such truncation has increased the operating expenditure for the airlines.
- 6.13 The Authority notes that in the submission made by FIA, FIA has assumed that the Future Passengers would be completely different from the existing passengers, which argument is, to the understanding of the Authority, unfounded.
- Also, from FIA's submissions, the Authority understands that FIA is not opposed to the Control Period of 5 years that the Authority had proposed to adopt wherein the 5 year period would be considered in totality and the charges to be collected during the period are evened out considering the total investments being made in the entire control period. In such a case also, the passengers would be required to pay in the first two years, on the averaged

rate, returns for assets that were being commissioned say, in the third year of the control period.

6.15 The Authority also notes that it so happens in case of BIAL also that tariff is proposed to be implemented after the new facility has come into existence and is operationalised.

Decision No. 3. Control Period

a. The Authority decides to consider the first control period from 01.04.2011 to 31.03.2016 for determination of the Aeronautical Tariff.

7 Regulatory Building Block

- 7.1 The Authority has analysed and determined the Regulatory Building Blocks for calculation of ARR in respect of BIAL for the current Control Period.
- 7.2 The ARR for the current Control Period has been calculated based on the following Regulatory Building Blocks with reference to the submissions made by BIAL:
 - 7.2.1 Fair Rate of Return applied to the Regulatory Asset Base (FROR x RAB)
 - 7.2.2 Operation and Maintenance Expenditure (O)
 - 7.2.3 Depreciation (D)
 - 7.2.4 Taxation (T)
 - 7.2.5 Revenue from services other than aeronautical services (NAR). Revenue from services other than aeronautical services (NAR) is meant to include revenues in the hands of the airport operator from services other than those captured under aeronautical revenue.
- 7.3 The ARR under Single Till for the Control Period (ARR) will be calculated as under:

$$ARR = \sum_{t=1}^{5} (ARR_t) \text{ and}$$

$$ARR_t = (FROR \times RAB_t) + D_t + O_t + T_t - NAR_t$$

where

- 7.3.1 t is the Tariff Year in the Control Period.
- 7.3.2 ARRt is the Aggregate Revenue Requirement for year t.
- 7.3.3 FROR is the Fair Rate of Return for the control period.
- 7.3.4 RAB_t is the Regulatory Asset Base for the year t.
- 7.3.5 D_t is the Depreciation corresponding to the RAB for the year t.
- 7.3.6 Ot is the Operation and Maintenance Expenditure for the year t, which include all expenditures incurred by the Airport Operator(s) including expenditure incurred on statutory operating costs and other mandated operating costs.
- 7.3.7 T_t is the Taxation for the year t, which includes payments by the Airport Operator in respect of corporate tax on income from assets/ amenities/ facilities/ services taken into consideration for determination of ARR for the year t.
- 7.3.8 NAR_t is the Revenue from services other than aeronautical services for the year t.
- 7.4 The computation of ARR under Shared Revenue Till will be as follows:
- 7.5 Under Shared Revenue Till, the ARR computation can be explained as under:

$$ARR = \sum_{t=1}^{5} (ARR_{At}) \text{ and}$$

$$ARR_{At} = (FRoR \times RAB_{At}) + D_{At} + O_{At} + T_{At} - \alpha \times NAR_{t}$$

where

- 7.5.1 t is the Tariff Year in the Control Period.
- 7.5.2 ARR_{At} is the Aggregate Revenue Requirement for Aeronautical Services year t.
- 7.5.3 FROR is the Fair Rate of Return for the control period.
- 7.5.4 RAB_{At} is the Regulatory Asset Base for the year t on the Asset Base related to provision of Aeronautical Services.
- 7.5.5 D_{At} is the Depreciation corresponding to the RAB for the year t on the Asset Base related to provision of Aeronautical Services.
- 7.5.6 O_{At} is the Operation and Maintenance Expenditure for the year t, which include expenditures incurred by the Airport Operator(s) including expenditure incurred on statutory operating costs and other mandated operating costs, for providing Aeronautical Services.
- 7.5.7 T_{At} is the Taxation for the year t, which includes payments by the Airport Operator in respect of corporate tax on income from assets/ amenities/ facilities/ services taken into consideration for determination of ARR for Aeronautical Services for the year t.
- 7.5.8 NAR $_{\rm t}$ is the Gross Revenue from services other than aeronautical services for the year t.
- 7.5.9 α is the percentage of Gross Non-Aeronautical Revenue taken into account for the purposes of calculation of Aeronautical Tariffs.
- 7.6 The Authority's examination of each of the building block in respect of KempeGowda International Airport, Bangalore is presented in the subsequent sections.

- 8 Allocation of Assets and Operation and Maintenance Expenditure between Aeronautical and Non-Aeronautical services
- a. BIAL Submission on Asset and Operation and Maintenance Expenditure allocation between Aeronautical and Non-Aeronautical services
- 8.1 BIAL had submitted details of bifurcation of Assets and Expenses into Aeronautical and Non-Aeronautical assets, in its earlier MYTP 2012 submission, based on which the Authority had issued its CP 14.
- 8.2 The Asset allocation between Aeronautical and Non-Aeronautical relied by BIAL in MYTP 2012 was on the basis of Report from its Auditors (Price Waterhouse) that it had earlier submitted to MoCA in 2008. Similarly BIAL had submitted the allocation of expenditure between Aeronautical and Non-Aeronautical services in MYTP 2012, however, it had not indicated the basis thereof. Thereafter, upon enquiry by the Authority, BIAL had submitted vide letter dated 17th May 2013 a Concept document detailing the break-up of costs between Aeronautical and Non-Aeronautical Services which was based on Management estimates.
- 8.3 BIAL had, in MYTP 2013, submitted certificate from the Auditors and a revised allocation methodology for its assets and expenditure. BIAL has submitted that:

"With subsequent developments like methodology adopted as per AERA in recent Consultation Paper of DIAL, MIAL and HIAL and improvement to existing Terminal to facilitate increase in passenger traffic and additional west apron coming up, Management envisaged the requirement of revisiting the earlier allocation. Hence, BIAL appointed KPMG, our Statutory Auditor to provide the revised classification of assets and expenses into Aeronautical and Non-Aeronautical.

8.4 A comparison of asset and cost allocation submitted by BIAL as part of MYTP 2012 and its MYTP 2013, detailed in CP 22 is tabulated below:

Table 12: Asset allocation between Aeronautical Services and Non-Aeronautical Services submitted by BIAL – MYTP 2012 and MYTP 2013

······································				
Nature of Asset	MYTP 2012		MYTP 2013	
	Aero	Non- Aero	Aero	Non- Aero
Assets capitalised before 1st April 2011 and part of Opening RAB	82%	18%	91%	9%
Apron Extension	100%	0%	100%	0%
Terminal 1 Expansion	82%	18%	91%	9%

Nature of Asset	MYTP 2012		MYTP 2013	
Maintenance Capital Expenditure - Airfield related	100%	0%	100%	0%
Other Maintenance Capital Expenditure	80%	20%	91%	9%

Table 13: Expenditure allocation between Aeronautical Services and Non-Aeronautical Services submitted by BIAL - MYTP 2012 and MYTP 2013

Head of Expenditure	МҮТГ	2012	MYTP 2013		
	Aero	Non-Aero	Aero	Non-Aero	
Personnel Cost	80%	20%	90%	10%	
O&M Cost	85%	15%	90%	10%	
Land Lease Rent	77%	23%	100%	0%	
Utilities	75%	25%	100%	0%	
Insurance	75%	25%	91%	9%	
Marketing & Advertising - Collection Costs	100%	0%	100%	0%	
Marketing & Advertising - Other Costs	85%	15%	85%	15%	
Waiver & Bad Debts	100%	0%	100%	0%	
OMSA Fee	100%	0%	100%	0%	
General Administration Costs	85%	15%	90%	10%	

b. Authority's Examination of BIAL Submissions on Asset and Operation and Maintenance Expenditure Allocation between Aeronautical and Non-Aeronautical services

8.5 The Authority had carried out a detailed review of the Asset and Expenditure Allocation. Accordingly, the Authority had proposed to consider the break-up provided by BIAL for the purpose of computation of ARR under Dual Till in the CP 14. The Authority had also proposed to commission an independent study to assess the reasonableness of the asset allocation submitted by BIAL and to consider the conclusions thereof at the time of determination of aeronautical tariff in the next control period. Asset allocation ratio proposed to be considered by the Authority, detailed in Table 12 of CP 14 is reproduced below:

Table 14: Table 12 of Consultation Paper No. 14/2013-14 - Ratio of Aeronautical Assets to Total assets considered

In%	2011- 12	2012-13	2013- 14	2014-15	2015-16
Average RAB of Aeronautical Assets as %age of Total Assets	81.47%	82.09%	82.42%	82.31%	82.37%
Total Average RAB	1569.83	1579.54	2395.22	3148.27	3063.61

8.6 The Authority also carried out a detailed analysis of workings submitted by BIAL as

part MYTP 2013. Authority's analysis which was detailed in CP 22 is given below:

- 8.7 The Authority noted that BIAL had submitted that "BIAL appointed KPMG, our Statutory Auditor to provide the revised classification of assets and expenses into Aeronautical and Non-Aeronautical". However, the report submitted by BIAL is from BSR & Company and not from KPMG. The Authority also noted that the Statutory Auditor of BIAL are BSR & Company and not KPMG. The Authority however, has referred to this report of BSR & Company as "KPMG" Report since BIAL had in its MYTP 2013 submission termed it as "KPMG" report. That apart, the Authority noted that the report from BSR & Co does not indicate its acceptance of the basis of asset and expenditure allocation presented to it by BIAL, and that the basis of asset allocation made by BIAL has not been independently examined by M/s BSR & Co and certified.
- 8.8 The Authority further noted that the allocation of assets and expenditure had significantly changed with more costs being allocated to Aeronautical Services in the MYTP 2013 submission made by BIAL.
- 8.9 The Authority noted that according to BIAL's submission, BIAL had appointed KPMG as its auditors for Asset allocation. Perusal of KPMG's opinion indicates that it is a "Report in connection with Agreed-upon procedures related to the Statement of allocation of fixed assets into Aeronautical and Non-Aeronautical".
- 8.10 However, KPMG had also indicated that its report that:
 - "...Because the procedures performed do not constitute either an audit or a review made in accordance with the generally accepted auditing standards in India, we do not express any assurance on the allocation of the fixed assets between Aeronautical and Non-Aeronautical as on 31 March 2011..."
- 8.11 KPMG had also stated that:
 - "..Had we performed additional procedures, an audit or a review in relation to the basis of allocation of fixed assets between Aeronautical and Non-Aeronautical, other matters might have come to our attention that would have been reported to you...."
- 8.12 The Authority understands that this is a standard paragraph to indicate that the auditor has not performed an Independent audit on the stated subject.
- 8.13 The Authority had also gone through the report of the auditors on segregation of assets and noted that the auditors appear to have merely carried out a check of the principles / methodology already established by BIAL for asset and cost allocation and have only

validated the same with the financials and not carried out any independent study to classify the assets between Aeronautical and Non-Aeronautical Services. The Authority also noted that in relation to segregation of expenditure also, the auditors had not carried out any evaluation on the estimate of the percentages allocable to Aeronautical and Non-Aeronautical services that were presented to it by BIAL.

- 8.14 Hence, while BIAL had stated that it has "appointed KPMG, our Statutory Auditor to provide the revised classification of assets and expenses into Aeronautical and Non-Aeronautical", the Authority noted that the scope of work performed by the auditors was not to carry out a detailed independent evaluation of the Management's estimate of allocation of assets and expenditure but a restricted one of validating the numbers based on the basis provided by BIAL.
- 8.15 The Authority also noted that the cost allocation ratios estimated by the Management had undergone a change within a period of 4 months (from April 2013 when BIAL made a detailed submission in pursuance of Hon'ble AERAAT's order dated February 2013). BIAL had stated that they had benefited by the approach of the Authority in respect of asset allocation of DIAL and MIAL. The Authority noted however that the Asset allocation in respect of DIAL and MIAL as indicated in the final orders was available on 24th April 2012 (DIAL) and 15th January 2013 (MIAL).
- At any rate, BIAL had given its asset allocation between Aeronautical and Non-Aeronautical assets generally on the basis of area (apart from common use or dual use assets) and that the allocation between Aeronautical and Non-Aeronautical assets (in terms of capital expenditure) had worked out as around 91%: 9%.
- 8.17 The Authority had noted that the Authority would adopt the areas occupied by Aeronautical and Non-Aeronautical activities for the purposes of allocation of assets between Aeronautical and Non-Aeronautical services and give similar treatment as appropriate to such areas as can be considered to be used for both Aeronautical and Non Aeronautical purposes. Based on this general approach, the Authority had computed the allocation between Aeronautical and Non-Aeronautical assets as indicated in Table 15.
- 8.18 From the submissions made by BIAL the Authority noted that the ratio of Aeronautical Area: Non-Aeronautical area in the initial terminal building as submitted by BIAL worked out to 82.54%:17.46% (45521 sq. m under Aeronautical Area and 9627 sq. m under Non-Aeronautical Area).

8.19 The Authority noted that total asset cost of Rs. 12 Crore had been incurred and capitalised by BIAL relating to what it called as "Cargo Village". During site visit to BIAL, it was noted that these were towards warehousing / office facilities provided by BIAL to various cargo related entities and was not a part of the Cargo handling process as is defined in AERA Act. Hence, costs incurred in creating this facility was proposed to be considered as relating to "Non-Aeronautical" services along with the income that was being derived therefrom.

Information Communication Technology (ICT) Assets

- 8.20 The Authority noted that there were two categories of ICT Assets provided by BIAL one within the Terminal Building and the other as part of the Common assets under "Other Buildings, Assets".
- 8.21 The Authority noted that capital expenditure relating to ICT related assets within the Terminal Building were incurred by BIAL largely relate to facilities provided to the Airlines and passengers. The capital expenditure incurred towards ICT assets were proposed to be considered towards Aeronautical Services and the income earned by BIAL from such ICT related activities was proposed to be treated as Aeronautical revenues.
- 8.22 ICT Assets that were part of "Other Buildings, Assets were proposed to be considered as part of the Common assets and allocated between Aeronautical services and Non-Aeronautical services in the ratio of Aeronautical Area and Non-Aeronautical Area in the Terminal building.
- 8.23 The Authority noted that a cost of Rs. 3.76 Crore had been incurred towards Fuel Farm assets which were proposed to be treated as assets created for Aeronautical services.
- 8.24 Accordingly, based on the above details, the ratio of Opening RAB between Aeronautical Assets and Non-Aeronautical assets was computed as detailed below:

Table 15: Recomputed allocation of Opening RAB between Aeronautical assets and Non-Aeronautical assets by the Authority – Rs. Crore

		Total opening		
Asset Category	Description	RAB	Aero	Non-Aero
Operational Area				
Assets	Runway, Taxiway, Apron etc	495.59	495.59	-
Fuel Farm Assets	Assets created for Fuel Farm	3.41	3.41	-
	Assets of the Cargo Warehouse facility			
Cargo Village Assets	created	10.87	-	10.87
ICT Assets in	Information, Communication,			
Terminal Building	Technology assets in Terminal Building	99.07	99.07	-

		Total opening		
Asset Category	Description	RAB	Aero	Non-Aero
	Assets in Passenger Terminal Building,			
	Other Assets in Landside, Roads,			
Other Assets	Substation etc	986.76	814.50	172.26
TOTAL		1,595.69	1,412.57	183.12
Overall ratio compute	ed by the Authority		88.52%	11.48%
Asset allocation consi	dered by BIAL	1595.69	1447.22	148.47

- 8.25 The Authority noted that BIAL had considered a ratio of 90.70%:9.30% for allocation of assets. However the Authority had computed the Aeronautical RAB as detailed in Para 8.24 above. This had resulted in a reduction of Rs. 34.65 Crore from the Opening Aeronautical RAB proposed by BIAL. The Authority proposed to adjust Rs. 34.65 Crore excess allocated to Aeronautical Assets by reallocating the value of assets proportionately across the different asset categories of the Opening RAB.
- With respect to Terminal 1 Expansion area (T1A), the Authority noted that according to BIAL, the additional Aeronautical Area constructed for Terminal 1 Expansion was 54810 sq. m whereas the additional Non-Aero area constructed was 7684 sq. m and additional common area was 22436 sq. m totalling to additional constructed area of 84,930 sq. m. This resulted in a ratio of 87.70%:12.30% for Terminal 1A Area between Aeronautical and Non-Aeronautical areas. The Authority proposed to consider this ratio in allocation of T1A cost between Aeronautical Assets and Non-Aeronautical Assets, for the present, for consideration under additions to RAB. The Authority noted that BIAL shall provide year-wise audited space allocation with the details of allotment for concessionaires and accordingly the asset allocation for Aeronautical RAB is likely to vary. The Authority proposed that this will be trued up at the time of determination of Aeronautical Tariffs for the next control period.
- 8.27 With respect to the allocation of Operating Expenditure into those relating to Aeronautical Services and Non-Aeronautical Services, BIAL, during the meeting on 19th December 2013 clarified that the costs are identified separately for each expenditure as Aeronautical and Non-Aeronautical, based on the cost centres defined in its Financial Reporting system except for few categories of personnel costs which are considered common and allocated between Aeronautical and Non-Aeronautical. However the detailed break-up of the costs identified as towards Aeronautical services and Non-Aeronautical services requested for from BIAL was awaited at the time of issue of CP 22, which have since then

been received (Refer Para 8.64 below). For the purpose of the Consultation Paper, the Authority proposed to adopt the expenditure allocation ratio as proposed by BIAL.

- 8.28 The Authority had proposed to commission an independent study to assess the reasonableness of the asset allocation between Aeronautical and Non-Aeronautical Assets and to consider the conclusions thereof at the time of determination of Aeronautical Tariff in the next control period.
- 8.29 Based on the material before it and its analysis, the Authority had proposed the following in CP 22:
 - 8.29.1 To consider the revised allocation of assets between Aeronautical and Non-Aeronautical Assets of Opening RAB as detailed in Table 15.
 - 8.29.2 To consider the revised allocation of costs relating to Terminal 1 expansion between Aeronautical Assets and Non Aeronautical Assets as detailed in Para 8.26 above.
 - 8.29.3 To consider the revised allocation of expenditure as submitted by BIAL as per Table 13 for computation of ARR for the current control period.
 - 8.29.4 To commission an independent study to assess the reasonableness of the asset allocation submitted by BIAL.
- 8.30 Further the Authority had proposed the following in CP 22.
 - 8.30.1 To true up the allocation of assets between Aeronautical and Non-Aeronautical services based on the conclusions of the study at the time of the aeronautical tariff determination in the next control period as may be relevant.
 - 8.30.2 To true up the asset allocation ratios each year within the control period based on the auditor's certificate of yearly space allocation to be provided by BIAL, at the time of determination of Aeronautical Tariffs for the next control period.
 - 8.30.3 To true up the allocation of expenditure, between Aeronautical and Non-Aeronautical services based on cost accounting principles.

c. Stakeholder Comments on Issues pertaining to Asset and Operation and Maintenance ExpenditureAllocation between Aeronautical and Non-Aeronautical services

Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14 and CP 22. Stakeholders have also commented on allocation of asset into aeronautical / non-aeronautical assets in respect of Kempegowda International Airport,

Bengaluru. These comments are presented below:

8.32 On the issue of allocation of assets between Aeronautical and Non-aeronautical Assets, AAI stated that

"AERA has agreed to accept the principle proposed by BIAL to bifurcate the assets between aeronautical and non-aeronautical asset. But it has stated that it proposed to undertake a study regarding the policy proposed by BIAL.

It is not clear whether the security assets procured through PSF (SC) have been excluded both from the aeronautical as well as non-aeronautical assets.

It is also not clear whether the portion of the asset like electrical installation, water supply, roads, car park & parking area, landscaping etc which also catered to its subsidiaries (non-Airport Activity) have been apportioned to its subsidiary and deleted from the Airport list.

It needs to be determined whether asset like ATC Tower, Technical Block has been funded through Government grant. If so, the effect has to be given in RAB on this asset. Moreover, in case Dual Till is considered, the classification of this asset in aeronautical or non-aeronautical is to be determined considering the revenue generated from these assets are being considered as aero or non-aero revenue."

8.33 On Asset allocation, FIA has stated that

"It is submitted that the Authority ought to conduct/commission its own study for allocation of assets and not accept BIAL's submission on as it is basis. The Authority has been contemplating to commission its own study since April, 2012 when it first issued the DIAL Tariff Order (No.3/2012-13). It is regrettable that the Authority has yet again adopted the stance of commissioning its independent study at a later date. It is to be noted that in the Appeals pending before the Hon'ble Airports Economic Regulatory Authority Appellate Tribunal, the issues pertaining to engagement of consultants/experts by the Authority instead of placing absolute reliance on consultants engaged by the airports operators have been raised and are pending adjudication.

It is submitted that purpose of appointing an independent external consultant is to enhance the credibility of data being relied upon by obtaining written reasonable assurance from an independent source. However, such objective will not be met if such external consultant can be influenced by other parties. In addition to technical competence, independence is the most important factor in establishing the credibility

of the opinion. To bring independence and objectivity to the process, the Authority should directly engage external consultants in order to obtain reasonable assurance on the data being relied upon.

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 reasons."

8.34 Zurich Airport, in its comments on Allocation of assets between Aeronautical and Non-Aeronautical has stated that:

"When using a Dual Till approach, attention must be paid to the accurate separation of aeronautical and non-aeronautical assets. For mixed-use areas or facilities, suitable distribution keys should be applied."

8.35 BPAC has stated that:

- "a. Overall cost bifurcation between aero and non-aero (91%-9%) is not in comparison with any of the international airports of similar capacity, worldwide. Need to be benchmark with other airports and compared with the cost allocation principles followed in aviation sector elsewhere. Proper justification for a dissimilar allocation to be sought.
- b. The allocation of expenses on aero and non-aero operations must be based on activity based costing.
- c. Employee costing need to be properly bifurcated between aero and non-aero. The engagement of common employees for various projects within BIAL and projects elsewhere need to be identified and proper cost bifurcation to be ensured.
- d. Why the passengers have to bear the lease cost of land lying idle, when BIAL failed to utilize it for commercial development?
- e. There appears to be a discrepancy in utility cost allocation. The rate paid by BIAL to the utility suppliers and the rate recovered from the consumers seems different, the second being around 50% higher side after incorporating capital investment costing and overhead charges. This leads to double recovery of capital cost, from passengers and form utility consumers, and also converting a portion of it as non-aero revenue. Also the allocation of the capital cost on utilities under aero and non-aero in line with the revenue allocation need to be ensured.

f. In terminal expansion project accounting, the allocation of expenditure between aero and non-aero is apparently not in line with the real scenario. The real footprint of non-aero commercial activities (as listed in the document) looks three times higher than what is projected. There seems to be misinterpretation of area allocation, for example the unenclosed areas allocated to concessionaries, seating area of restaurants etc, bringing under aero.

g. Overall concerns about accounting practices can be alleviated with more transparent reporting of the aero and non-aero financials."

8.36 British Airways stated as below:

"Lifts, escalators and passenger conveyors in the terminal building, policing and general security, infrastructure and facilities for post office and public telephones, toilets and nursing mother's room, waste and refuse treatment and disposal should probably be considered common assets"

- 8.37 On allocation of Expenditure between Aeronautical and Non-Aeronautical, FIA has commented in response to CP 22 as follows:
 - In the CP No.14/2013-14, the Authority has accepted BIAL's allocation of expenditure (approximately 80%: 20%) submitted by way of its MYTP-2012 and had considered the same for the purpose of computation of ARR under Dual Till. In its MYTP-2013, BIAL has revised its submission with respect to expenditure allocation on the basis of BSR Report on 'Agreed upon procedures related to the Statement of allocation of operating expenses into Aeronautical and Non-Aeronautical' and the allocation has been increased towards aeronautical expenditure (approximately 90%: 10%) and the same is beneficial for BIAL under the proposed Shared Till approach.
 - 44. As per the Paragraph No. 4.28 the CP No. 22/2013-14, the Authority has requested BIAL to provide the detailed breakup of the costs identified towards aeronautical and non-aeronautical services and same has not been provided yet. For the purpose of computation of ARR under Shared Till in CP No.22/2013-14, the Authority has accepted BIAL's submissions with respect to expenditure allocation in spite of:
 - (a) Acknowledging that BSR Report cannot be considered as an independent evaluation; and
 - (b) Non-availability of detailed breakup of costs identified towards aeronautical and non-aeronautical services.

45. Acceptance of BIAL's submission by the Authority has resulted in increase in allocation towards Aeronautical expenditure in the CP No. 22/2013-14 as compared to the CP No.14/2013-14.

In the CP No.22/2013-14, the Authority has proposed to commission an independent study to assess the reasonableness of the expenditure allocation. However, the Authority has not thrown any light on the status of independent study i.e. the agency appointed, time frame in which the report is to be submitted, etc.

It is submitted that allocation of the operating expenditure in to Aeronautical or Non-aeronautical categories is important exercise towards the determination of aeronautical tariff in a Shared Till model, hence the same should be done on the basis of independent study rather on the financial reporting system of BIAL. The Authority has left the exercise for truing up the allocation mix and costs on basis of cost accounting principles. It is submitted that the Authority ought to commission for independent study for determining the reasonableness of allocation ratios and pass reasoned order (on basis of that study) on issues like 'bifurcation of expenditures into aeronautical and non-aeronautical instead of leaving it for truing up without assigning any cogent reasons."

8.38 British Airways in its comment on Asset allocation has stated as follows:

"Non-Aeronautical Assets

Cargo services, ground handling services and fuel into-plane services are regarded as aeronautical services under the AERA Act in recognition that the airport operator has monopolistic power to impact the cost of provision of these services. Therefore, revenues derived by the airport operator from these services, regardless of whether the services are provided by the airport itself or concessioned out, should be treated as aeronautical revenue. British Airways would further consider the revenue generated from airline lounges, operation and maintenance of passenger boarding and disembarking systems, hangers, heavy maintenance services for aircraft, and flight catering services as aeronautical revenue and as such thinks assets associated with these operations would be Aeronautical Assets.

So long as the airport receive revenues (in any form) from services such as cargo services, ground handling services and fuel into-plane services, the revenues should be treated as aeronautical revenue irrespective of whether related assets used for provision of the services appear in the airport operator's books or not. As such we

support the determination of aeronautical tariffs (as well as UDF) considering the CGF Service providers as Agents of BIAL (and not as third party concessionaires)"

8.39 Cathay Pacific in its comment on asset allocation has stated that:

"BIAL has changed the cost allocation ratios as compared to its original submission stating that it benefited from AERA approach for MIAL and DIAL. AERA has already justified the difference in approach for DIAL/ MIAL and BIAL and Cathay Pacific supports the fact that approaches for greenfield and Brownfield airports must remain distinct. Therefore we oppose defining the cost allocation ratio using DIAL / MIAL approach. Nonetheless, we supports AERA's proposition to commission an independent study to assess the reasonableness of assets allocation and proposes to hold any decision on the appropriate allocation of assets until such study is released. We are also in favour of truing up the assets allocation ratios each year based on the results of independent audits of yearly space allocation."

8.40 On Asset allocation, IATA, while supporting the Authority's proposal to commission an independent study, has commented that:

"IATA maintains that the single till approach should be used and recognizes that allocation of assets and expenditures to aeronautical and non-aeronautical activities would only be critical in the event that an approach other than single till should apply. The fact that BIAL was able to significantly alter the cost allocation ratios to its favor in just four months provides clear evidence in support of the crucial need for an independent study commissioned by AERA on allocation of asset and expenditures. While the appropriate allocation ratios to be confirmed by an independent study are pending, AERA should reject BIAL's revised allocation ratios that would clearly benefit the airport in the current control period at the expense of the airlines and passengers notwithstanding that truing up is proposed in the next control period. Instead AERA should use the original allocation ratios submitted by BIAL as reflected in CP No.14/2013-14."

8.41 Lufthansa German Airlines has commented that:

"BIAL has changed the cost allocation ratios as compared to its original submission. Authority proposes to consider the revised allocation of assets/ costs and expenditure between Aeronautical and non-Aeronautical Assets and true up the same in the next control period. Whereas under the CP 14 it proposed ratios comprised between 81.5:18.5 and 82.4:17.6. The authority noted that the auditors of BIAL appear to have

merely carried out a check of the principles / methodology already established by BIAL for asset and cost allocation and have only validated the same with the financials and not carried out any independent study to classify the assets between Aeronautical and non-Aeronautical services. The Authority notes that in relation to segregation of expenditure also, the auditors have not carried out any evaluation on the estimate of the percentages allocable to Aeronautical and non-Aeronautical services that were presented to it by BIAL.

The authority relies on the submission of BIAL that the costs are identified separately for each expenditure as Aeronautical and non-Aeronautical based on the cost centres defined in its financial operating system except for few categories of personnel costs which are considered common and allocated between Aeronautical and non-Aeronautical. Although it mentions that the detailed break-up of the costs identified as towards Aeronautical services and non-Aeronautical services requested for from BIAL is still awaited. But for the purpose of this Consultation paper Authority has accepted the allocation on the information supplied by BIAL without conducting any independent study or analysis in the current control period. It has just left it open by proposing to commission a study at the time of determination of tariff for the next control period."

- d. BIAL's response to Stakeholder Comments on Issues pertaining to Asset and Operation and Maintenance Expenditure Allocation between Aeronautical and Non-Aeronautical services
- Subsequent to the receipt of comments from the Stakeholders on CP 14 and CP 22, the Authority forwarded these comments to BIAL seeking its response to these comments. BIAL has provided responses to the Stakeholders' comments, which are presented below:
- 8.43 On BPAC comment, BIAL has stated that:

"BIAL has already submitted details of asset allocation to AERA vide letter dated January 30, 2014 and has further submitted the details in its response to CP 22 and the same are incorporated herein by reference. BPAC has made bald allegations without indicating whether the asset allocation is different in other airports and if so whether such airports are similarly placed as compared to BIAL.

Employee costing: Suitable bifurcations have already been undertaken. BIAL runs robust costing/ accounting practices on SAP platform which has been submitted / explained to AERA and its accounts are audited by an internationally reputed firm.

Detailed justifications have already been provided by BIAL during the consultative process.

BIAL denies that there is a double recovery of capital cost or for that matter 50% increase incorporating capital investment costing and overhead charges. BIAL submits that all requisite details concerning this issue have already been furnished to AERA.

Para f – The basis on which BPAC's comment has been made is not provided and in any event, necessary details have been furnished to AERA. Asset allocation submitted by BIAL s appropriate.

Para g – The statement is more philosophical and does not call for any specific response. BIAL follows all applicable accounting practices and its accounts are audited by an internationally reputed accountancy and audit firm, complying with the thresholds of transparency that similar activities would demand."

8.44 On British Airways comment on inclusion of certain activities as Aeronautical Revenue, BIAL has stated that:

"As regards British Airways submissions for consideration of certain non-aeronautical services as a part of regulatory till, BIAL submits that the same be kept out of the regulatory purview in accordance with various provisions of the AERA Act."

8.45 On Cathay Pacific, Lufthansa Airlines and IATA's comment on asset allocation, BIAL has stated that:

"BIAL submitted all necessary details with regard to clarifications sought by AERA while determining asset allocation ratios."

8.46 On FIA's comments regarding Asset Allocation, BIAL has stated that:

"BIAL submits that AERA had sought details on various occasions from BIAL in relation to asset allocation and BIAL has submitted the same. Upon consideration of information submitted, AERA has revised the asset allocation ratio and the revised ratio is set out in CP No 22. BIAL has, in its response to CP No. 22 made submissions in relation to asset allocation requesting certain revisions and the same is incorporated herein by reference.

BIAL submits that it has furnished necessary information to AERA including details referred to in paragraph 44. BIAL has additionally submitted information as and when sought by AERA. Further, the current expenditure ratio is proposed to be trued up at

the time of the next control period on cost accounting principles. BIAL therefore submits that expenditure allocation submitted by it is reasonable."

e. BIAL's own comments on Issues pertaining to Asset and Operation and Maintenance Expenditure Allocation between Aeronautical and Non-Aeronautical services

8.47 BIAL submitted as under on issues pertaining to Asset and Expenditure Allocation (Aeronautical / Non-Aeronautical) in response to Authority's Proposal in CP 14:

"RE-ALLOCATION OF ASSETS

While submitting MYTP, allocation of assets as aero and non-aero was based on an earlier report which, after careful consideration and review, was found to be based on premises which were not tenable and needed corrections. Accordingly, BIAL post submission of MYTP, embarked upon to adopt correct methodology for allocation of assets as aero and non-aero. During this process, allocation of expenses was also reviewed and necessary corrections were made.

BIAL considered the correct allocation of assets and expenses and revised MYTP, including additional proposal under Hybrid / Shared till with 30% cross subsidization, has been submitted on August 19, 2013 and we request Authority to consider the same"

8.48 BIAL submitted as under on issues pertaining to Asset and Expenditure Allocation in response to Authority's Proposal in CP 22:

"INFORMATION AND COMMUNICATION TECHNOLOGY ("ICT") ASSETS

BIAL submits that ICT Services consist of the following:

- (i) Common Airport Passenger IT Services (Proposed Concession Services)
- a. CUTE
- b. CUSS
- c. BRS
- (ii) Other IT Services

BIAL respectfully submits that all ICT Assets cannot be classified as Aeronautical Assets as the other IT services cater to Non-Aero requirements. However, some examples of aeronautical assets which cannot be billed as an IT service would be FIDS, FAS, and PA etc. Regarding Common Airport Passenger IT Services (CUTE, CUSS, BRS), BIAL submits that these services which are being provided by BIAL are now being relooked and henceforth would be offered as a concession service starting from FY

2014-15. We have just completed the technology refresh for CUTE in conjunction with the Terminal expansion. BIAL is also at an advanced stage of negotiations to upgrade the systems for CUSS and BRS through a Concessionaire. Further in line with industry practice and in line with treatment accorded to other major airports, the above services (CUTE, CUSS and BRS) may kindly be treated as non-aeronautical.

After the CP was issued, BIAL had made certain submissions vide letter dated January 30, 2014 to the Authority. BIAL requests the Authority to take the same into account and approve the Common Airport IT Charges as Non-Aeronautical and treat the revenues there from as non-aeronautical. Concessionaire would be charging at par with other Indian Airports (including AAI) for similar services. As part of ICT services, many other initiatives which are non-aeronautical in nature being undertaken by BIAL. The detailed submissions made in response to the CP and MYTP submissions may kindly be referred. In this regard, we request Authority to consider the other services of ICT as well as revenues arising out of it as non-aeronautical.

In paragraph 4.23 of the Addendum, other assets are considered as a part of Common Assets and allocated between Aeronautical Services and Non Aeronautical Services in the ratio of Aeronautical Area and Non Aeronautical Area in the terminal building. BIAL respectfully submits that the aforesaid allocation is not on the basis of actual assessment of the assets but on the basis of ratio employed within the terminal building. BIAL respectfully submits that, rather than allocating assets on the basis of a ratio, the allocation must be on the basis of actual usage and relevant details in this regard have been provided by BIAL."

BREAK UP OF COSTS TOWARDS AERONAUTICAL AND NONAERONAUTICAL SERVICES
In paragraph 4.28, Authority had sought break up of costs towards aeronautical and
non-aeronautical services. BIAL requests Authority to consider the details submitted
on 30th January, 2014 in this regard."

- f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to Asset and Operation and Maintenance Expenditure allocation between Aeronautical and Non-Aeronautical services
- 8.49 The Authority has carefully examined the comments of the Stakeholders with respect to the Asset and Expenditure Allocation.
- 8.50 The Authority takes note of IATA and FIA's concern that the Authority ought to conduct/commission its own study for allocation of assets into aeronautical and non-

aeronautical assets and not accept BIAL's submission on an "as is" basis. For the current determination, the Authority had computed the asset segregation based on the methodology detailed by the Authority and summarised in Table 15 and Para 8.26 above. The Authority has also decided to commission an independent study to assess the reasonableness of this allocation and to consider the conclusions thereof at the time of determination of tariffs for aeronautical services in the next Control Period as may be relevant.

- 8.51 The Authority also notes FIA's concern that the Authority had recognized the need to commission an independent study in the case of tariff determination process of Indira Gandhi International Airport, Delhi. In this regard, the Authority will like to clarify that the independent study for DIAL has already been commissioned and the draft report has been submitted and the work is in final stages of completion.
- 8.52 The Authority notes FIA's comment that in case of BIAL, the Authority proposed to commission independent study but has not provided any status on the same. The Authority would take steps to commission the necessary independent study on asset allocation and consider the results thereon and true up the same, at the time of determination of Aeronautical Tariffs for the next control period.
- 8.53 The Authority has noted AAI's comment regarding procurement of security assets through PSF (SC) which needs to be excluded both from aeronautical and non-aeronautical assets. The Authority notes that PSF (SC) collections are held by the Company in fiduciary capacity for the Government of India and are maintained separately for meeting security related expenses. The Authority has also referred to MoCA's letter referred to in Para 9.76 below wherein MoCA has directed that the Capital expenditure is not to be met through PSF collections. Hence, the relevant Capital Expenditure has been considered as part of the costs proposed to be incurred by BIAL and added to RAB.
- 8.54 The Authority has also noted AAI's comment stating that "it needs to be determined whether asset like ATC Tower, Technical Block has been funded through Government grant. If so, the effect has to be given in RAB on this asset". The Authority notes that there is no Government Grant that has been received by BIAL, hence the question of excluding such Government Grant from RAB does not arise. Government Funding has been in the nature of State Support Loan as per the SSA which is repayable. The Authority also has noted AAI's comments about assets catered to BIAL's subsidiaries. The Authority understands that BIAL does not have any subsidiaries except for investment made in Bangalore Airport

Hotel Limited (BAHL) in December 2013. The Authority, in its computation had considered the assets that are in the Balance sheet of BIAL only. As far allocation of assets into aeronautical and non-aeronautical based on the revenues, the Authority has already detailed its methodology of allocation in Paras 8.17 to Para 8.26 above. The Authority notes that AAI is a Shareholder of BIAL and may have just adopted the comments applicable to HIAL in providing the comments to CP 14 relating to determination of Aeronautical tariffs for BIAL.

- 8.55 On FIA's comments on passing a reasoned order, the Authority has in CP 22 elaborated the methodology adopted by it in allocation of aeronautical and non-aeronautical assets and had also proposed to commission an independent study to asset the allocation of assets and expenditure between Aeronautical assets and Non-Aeronautical assets. The Authority hence is of the opinion that the analysis detailed and the Order issued by the Authority herein is a reasoned order.
- 8.56 The Authority also agrees with Zurich Airport and AAI's comment that classification of this asset in aeronautical or non-aeronautical is critical. This classification would have relevance to the nature of revenue generated from these assets. On the basis of the nature of asset, the Authority has detailed in CP 22, its methodology for computation of allocation of assets between Aeronautical and Non-Aeronautical services.
- 8.57 The Authority notes BPAC's comments on allocation of costs and expenditure. The Authority has laid down the methodology of allocation of expenditure and costs between Aeronautical services and Non-aeronautical services. The Authority has noted BIAL's submission made on January 30th 2014 detailing the process of allocation of expenditure (Refer Para 8.64 below). The Authority had also decided to commission an independent study and detailed the proposal for truing up at the end of the current control period at the time of determination of Aeronautical tariffs for the next control period.
- 8.58 The Authority notes BPAC's comment that the actual non-aero footprint is much higher than what is submitted by BIAL. While the Authority notes that BPAC has not given any objective and verifiable data/ details to support the statement, the Authority had proposed to commission an independent study to assess the allocation of assets between aeronautical and non-aeronautical assets and proposed the methodology for true up.
- 8.59 On comment about land lying idle without being commercially exploited, the Authority had reviewed the relevant submissions made by BIAL on the land development (Refer discussions in Para 11 below). The Authority also notes that the Concession period is

for a period of 30 years, further extendable at BIAL's option for another 30 years. The Authority is cognizant of the fact that in projects having a large timeline, the land development could also take place over the tenure of the Concession period. The Authority had accordingly proposed to reckon the value of land monetisation (as per the methodology and value to be prescribed by GoK – Refer Para 11.79 below) as and when the land is monetised.

- 8.60 The Authority has noted that the BIAL has provided clarification on the Utility cost recovery issue highlighted by BPAC. Utilities recovery as submitted by BIAL, has been considered as a reduction from the Utilities cost projected by BIAL as part of the Operating and Maintenance Expenditure.
- 8.61 On British Airways inputs on consideration of assets as either Aeronautical or Non-Aeronautical and comment that revenues from airline lounges, flight catering etc. are to be considered as Aeronautical and accordingly consider the asset allocation, the Authority notes that the segregation as proposed by British Airways is not notified in AERA Act and the Authority is required to follow the principles laid down under the AERA Act, AAI Act and the rules thereon.
- 8.62 On Cathay Pacific, Lufthansa and IATA's comment on retaining the asset allocation provided by BIAL as part of CP 14, the Authority notes that in CP 22, while reviewing the asset allocation details submitted by BIAL, the Authority had reviewed the segregation of assets between Aeronautical and Non-Aeronautical assets as given by BIAL and considering the basis of Terminal Area, had accordingly made appropriate computation of asset allocation between Aeronautical assets and Non-Aeronautical assets. The Authority hence decides to adopt the allocation proposed by it in CP 22.
- Authority has noted the additional submission made by BIAL on 17th January 2014 and 30th January 2014. The Authority notes that BIAL has changed the allocation of area of Terminal Building for Phase 1 (without considering the expansion area) between Aeronautical and Non-Aeronautical assets from 82.5%:17.5% (45521 sq. m and 9627 sq. m respectively) submitted by it in December 2013 to 85.5%:14.5% (45864 sq. m and 7747 sq. m) in January 2014. (The Authority understands that the difference is attributable to increase in Common Area in the revised allocation as compared to the earlier submission). The Authority notes that BIAL has changed its submission of already constructed and commissioned area in 2008, within a span of 1 ½ months and has now requested the Authority to consider the revised

allocation and the asset allocation break-up provided by it. The Authority has computed the asset allocation based on Terminal building area as detailed in its CP 22 and has accordingly considered the ratio of Aeronautical assets to be considered for Shared Revenue till. The Authority has also decided to commission an independent study to evaluate the reasonableness of Asset and Expenditure allocation ratios.

The Authority has also reviewed the additional submission made by BIAL with respect to the allocation of Expenditure. In its submission dated 30th January 2014, BIAL has stated as follows:

"SAP FI Module supports in addressing external reporting requirements like companies Trial Balance, Profit & Loss Account and Balance Sheet. The FI (Financial Accounting) Module integrates with other SAP Modules such as MM (Materials Management), SD (Sales and Distribution), PM (Plant Maintenance), HR (Human Resources) etc.

The Financial Accounting Module comprises several sub-modules as follows:

General Ledger

Accounts Receivables

Accounts Payable

Asset Accounting

Bank Accounting

General Ledger serves as a complete recording all financial transactions. Real-time integration with other modules like Materials management, Sales and Distribution, Plant Maintenance and sub modules like Accounts Receivable, Accounts Payable, bank, Asset Accounting etc.

The transactions are captured at General Ledger (GL) level for preparation of financial statement and at the same instance, the costs are assigned to respective departments based on the nature of transactions.

All data relevant to costs flows automatically from Financial Accounting to Controlling. For every GL Account there is a corresponding Cost Element.

The GL accounts / cost elements are grouped majorly under Personal Cost, Operations and Maintenance Cost, Marketing & Advertisement Expenses and General Administration Overhead.

-The personnel cost, operations and maintenance cost, marketing and advertisement expenses and general administration overheads have been classified based on the department wise reports. The various departments considered here are operations, Engineering & Maintenance, Corporate Function like Finance, Legal, HR etc., and Commercial.

Expenses allocation to Aeronautical / Non-aeronautical

Particulars	AERO	NON AERO	Key	
Personnel Cost	90%	10%	Department wise salary	Attachment Provided
Operations & Maintenance cost (O&M)	90%	10%	Department wise cost	Attachment Provided
Concession fee			Revenue ratio	
Lease Rent	100%	0%	Actual cost	
Utilities COST	100%	0%	Actual cost	
Insurance	91%	9%	Asset Ratio	
Marketing & Advertisement	85%	15%	Department wise cost	Attachment Provided
Waiver & Bad debts	100		Actual cost	
OMSA fee	100%		Actual cost	
General Administration cost	90%	10%	Department wise cost	Attachment Provided

8.65 BIAL has also provided the segregation of cost centres capturing different expenditure into Aeronautical and Non-Aeronautical as follows:

Table 16: Cost centre wise allocation between Aero and Non-Aero provided by BIAL

Cost Center	Cost Center Name	Allocation
16000	Director Operations	Aero
16100	Quality Management	Aero
16200	Corporate Affairs	Aero
16300	Terminal Operations	Aero
16350	Airside Operations	Aero
16400	Aviation Marketing and Contracts	Aero
16500	Aviation Safety	Aero
16550	Emergency & BCM	Aero
16600	Security	Aero
16650	Security - Inline Screening	Aero
16700	Ops Planning & Project Co-ordination	Aero
16800	ARFF	Aero
17000	Aeronautical Asset Capitalization	Aero
18000	ICT Aviation	Aero

Cost Center	Cost Center Name	Allocation
30000	Operations	Aero
72000	VP - Commercial	Common
72010	Landside Traffic	Nonaero
72015	Landside Technical	Nonaero
72020	Facilities	Nonaero
72030	Commercial Centre Management	Nonaero
72040	Marketing and Advertising	Nonaero
72050	Infrastructure Resources Mgt	Nonaero
72100	Chief Infrastructure Officer	Common
72110	Planning & project management	Common
72150	VP - Engineering & Maintenance	Common
72170	Landside Maintenance - Building	Common
72175	Landside Maintenance - Electrical	Common
72180	Landside Maintenance - Special Equipment	Aero
72190	Utilities - Water Supply	Aero
72200	Landside Maintenance - Services	Common
72210	Airfield Maintenance - Civil	Aero
72220	Airfield Maintenance - Electrical	Aero
72230	Utilities - Power Systems	Aero
72240	Airfield Maintenance - Services	Aero
72250	Airfield Services- Vehicle & Equipments	Aero
72260	Airfield Services- Horticulture & Landscaping	Aero
72270	Airfield Services - Wild life control	Aero
73000	ICT Communications	Common
73100	ICT Network	Common
73300	ICT Value added services	Common
73400	ICT Contract services	Common
73500	ICT Others	Nonaero
74000	Non-Aeronautical Capitalization	Nonaero
80000	President - Airport Operations	Aero
81000	Finance	Common
82000	Human Resources	Common
83000	Administration	Common
84000	Company Secretary & Legal	Common
85000	Corporate Communications	Aero
86000	ICT-Common	Common
87000	Common Asset Capitalization	Common
Others	Others	Common

8.66 The Authority has taken note of the above Cost Centre break-up as provided by BIAL for the purposes of the computation of Aeronautical Tariffs for the current control period. The Authority has also decided to commission an independent study on the allocation of expenditure between Aeronautical and Non-Aeronautical activities. Results of the study will be considered and the ARR for the current control period will be trued up at the time of determination of Aeronautical tariffs and UDF for the next control period.

8.67 The Authority notes BIAL's submission that:

"Further in line with industry practice and in line with treatment accorded to other major airports, the above services (CUTE, CUSS and BRS) may kindly be treated as non-aeronautical."

- 8.68 The Authority notes that BIAL was possibly referring to the CUTE, CUSS and BRS revenue being considered as Non-Aeronautical in case of MIAL. The Authority notes that CUTE, CUSS and BRS are regarded as part of Ground handling activities which are Aeronautical in nature (Refer Ground Handling Regulations detailed in Para 25.75 below). Hence, revenues accruing to the Airport Operator on account of these services (whether provided by the Operator directly or through a concessionaire) are regarded as Aeronautical services, the treatment which is also in line with the comment received vide MoCA's letter dated 24th September 2013.
- 8.69 The Authority notes that BIAL has stated that the CUTE, CUSS and BRS charges may be treated in line with treatment accorded to other major airports. Based on the tariff determiantions made by the Authority so far, this observation of BIAL pertains to MIAL. In this regard, the Authority states that in case of MIAL, the Authority may also review / revisit the position of considering the CUTE, CUSS and BRS charges as Non-aeronautical at the time of determination of Aeronautical Tariff for the next control period of MIAL commencing 1st April 2014 after duly considering the MoCA letter dated 10th September 2012 (according to which, interpreting the provisions of OMDA, SSA etc., in case of DIAL and MIAL, MoCA had stated that the revenues accruing to the Airport Operator on account of Aeronautical services of Cargo and Ground Handling should be treated as Non-Aeronautical Revenues).
- 8.70 To summarise, the Authority has decided to commission an independent study in respect of the following:
 - 8.70.1 To review the methodology adopted by BIAL for allocation of Assets between Aeronautical and Non-Aeronautical Services for the period 2011-12, 2012-13 and

2013-14 for its reasonableness. As far as 2014-15 and 2015-16 is concerned, the Authority decides to ask for the Auditors' certificate for the asset allocation between Aeronautical and Non-Aeronautical services, based on the methodology as may be indicated in the study and accepted by the Authority.

- 8.70.2 To review the methodology adopted by BIAL for allocation of Operation and Maintenance expenditure between Aeronautical and Non-Aeronautical services for the period 2011-12, 2012-13 and 2013-14 for its reasonableness. As far as 2014-15 and 2015-16 is concerned, the Authority decides to ask for the Auditors' certificate for the Operation and Maintenance expenditure allocation between Aeronautical and Non-Aeronautical services, based on the methodology as may be indicated in the study and accepted by the Authority.
- 8.70.3 Based on the studies indicated in Para 8.70.1 above and 8.70.2 above, the Authority would then true up the asset allocation as well as Operating and Maintenance Expenditure allocation.

Decision No. 4. Allocation of assets and Operation and Maintenance Expenditure between Aeronautical and Non-aeronautical services

a. The Authority decides:

- To consider the allocation of Opening RAB as of 1st April 2011 between Aeronautical and Non-Aeronautical Assets as determined by the Authority and detailed in Table 15.
- ii. To consider the allocation of assets relating to Terminal 1 expansion between Aeronautical Assets and Non Aeronautical Assets as detailed in Para 8.26 above.
- iii. To consider the allocation of Operation and Maintenance Expenditure between Aeronautical and Non-Aeronautical services as submitted by BIAL as per Table 13 for computation of ARR for the current control period.
- iv. To commission an independent study to assess the reasonableness of the asset allocation considered in Para i and Para ii above (Refer Para 8.70.1 above).
- v. To commission an independent study to assess the reasonableness of the allocation of Operation and Maintenance Expenditure considered in Para iii above (Refer Para 8.70.2 above).
- vi. To true up the allocation of assets between Aeronautical and Non-Aeronautical services based on the conclusions of the study at the time of determination of aeronautical tariff determination in the next control period.

vii. To true up the allocation of Operation and Maintenance Expenditure between Aeronautical and Non-Aeronautical services based on the conclusions of the study at the time of determination of Aeronautical tariff in the next control period.

9 Future Capital Expenditure including General Capital Expenditure

a. BIAL Submission on Future Capital Expenditure

- 9.1 BIAL had, at the time of MYTP 2012 submissions, detailed the list of Projects proposed to be executed during the control period and had provided a note on such Projects. BIAL had also submitted the details of Capital Expenditure proposed to be incurred for Maintenance Capital Expenditure. Based on the borrowing eligibility, BIAL had also projected the financing pattern for the said expenditure.
- 9.2 The Authority had examined the submissions made by BIAL and had detailed the Capital Expenditure proposed to be considered as part of RAB in Table 21 of CP 14, which is reproduced below for reference:

Table 17: Table 21 of Consultation Paper No. 14/2013-14 - Details of Capital Expenditure Projects proposed to be Capitalised and thus added to RAB in the current control period

	Date of	Basic Cost and	Financing	Total cost
Project	Capitalisation	charges	allowance	Total cost
Other Projects	31-Mar-14	63.10	20.34	83.44
Apron Extension	31-Mar-14	118.38	24.46	142.84
T01 Expansion	30-Sep-13	1397.98	147.09	1545.07
Expansion Projects Capitalised				1771.35
	31st March 2012	15.43	0.00	15.43
	31 st March 2013	23.96	0.00	23.96
Maintenance Capex Projects	31st March 2014	235.80	0.00	235.80
	31st March 2015	96.72	0.00	96.72
	31st March 2016	61.68	0.00	61.68
Maintenance Capital Expenditure				433.59
Total Capitalisation		2013.05	191.89	2204.94

- 9.3 BIAL had, in its MYTP 2013 updated the Capital Expenditure submission made by it, as detailed below:
 - 9.3.1 BIAL had taken the actual costs incurred upto March 2013 as per the audited accounts.
 - 9.3.2 BIAL had also broken down the proposed capital expenditure to be incurred and Capitalised and hence added to RAB, in the current control period, into different categories for Terminal 1 expansion as compared to a single asset category that it had considered earlier as detailed below:

Table 18: Asset category-wise break-up of Terminal 1 Expansion project

Asset Category	Depreciation Rate
Building	3.34%

Asset Category	Depreciation Rate
Plant & Machinery	10.34%
Furniture & Fixtures	6.33%
Safety Equipments	16.21%
Information, Communication, Technology costs	16.21%

9.4 Revised Future Capital Expenditure proposed during the Current Control Period to be added to the RAB, as per the MYTP 2013 submissions made by BIAL was as under:

Table 19: Revised Details of Capital Expenditure Projects proposed to be added to RAB during the current Control period as per BIAL – MYTP 2013 - Rs. Crore

Project	Date of Capitalisation	Basic Cost and charges	Financing allowance	Total Cost (CP 22/MYTP 2013)	Total cost (CP 14/ MYTP 2012)	
Other Projects i.e. Miscellaneous	31-Mar-14	37.63	12.56	50.19	83.44	
Apron Extension	31-Mar-14	111.38	24.87	136.25	142.84	
T1A Expansion	31-Mar-14 *	1339.21	186.67	1525.88	1545.07	
Expansion Projects Capital	ised (A)			1712.32	1771.35	
	31 st March 2012	15.43		15.43	15.43	
	31 st March 2013	22.52		22.52	23.96	
Maintenance Capex	31 st March 2014	235.64		235.64	235.80	
Projects	31st March 2015	96.97		96.97	96.72	
	31 st March 2016	61.67		61.67	61.68	
Maintenance Capital Expe			432.22	433.59		
Total Capitalisation				2144.54	2204.94	
* Earlier proposed to be capitalised by 30 th September 2013						

9.5 BIAL had, further to subsequent queries raised by the Authority, provided the current status of the Projects, Board approvals available and the cost estimates available for the works proposed to be capitalised during the current control period. BIAL had also provided details of additional Projects (like Terminal 2 – Phase 1 as well as second Runway with associated airfield development etc.) proposed to be commenced during this control period and completed in the next control period.

b. Authority's Examination of BIAL Submissions on Future Capital Expenditure

- 9.6 The Authority had carried out a detailed review of the submissions made by BIAL with regard to the Future Capital Expenditure in CP 14 and CP 22. Authority's analysis provided in CP 22 is as given below:
- 9.7 The Authority noted that BIAL had re-estimated and fine-tuned its earlier

submission of Capital Expenditure leading to a reduction in its Capital expenditure requirements as detailed in Table 19 of CP 22. Also, BIAL had broken down the estimated cost of Terminal building into different asset categories having different rates of depreciation as detailed in Para 9.3.2 above.

- 9.8 To obtain further reconfirmation of the Capital Expenditure and Capital works in Progress proposed by BIAL, the Authority had requested for information and documents from BIAL. BIAL had submitted clarifications to Authority's queries on 15th October 2013 and made presentation to the Authority on 25th October 2013. Details of clarifications provided by BIAL were separately uploaded for Stakeholders' information.
- 9.9 On review of the details provided by BIAL, Authority had requested for further clarifications on 5th November 2013 for which BIAL has responded with details on 2nd December 2013. These were also uploaded for Stakeholders' information. The Authority had subsequently carried out site visit and discussions with BIAL on 18th and 19th December 2013 and sought additional clarifications on 20th December 2013.
- 9.10 BIAL had submitted additional clarifications vide letter dated 17th January 2014. This was also uploaded for Stakeholders' information.
- 9.11 The Authority had examined the Future Capital Expenditure into 2 categories given below. Thereafter, the Authority's proposal was also presented for Stakeholders' consultation.
 - 9.11.1 Category 1 Projects / assets proposed to be capitalised during the current control period
 - 9.11.2 Category 2 Projects for which works would commence during the current control period and would remain as Works in Progress and would be capitalised in the next control period.

Category 1 - Projects Proposed to be capitalised in the current control period.

- 9.12 Terminal 1 expansion (T1A) Project, proposed to be capitalised in 2013-14: The existing Terminal-1 building which is fully operational has an area of 73,627 Sq. Mtrs. In BIAL's submissions it had indicated that after T1A is complete (and the total Terminal-1 plus Terminal-1 expansion area works out to 158,557 Sq. Mtrs (Stated earlier by BIAL as 150,556 Sq. Mtrs.), the passenger throughput would be in the range of 20 million passengers.
- 9.13 The Authority, therefore, inferred that after the expansion of Terminal-1 is complete, the BIAL would be able to handle upto 20 million passengers. It is currently handling

about 13 million passengers and according to its forecast, 20 million passenger traffic per annum would be reached by 2017-18. As far as traffic forecast is concerned, BIAL had stated that it has commissioned a traffic forecast study by Landrum & Brown in 2010 which was followed by an updated study carried out by Landrum & Brown in February 2013.

- 9.14 The Authority noted that the total area of T1 at 1,58,557 sq. m appears reasonable for a proposed passenger through put of 20 million per annum, considering the standard IMG norms.
- 9.15 The Authority noted that the Security Hold area has increased from 6587 sq. m in the earlier Terminal to 26324 sq. m in the expanded terminal an increase of 4 times as compared to the increase in overall terminal area of 2 times. On enquiry, BIAL had informed that the existing Security hold area was inadequate to handle the passenger throughput of 12 million passengers per annum and had to be increased substantially to facilitate the total estimated passenger through put of 20 million passengers for the total Terminal 1 expanded capacity.
- 9.16 The Authority noted that the Project cost for Terminal 1 expansion 1 and related works was approved by the Board of BIAL for a value of Rs. 1459 Crore and the actual amount spent (including interest costs etc.) as submitted by BIAL vide its submission dated 2nd December 2013 was Rs. 1547 Crore. The Authority noted that BIAL had earlier in its MYTP 2012 and MYTP 2013 submissions stated that the T1A area was 76,929 sq. m which BIAL has in its submission dated 2nd December 2013 stated to be about 85,000 sq. m. Details of costs for the Project as given by BIAL is as given below.

Table 20: Summary of Terminal cost as provided by BIAL

Summary of Terminal Expansion Cost		All amount in crores
Description	Approved cost	Actual cost
Terminal Expansion Project		
Terminal Building (expansion)	1055.5	1105.50
Enabling & Terminal modifications	32.0	26.70
External roof works	128.10	129.70
Airside projects	42.00	48.25
Landside and landscape projects	25.00	16.90
New VVIP Terminal	12.00	14.80
Master Plan projects	25.00	13.00
IEDC and Administrative costs	159.40	192.50

9.17 The Authority noted that BIAL had justified the total cost of this Project by computing the cost per sq. ft. at Rs. 11744 which BIAL stated to be in line with other similar

international airports, as per the note provided by BIAL as given below:

"...Terminal building footprint has increased to 85000 sq. m during the detailed design stage. The terminal building scope also includes new utility buildings. Thus the cost/sqft for the terminal building scope amounts to 11744/sqft, as provided below, which is in line with other similar international airports.

Terminal Building (expansion)	
Terminal Area	85000
NEC (New Energy Centre)	1091
NCP (New Chiller Plant)	1392
Total area in sq m	87483
Cost of Terminal/sq ft	11744

- 9.18 "The Authority noted that according to BIAL's latest submission dated 2nd December 2013, the Terminal Building footprint has increased from 76,929 Sq. Mtrs. to 85,000 Sq. mtrs. During the site visit, BIAL indicated that the footprint is the plinth area of the Terminal enclosure and that part of the roof that is overhanging beyond the Terminal enclosure was not included in 85,000 Sq. Mtrs. The Authority noted that the table referred in Para 9.16 above mentions an item of cost for "External roof works" valued at Rs. 129.7 crore. The Authority has noticed that some part of the roof overhangs beyond the Terminal enclosure. BIAL had however, considered the cost of Rs. 1105.5 Crore as the cost of the T1A to justify the cost of construction per sq. ft. at Rs. 11744/-.
- 9.19 BIAL had provided vide letter dated 17th January 2014 the estimates prepared by their consultants for the T1A project and the T1A layout plan details.
- 9.20 The Authority noted that an amount of Rs. 14.80 Crore had been incurred on the VVIP Terminal building as part of the T1A Project. The Authority noted that there was an earlier VVIP terminal which had to be demolished in order to facilitate Terminal -1 expansion project.
- 9.21 The Authority also noted that BIAL had included Security related capital expenditure to the tune of Rs. 35 Crore in the T1A project which BIAL had incurred in line with MoCA directive issued on 16th April 2010.
- 9.22 The Authority had noted that the cost of construction of T1A and associated works appeared to be high compared with the indicative past cost of construction of other Airports Terminals at Chennai, Kolkata, Cochin, Goa etc. The Authority was cognizant of the fact that

the costs of construction depends on the scope of the work including specifications, design etc. Secondly, the Authority noted that in these airports constructed by AAI (except Cochin which is a private Airport), the costing was generally based on the engineering cost estimation principles as indicated in CPWD that are available in Public domain. The Authority also noted that the cost of construction in other airports as mentioned above, can be taken as indicative costs and these alone cannot be regarded as a basis or approved norm, to ascertain the reasonability of cost as the same has linkage with the scope of work, specification and design elements of the Project which may vary from airport to airport.

- 9.23 The Authority noted that the completion cost indicated by BIAL as given in Para 9.16 above is based on the workings of the Engineering Consultant appointed by BIAL and was proposed to be taken as allowable Project cost for determination of aeronautical tariff for the current control period.
- The Authority also noted that in the User consultation process done in the past for T1A (15th July 2011), some of the stakeholders like IATA had sought information whether T1A would impact UDF. BIAL had responded that "Impact on UDF will be shared as soon as the regulatory mechanism is finalized. The matter is currently sub-judice". The consultation paper has outlined in detail the impact of the expenditure incurred on T1A and the proposals for Aeronautical Tariffs and UDF for BIAL as a whole. From the concluding part of the minutes of the meeting of the Stakeholders' consultation (dated 15th July 2011) the Authority also noted that as far as further expansion (beyond T1A) in areas like Second Runway or Terminal 2 is concerned, "IATA evinced their interest to take part in the consultation process for development of Terminal-2 right from the need identification stage. BIAL team welcomed the same and also added that the "inputs from IATA bring lot of value to our thinking process and will be more than happy to involve IATA for future consultations." The Authority thus expects that BIAL will take forward this process.
- 9.25 Maintenance Capital Expenditure: The Authority noted that a significantly large sum of Rs. 432 Crore was proposed to be spent towards Maintenance Capital expenditure during the current control period of which only Rs. 38 Crore (approx.) had been spent till 2012-13 and capitalised. The Authority noted that the cost of Maintenance Capital expenditure proposed included Rs. 35 Crore towards development of a retail plaza and development of Forecourts worth Rs. 80 Crore.
- 9.26 During discussions with the Authority on 19th December 2013, subsequent to a

query, BIAL informed that while Rs. 235 Crore of Maintenance Capital expenditure was proposed to be incurred in 2013-14, works relating to the same had not commenced till December 2013. BIAL informed that these costs will be spent in the year 2014-15 instead of 2013-14. The Authority had also requested BIAL to review the maintenance capital expenditure projections provided by it and provide complete details of the key costs listed in the schedule provided to the Authority.

- 9.27 The Authority also noted that a significant amount of approx. Rs. 42 Crore had been proposed towards strengthening Airfield pavement as part of Maintenance Capital Expenditure. The Authority noted that this should have been carried out properly as part of the initial project itself. (Refer Para 9.106 below for the information received from BIAL and the Authority's analysis on this issue).
- 9.28 The Authority proposed to consider the Maintenance Capital expenditure proposed by BIAL (including shifting the capitalisation of Maintenance Capital expenditure work proposed for 2013-14 to 2014-15) for the purpose of the Consultation Paper.
- 9.29 **West Apron Extension proposed to be capitalised in 2013-14**: The Authority noted that West Apron extension cost of Rs. 136 Crore was proposed to be added to the RAB, in addition to Airside Works of Rs. 48.25 Crore considered as part of Terminal-1 expansion works detailed in Para 9.16 above.
- The Authority had asked BIAL to provide a layout plan and marking of the Apron area originally constructed, construction now said to have been carried out amounting to Rs. 136 Crore and included under Apron extension and also the additional construction made under the head "Airside works" amounting to Rs. 48.25 Crore which has been included under the Terminal 1 expansion related costs. Some of these details were made available by BIAL. The Authority, in the Consultation Paper proposed to consider the Apron Extension cost of Rs. 136 Crore for the purpose of additions to RAB during the Control Period in addition to Rs. 48.25 Crore grouped under Terminal-1 Expansion work. The Authority had noted that appropriate treatment, as may be required, will be given, on receipt of cost particulars from BIAL, at the time of Order for determination of Aeronautical tariffs for the current control period.
- 9.31 To summarise, the Authority noted that large capital expenditure had already been incurred (on items like T1A) and was proposed to be added to RAB during the current control period. The Authority proposed to consider the capital expenditure additions

proposed by BIAL. However, in order to ascertain the reasonableness of the cost of construction of Terminal expansion and associated works like Apron, Road Landscaping and other costs proposed to be capitalised during the current control period, on the basis of well-established norms and guidelines, the Authority proposed to commission a study to evaluate the reasonableness and appropriateness of the costs incurred by BIAL that would be required to be added to the RAB during the current control period and to carry out adjustments / disallowances if any, by truing up the RAB and Aeronautical Tariff computations accordingly, at the time of determination of Aeronautical Tariffs for the next control period.

Category 2 - Future Expansion (Proposed) viz. Terminal 2, Second Runway and other associated works proposed to be commenced and some costs incurred during the current control period, carried as Work-in-progress at the end of the current control period and capitalised in the next control period

- 9.32 The Authority had reviewed the Projects for which works are proposed to be commenced and amounts incurred which will remain in Work-in-progress as of 31st March 2016 (at the end of the control period) in CP 14. The Authority had stated therein that the cost carried as Capital Works in Progress in the books of BIAL at the end of the first control period was estimated at Rs. 2052.98 Crore. The Authority had reviewed this in detail and had sought additional information / documents and had carried out discussions with BIAL on the same.
- 9.33 Overview of the Projects for which works were proposed and the costs proposed to be incurred in the current control period (apart from the expenses proposed to be capitalised) and the total cost proposed to be capitalised in the next control period, as per BIAL's MYTP 2013 submission was as given below:

Table 21: Details of costs for Terminal 2, Runway 2 and related Projects as submitted by BIAL - MYTP 2013 - Rs. Crore

	Amount			Interest		
	spend	Interest	Amount	cost		WIP as of
	(2014-15	cost (2014-	spend	(2016-17	Cost	31st
	to 2015-	15 to 2015-	(2016-17 to	to 2017-	capitalised	March
Project	16)	16)	2017-18)	18)	in 2017-18	2016
	А	В	С	D	(A+B+C+D)	(A+B)
Second Terminal Phase 1	951.56	63.54	3014.00	468.90	4497.99	1015.09
Site Preparatory works	151.00	8.76	768.00	103.81	1031.57	159.76
Runway	89.00	5.16	454.00	61.37	609.53	94.16
Parallel taxiways	164.00	9.51	871.00	117.73	1162.25	173.51

	Amount			Interest		
	spend	Interest	Amount	cost		WIP as of
	(2014-15	cost (2014-	spend	(2016-17	Cost	31st
	to 2015-	15 to 2015-	(2016-17 to	to 2017-	capitalised	March
Project	16)	16)	2017-18)	18)	in 2017-18	2016
Cross Connect taxiway	59.00	3.42	298.00	40.28	400.70	62.42
Apron	225.00	13.05	1341.00	181.26	1760.31	238.05
Existing Runway						
enhancements	25.00	1.45	138.00	18.65	183.10	26.45
Airside Development						
Others	64.00	3.71	328.00	44.33	440.05	67.71
Forecourts, Roadways						
and Landside						
Development	170.28	11.37	537.85	83.78	803.29	181.65
TOTAL	1898.84	119.99	7749.85	1120.11	10888.80	2018.83

- 9.34 From Table 21 of BIAL's submissions as part of MYTP 2013, it can be noted that an amount of Rs. 2019 Crore would be incurred during the current control period and is expected to be shown as Capital Works in Progress at the end of the current control period. Additionally, Capital works amounting to Rs. 8870 Crore would be undertaken during the next control period resulting in total capital expenditure on Terminal 2 Phase 1, Second Runway etc. of Rs. 10,889 Crore into the RAB in the next control period. The Authority noted that this amount is inclusive of the capitalised interest during construction.
- 9.35 The Authority had noted the Capital expenditure Projects proposed to be carried out. Its initial observations were summarized below:
- 9.36 **Terminal 2**: BIAL had indicated that the expansion of T-2 is proposed to comprise of two phases, namely, Terminal T-2 Phase-1 (to cater to additional 20 million passengers) and Terminal T-2 Phase-2 (to cater to additional 15 million passengers). Hence, once the Terminal-2 is complete (both Phase-1 and Phase-2), BIAL expects to be able to handle passenger throughput as under:

Terminal T-1 (including T1A) : 20 million passengers

Terminal T-2 (Phase-1) : Additional 20 million passengers making the total capacity 40

million passengers

Terminal T-2 (Phase-2) : Additional 15 million passengers making the total capacity 55

million passengers

- 9.36.1 BIAL had indicated that the works for Terminal 2 Phase 1 would commence in the current control period as detailed above. BIAL had proposed carrying out construction of Phase 1 of Terminal 2 from 2014-15. BIAL had submitted that it proposes to construct a total area of 2,60,000 sq. m for a total passenger capacity of 20 million passengers per annum. The Authority notes that Jacob's master plan considered a plan of 2,90,000 sq. m for a passenger traffic of 25 million passengers per annum. The Authority also noted that the Jacob's master plan was made when the traffic forecasts projected the Airport reaching a passenger throughput of 20 million per annum in 2015-16 and an alternate proposal of Terminal 2 Phase 1 was proposed by Jacobs for 20 million capacity to ensure 65% utilisation of Terminal 2 Phase 1 at the time of starting the said Terminal operations.
- 9.36.2 BIAL had stated that only block estimates of costs are available for the Project currently, as has been provided by its consultant Jacobs and detailed estimates are not available. BIAL, in its clarifications dated 2nd December 2013 had also stated that:

"...It is important to note that the Master Plan phases for all facilities including T2 and rough order-of-magnitude (ROM) costs were developed as a guide for future development. These are envisaged as an indicative program subject to future refinement for each major project as detail design development and detailed project reports (DPR's) are developed.

The development of the NSPR, associated facilities and the phase-wise T2 development are expected to be adjusted to volatile and dynamic nature of the Indian aviation industry during the detail design stages.

In doing so, there is likely to be a +/- 20% change (and in some cases even higher ranges) in terms of terminal or airfield size and costs during this period. This is an expected norm for the industry at a master planning level of analysis where the Master Plan typically outlines facilities requirements and sizing at a macro-level with significant refinements and value engineering expected during detail design and project tender stage.

BIAL will engage stakeholders for the Design development stage and Detailed Design stage consultations as indicated in the planning program for Terminal 2 and the second runway project. During these stages BIAL will firm the scope of project, sizing of various facilities, construction phasing etc. along with the stakeholders.

Below are the indicative planning schedules for Terminal 2 and Second Runway project as on date. These are subjected to change further when project scope and construction methodology are determined..."

"...BIAL T2 cost is estimated at a master planning level. Area and the related Cost shall be optimized and derived through a process of schematic design, detailed design, DPR and followed by competitive tendering process. About 20% variation in actual cost is expected from the master planning level estimates provided...."

- 9.36.3 At present, after expansion of Terminal 1 (called Terminal T1A) the Terminal capacities and expected passenger throughput are as follows Terminal T1 has an area of 73,667 sq. m and was actually handling passenger through put of around 13 million (2012-13). This terminal was in a congested state which necessitated T1A. The expanded Terminal (T1A) has an area of about 85000 sq. m and together with T1 would have a total area of 158,557 sq. m capable of handling passenger throughput of around 20 million by 2017-18 according to the estimates of BIAL.
- 9.36.4 The Authority noted that BIAL has, vide its letter dated 2nd December 2013 revised its area estimate of Terminal 2 Phase 1 from initial submission of October 2013 of 2.60 lacs sq. m to 2,31,900 sq. m a reduction of 28,100 sq. m and had also reduced its cost estimate (excluding interest) from Rs. 3965 Crore to Rs. 3470 Crore (a reduction of Rs. 495 Crore). In a further submission, BIAL had stated that for master plan phases of all facilities including T2, a Rough order of magnitude costs have been developed as a guide for future development. It had also stated that "...there is likely to be a +/-20% change (and in some cases even higher ranges) in terms of terminal or airfield size and costs during this period...".
- 9.36.5 The Authority expected that BIAL would have more clarity in these estimates when according to BIAL, the work for T2, Runway 2 and associated infrastructure works need to be commenced in very near future. If these estimates were really to be so tentative and hence purely indicative, the Authority may indeed be inclined not to take these figures into consideration for the current control period. However, the Authority was also cognizant of the need for matching the airport capacity with growing passenger needs. Hence, the Authority had noted the above submissions of BIAL and expected BIAL to work out the Terminal capacity in accordance with IMG norms. (Refer Para 9.46 below). Also BIAL had been indicating that its cost estimates are based on what BIAL calls "International Standards" and hence may appear to be high. The Authority however noted that BIAL had not indicated the specifications of

such International standard and further whether they are in public domain for reference. The Authority expected BIAL to indicate the nature and scope of the International standards that it feels are necessary to be adopted in respect of the proposed construction.

- 9.36.6 For the integrated Terminal T1 as well as T1A, BIAL had given the peak hour passenger ("PHP") through put at 6540. It also had given the norm of around 25 sq. m per passenger. This works out to 1.63 lakh sq. m of terminal area which broadly corresponds to the total area now available of 158,557 sq. m capable of handling, as mentioned above, a passenger through put of around 20 million per annum by 2017-18. If the same numbers viz. 6540 as PHP and 25 sq. m per passenger are taken for the additional Terminal viz T2 Phase 1, an area of 1.63 lakh sq. m would appear to be appropriate for T2 Phase 1 to cater to additional 20 million passengers per annum (which according to BIAL would be the additional passenger throughput by 2026-27 when the total passenger through put is estimated to be around 40 million). The Authority had also noted that according to BIAL's own submission, Jacob's estimate of handling additional 10 million passengers (Phase 2 of Terminal 2) would require additional area of around 75,000 sq. m. This also corresponded to a requirement of around 1.5 lakh sq. m to cater for 20 million passengers per annum.
- 9.37 The Authority noted that according to BIAL, it has carried out stakeholder consultations on the Master Plan update and traffic forecasts stating as under:
 - "...In the master plan workshop with Airlines on 28th March 2011, BIAL has explained terminal options that Jacobs has evaluated at Master Plan level for Terminal 2. This demonstrated the alternatives for Terminal 2, feasible in the land use earmarked for development. The Terminal design evaluation criterias were presented and proposed scheme for Terminal 2 as per Master plan was determined..."
- 9.38 However, detailed discussion and consultations with stakeholders on the Options, detailed design discussions, detailed cost estimates etc. had not been carried out by BIAL yet and that these do not conform to the procedure indicated in Airport Guidelines.
- 9.39 **Airfield Development Runway and related works**: The Authority recognized that having a second runway is technically required for an international airport which is likely to be of substantial size in excess of 20 million passengers or so.
 - 9.39.1 Details of the Airfield development activities proposed by BIAL, from its submissions dated 15th October 2013 are as given below:

"...Airfield Development:

The airfield development proposes phased expansion of the runways, aprons and taxiways, including rectification and up gradation of the existing airfield. The new runway, related taxiways and apron airfield will provide the required capacity beyond 2017/18.

Phase 1

- Runway on south:
- Code F compliant, 4000m long, overall width of 75m, CAT III B compliant Airfield ground Lighting System
- Taxiways:
- One full parallel taxiway, 4000m long 6: overall width of 60m wide including paved shoulders
- o Parallel taxiway of approximately 2000m 6: overall width of 60m Wide including paved shoulders
- o Two cross field Taxiways of 1900m long and 60m overall width, to connect to the Existing Runway.
- o New Additional parallel taxiways both North and South of the future T2 aprons
- o 6 New Entry and Exit taxiways
- o 2 new Rapid Exit Taxiways in the Northern Airfield.
- o GSE Tunnels 2 lane wide and 280m long, across the East Cross field Taxiways.
- o Apron of 11,28,050 sqm (or 87 Contact and Remote stands including all utilities.
- o Utilities including-power supply, drainage network with retention ponds, Integrated Instrument Landing system and Navigational Aids.
- o New ARFF and Airfield Maintenance Buildings of approx. 10000sqm Phase 2
- o Taxiway: Code F compliant, full length 4000m taxiway, overall width of 60m, parallel to the existing Runway.
- o 90deg Entry/Exit Taxiways in the Northern Airfield.
- o And remaining portion of the new second parallel taxiway of the South Airfield.

Existing airfield up gradation

- o Strengthening and widening of the existing Runway to Code F standards, overall width of 75m.
- o Strengthening and widening of the existing taxiways to Code F standards, overall width of 60m.
- o Installation of CAT III B compliant Airfield ground lighting system iii in the Northern Airfield.
- o Up gradation of the existing drainage and utilities network of the Northern Airfield..."
- 9.39.2 BIAL had indicated that both the runways would be of Code F standard capable of handling A380 aircraft. The Authority, however, found from Jacob's study that M/s Jacobs has recommended that the existing runway is to be retained as Code 4E till 2030 and the second new runway with a parallel runway to be of Code F facility and hence had discussed with BIAL on the need to re-work the cost accordingly. BIAL has, vide submission dated 2nd December 2013 responded that it has reworked the cost and there is a reduction of Rs. 93 Crore on account of deferring the Code-F compliance for existing Runway and Taxiway.
- 9.39.3 Instrument Landing System (ILS): BIAL had proposed CAT-IIIB standard for both the Runways. The Authority noted that having regard to the climatic conditions of Bengaluru, the probability of technical requirement for CAT-IIIB would be low. The Authority discussed this with BIAL representatives on 25th October 2013 who stated that more and more number of flight days in Bengaluru were being affected by fog and there was a need for Cat IIIB compliant lighting system. The Authority, also noted that the difference between the incremental cost of CAT-II and CAT-IIIB is understood to be small. The Repot of M/s Jacob has recommended CAT-IIIB capability for both the runways (instrumental approach capability). The Authority had requested BIAL to revisit the need for CAT-IIIB for both the Runways, putting it before the stakeholders for consultation and subsequent Board approval. The agency responsible for Air Traffic Control (ATC) is the AAI with the support service of MET (Meteorological Service). Hence, any up gradation to CAT-IIIB would need to be dovetailed with corresponding matching capabilities of both AAI as well as MET. Hence, the Authority had requested BIAL to specifically coordinate both with AAI and MET while revisiting the issue of upgrading the ILS if required to the proposed CAT-IIIB for both the Runways.

- 9.39.4 **Parallel Taxiways:** BIAL had factored the cost of one (1) additional parallel taxiway for the existing runway, and two (2) parallel taxiways for the proposed new runway, hence, effectively, BIAL had proposed two (2) taxiways per runway. Hence, BIAL's proposal was to have three new taxiways (one parallel taxiway already in existence for the existing runway) constructed now. The Authority noted from M/s Jacob's study that it had proposed one (1) parallel taxiway for New South Parallel Runway (NSPR) and had considered the requirement of second parallel taxiway for NSPR in 2022-23. M/s Jacob had also indicated passenger throughput of 35 million passengers per year as the trigger point for having the second parallel taxiway for NSPR. As far as the BIAL's proposal of having one additional parallel taxiway for the existing runway 9–27 is concerned, the Authority had noted that M/s Jacob's report indicated the requirement of two parallel taxiways for the existing runway at 20 million passengers per annum and accordingly the Authority had noted that the cost proposed by BIAL for Parallel taxiways include additional taxiway for the existing runway.
- 9.39.5 **Cross Taxiway** -BIAL had proposed to have dual (2) cross taxiways connecting existing runway to the proposed new NSPR. M/s Jacob had supported the construction of dual cross field taxiway system.
- 9.40 **Forecourts, Roadways and Landside Development:** The Authority noted that an amount of approx. Rs. 800 Crore were proposed to be spent towards Forecourts and Roadside development works, for which no detailed explanations were provided by BIAL.
- 9.41 Site Preparatory works (for Second Runway, Taxiway, Apron etc.): The Authority also noted that the cost of site preparatory works was in the region of Rs. 1000 Crore which BIAL had explained was due to the uneven site condition, existence of a large quarry which needs to be filled and a hill which needs to be levelled. The Authority expected that BIAL will prepare detailed estimates based on site measurements as well as well documented reference levels since these would determine the quantum of excavation as well as filling.
- 9.42 The Authority therefore noted that the design of the Terminal and Airfield development works and estimation of cost were only at a planning level which needs to be fine-tuned and firmed up after evaluation of all possible options and alternatives, doing detailed level analysis and estimation of costs, detailed stakeholder consultations, review of all information by the Board and its approval of the costs. The Authority also notes that detailed discussion and consultations with stakeholders had not been yet carried out by BIAL for the Terminal 2 Phase 1 and Airside development works.

- 9.43 The Authority also noted that costs for Terminal 2 Phase 1 and Airside development had been approved by the Board of Directors only at the level of block estimates during the approval of Master Plan update and detailed specific approval of the Board of Directors for scope and the corresponding expenditure outlay for undertaking the work was yet to be obtained.
- 9.44 On the Capital expenditure likely to be incurred during the current control period, during discussions on 19th December 2013 BIAL was specifically asked to confirm that the costs of the order of Rs. 2000 Crore will actually be incurred during 2014-15 and 2015-16, which BIAL had affirmed.
- 9.45 To summarise, on Terminal 2, Airside Development and related works, the Authority noted that BIAL had proposed a substantially large sum of capital expenditure requiring to be spent between 2014-15 and 2017-18 of over Rs. 10,000 Crore. These were currently only block estimates which need to have a detailed stakeholder consultation, detailed analysis and review by the Board of BIAL, detailed cost estimates to be drawn up and then the costs put up for approval.
- 9.46 While the Authority would consider these costs as indicative, these should not be construed as having been in any case considered as reasonable and appropriate by the Authority at this stage. The Authority noted that the proposed capital works in connection with Second Runway, Second Terminal (T2) as well as other associated costs appurtenant thereto would not be capitalised during the current control period. These costs thus would not have any impact on the tariff determination during the current control period. However, the Authority expected BIAL to finalise their future project works (Second Runway, Terminal T2 etc.) keeping in view the following points:
 - 9.46.1 **Cost estimation** estimating the costs based on well-established principles like drawing up detailed bill of quantities for each element of the work, appropriate costs thereof as would be available in public domain. (One such detailed analysis and procedure of estimating the project cost is available in published schedule of rates of CPWD. CPWD publishes the standard items, its cost, (what is called as scheduled items) its applicable rate and its base year. CPWD also publishes the revised cost index to convert the scheduled items rate into a current rate equivalent. Apart from scheduled items, the project may contain some other items which may also need to be executed (what is called market rate items or non-scheduled items) namely

Elevators, Escalators, Central Air conditioning plant, Walkalator, Passenger Boarding Bridge (PBB) or other non-scheduled items such as flooring, fittings etc. inside the Terminal building. These are the non-scheduled items for which standardised rates are not available. In such cases, according to CPWD principles, market rate analysis needs to be carried out as per the CPWD procedure to arrive at reasonable cost estimates)

- 9.46.2 **Stakeholder consultation** Detailed stakeholder consultation to be carried out for the need of the Project for each of the Project Proposed, wherein the stakeholders are given complete details of the Project, detailed scope, design, available alternates and its detailed cost estimates along with basis thereof. (Airport guidelines issued by the Authority indicate the various stages in which the Stakeholder consultation is to be carried out along with the various information to be provided including Project cost estimate, Capital cost, details of Operating expenditure, Forecast of cost and its other impact, Projected impact on the tariff, Projected implications for Airport Operations, Service levels, Providing a Project Information file etc. Refer Airport Guidelines)
- 9.46.3 **Board's approval** on scope, standard of work and the cost of the proposed Project (viz. Terminal 2, Site Preparatory works, Second Runway, Apron, Parallel Taxiway, Cross connect Taxiways, Other Airfield Development works Forecourts, Roadways and Landside Development etc.)
- 9.47 For the purpose of the Consultation Paper the Authority proposed to consider the following:
 - 9.47.1 For projects proposed to be capitalised in the current control period (Refer Category 1 as detailed in Para 9.11.1 above along with its details, consider the estimates provided by BIAL, subject to shifting the maintenance capital expenditure proposed during 2013-14 to 2014-15. Also the Authority proposed to commission an independent study on the reasonableness of the costs incurred and capitalised by BIAL and to carry out adjustments, if any identified, by truing up the RAB for the current control period at the time of determination of Aeronautical tariffs for the next control period.
 - 9.47.2 For other Projects viz. Category 2 as detailed in Para 9.11.2 above along with its details (other than those detailed in Table 22) for which costs are proposed to be incurred during the current control period and remain as Work in progress at the end of this Control period, to consider the same only as indicative estimates. These have not

been included in calculations for determination of Aeronautical Tariffs for this control period as they are not proposed to the capitalised in the current control period.

9.48 Accordingly, the revised capital expenditure proposed to be added to RAB during the current control period as considered by the Authority in CP 22 was as given below:

Table 22: Revised Details of Capital Expenditure Projects proposed to be added to RAB during the current Control period as per Authority – CP 22 - Rs. Crore

Project	Date of Capitalisation		Financing allowance	Total Cost to be added to RAB		
Other Projects i.e. Miscellaneous	31-Mar-14	37.63	11.86	49.48		
Apron Extension	31-Mar-14	111.35	23.34	134.68		
T01 Expansion	31-Mar-14 *	1338.27	173.53	1511.80		
Expansion Projects Capitalised	(A)			1695.97		
	31st March 2012	15.43		15.43		
	31st March 2013	22.52		22.52		
Maintenance Capex Projects	31 st March 2014	0.00		0.00		
	31st March 2015	339.58		339.58		
	31st March 2016	61.68		61.68		
Maintenance Capital Expenditu	439.20					
Total Capitalisation	2135.17					
Maintenance capital expenditure for 2011-12 and 2012-13 given net of disposals						
* Earlier proposed to be capita	lised by 30 th September	2013				

9.49 Further based on the material before it and its analysis, the Authority had

9.49.1 To consider Capital Expenditure (Refer Table 22) for addition to RAB during the current control period, for the present, for the purpose of the determination of tariff

for aeronautical services during the current control period.

9.49.2 To commission an independent study on the reasonableness of the costs incurred and capitalised by BIAL during the current control period.

9.49.3 To note the proposal of BIAL for additional infrastructure proposed to be created during 2014-15, 2015-16 and the next control period (01.04.2016 – 31.03.2021) (Refer Table 21). The Authority expected BIAL to firm up the scope, standard of work, design and cost of the proposed additional infrastructure (Refer Para 9.46 above and Table 21)

proposed in CP 22:

- 9.50 Further based on the material before it and its analysis, the Authority had proposed trueing up for proposal in CP 22:
 - 9.50.1 To true-up the difference between the Capital Expenditure considered now and that actually incurred based on evidential submissions along with auditor certificates.
 - 9.50.2 To true up the additions to RAB based on the results of the independent study proposed by the Authority as detailed in Para 9.31 above at the time of determination of aeronautical tariff for the next control period.

c. Stakeholder Comments on Issues pertaining to Future Capital Expenditure including General Capital Expenditure

- 9.51 Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14 and CP 22. Stakeholders have also commented on consideration of Future Capital Expenditure including General Capital Expenditure in respect of Kempegowda International Airport, Bengaluru. These comments are presented below:
- 9.52 On the issue of Future Capital Expenditure, IATA stated that it agreed with the Authority's proposal given that the costs submitted by BIAL are only broad estimates.
- 9.53 On the issue of Future Capital Expenditure and General Capital Expenditure, IATA stated on the User Consultation Process as follows:

"IATA believes that a proper user consultation must be supported by detailed official minutes that are circulated and agreed to by the users. Where necessary (which is usually the case), follow-up meetings are held to address or clarify concerns. IATA is not aware that the minutes for the airline consultations on terminal expansion held in August 2010 and July 2011 were circulated and that there was subsequent follow through on concerns raised by the users during these meetings. AERA should seek from the airport operator the official documentation of the proceedings of user consultations to ensure that indeed effective user consultation had taken place and that a perfunctory information dissemination session by the airport is not passed off as user consultation. The airport should view effective user consultation positively as a key avenue to get buy-in and ensure that the right capital investments are made at the right time and the right cost to meet the needs of users.

IATA supports timely investment in airport infrastructure to meet future growth. The airport's ATM projection suggests that a second runway would be needed in 2017/18.

This appears to be optimistic given that ATMs was at 105,000 in 2012/13 and had been fluctuating between 105,000 and 120,000 in the past 5 years. To hit the maximum capacity for a single runway of 172,000 ATMs growth will need to be very robust over the next 4 years and certainly will have to be supported by an efficient cost environment that is conducive for airlines to grow their services to BLR. IATA looks to consult extensively with the airport to see if the 2017/18 planning timeframe for a second runway should remain or needs to be adjusted"

9.54 IATA, in its comments to CP 22 stated that:

"IATA agrees that the airport should hold detailed discussion and consultations with stakeholders on its Master Plan with respect to the options, detailed design and detailed cost estimates etc. in conformance with the Airport Guidelines. IATA looks forward to participating in such consultations organized by the airport.

IATA supports AERA's proposal for an independent study on the appropriateness of the capital expenditure incurred by BIAL during the current control period and to true up any difference in the next control period."

9.55 On the issue of capital and general capital expenditure, AAI stated as under:

"All future capital expenditure (maintenance capex) proposed which are not finalized at this stage needs to be analysed.

The general capital expenditure proposed during the period of 5 years seems to contain a number of works like modification of security hold area, modification of old duty free space which are revenue in nature and not addition to the capital asset if so, needs to be deleted from the capital expenditure.

Any future Capital expenditure on security equipment to be funded through PSF Security Component is to be excluded."

9.56 BPAC stated as under:

"T1 expansion cost of 1545 Cr looks extremely inflated and would add unsolicited burden to passengers. In this regard the following points need to be scrutinized, investigated and audited by third party appointed by the Authority keeping public interest in consideration:

1. Expansion cost of T1 to be thoroughly audited and benchmarked in comparison with the similar airport expansion projects recently completed in Chennai and Kolkata.

- 2. Cost per sq. ft. of Rs. 11744 is too high. It also raises doubts about the method adopted for the area of footprint calculation. The bifurcation of area and costing between the actual building (covered, facilitated and effectively used) and the roofed structure (open and only covered with canopy/roofing/facia) need to be properly evaluated and bench marked in comparison with the cost of similar projects.
- 3. The service levels in consideration for designing and execution of the terminal need to be verified for its appropriateness. It appears that building is designed keeping in a higher standards of service level compared to what level is being assured to AERA vide the document under reference. This results in higher (undesired) capital cost, but not adding desired value to the travellers.
- 4. In view of the use of common contractors, consultants, employees and suppliers by the promoters having multiple airport projects and non-airport projects across the country and abroad, the cost allocation need a thorough auditing to confirm the works/supplies billed for T1 project is actually used here or elsewhere.
- 5. It is understood from reliable sources that employees in BIAL payroll is executing projects elsewhere and also the employees actually working for the project elsewhere are charged to BIAL projects, resulting misrepresentation of the BIAL revenue. Hence it is felt necessary to undertake a thorough audit of payroll of top 20% category of employees and if found them shared resources in multiple projects, care should be taken to allocate only relevant costs to BIAL.
- 6. It is also understood that there is huge variation of completion cost (around 300 Cr) from the original scope. This need proper justifications if those expenditures were actually necessary to be executed as the burden of this straight away falls on the users.
- 7. There was no public consultation involving the pretentious stakeholders' passengers. Why the citizen forums and industry bodies were not involved for consultation? Also, it is unclear from the consultation paper, if BIAL had made available the cost estimation of the project during the stakeholders' consultation. Any consultation without revealing the projected expenditure and its impact on stakeholders is incongruous and would allow the airport operator free to draw and deviate the lines wherever they desire during execution and by the end of the project.
- 8. Threats of conflict of interest and its probable impact in inflated project cost:

- 1. We see that one of the shareholder having multiple interests in allied businesses such as airport hotel, construction contracts within BIAL, projects at another airport and elsewhere has engaged a common contractor for all these works, raising concerns over the misrepresentation of cost over the transaction through this common conduit.
- 2. The contractor for T1 expansion is an ex-stakeholder of BIAL, having sold their 17% of their stake to the present major stakeholder who in turn awarded the contract back to the ex stakeholder.
- 3. Since the same contractor is involved in handling many projects of the major stakeholder of BIAL and also in the sale of Airport hotel, there is a possibility that the fund allocation for various activities and the source of funding could have undergone adjustments to match the final 'give and take'. If the dues of the project elsewhere got adjusted in the project cost of BIAL, this would result in high capital expenditure, and hardship to the passengers.
- 4. The method of award of contract, the criteria adopted, transparency in dealing public money, approval process etc. need to be thoroughly investigated and audited.
- b. It is necessary to ensure that the capital expenditure on aero operations is not overstated and non-aero operations are not understated. Need detailed scrutiny to overcome this risk.
- c. The projections for immediate future capital expenditure (over 10,000 Cr) for second terminal, second runway and allied facilities looks too much inflated. The projected cost must be based on reliable and systematically fit to India costing and not based on dollar conversion of the similar projects in US or Europe as projected by a foreign consultant.
- d. The cost of site preparation work for the second runway amounting to 1000 Cr is unjustifiable and raises the doubts about the suitability of site for building a runway. There are many airports (with complete infrastructure and facilities) in India which were built with a total cost much lesser the site preparation cost alone for a runway in BIAL. May please seek clarification from AAI in this regard.
- e. It is felt necessary that the operator discloses the details of design, service levels in offer and cost along with the probable impact of UDF at the initial stage with the representatives of major stakeholders passengers. Before freezing the scope and

costing of the project, an independent detailed scrutiny of proposal to be made mandatory and the projected cost to be disclosed to the public.

- f. Regarding expenditure of strengthening of existing airfield pavements, the existing warrantee for such infrastructure need to be taken in to consideration. It is learned that the flexible pavements built in first phase enjoy a warrantee of 12 years and the rigid pavements, 20 years. The passengers need to be safeguarded from the burdens of such inappropriate cost doubling.
- g. Capital expenditure for those facilities which are made available to the users only to be considered for determination of UDF. The expenditure for a facility which will be offered to the user during next control period should not be considered for evaluating UDF of this control period. Why the passengers should pay for a facility which is not made available to them?"
- 9.57 On Capital Expenditure, FIA has stated as under:
 - "II.A. Authority should ensure that the project cost is in check and gold plating is avoided
 - 20. The Authority in the CP No.22/2013-14 has noted that the cost of construction of T1A and associated works appear to be high compared with the indicative past cost of construction of other Airports Terminals at Chennai, Kolkata, Cochin, Goa etc. It is submitted that though there may be marginal deviations owing to the specification and design elements but Authority should not allow the cost which are attributable to gold-plating by BIAL to keep the project-cost in check. It is noteworthy that project cost is taken into account for determination of aeronautical tariff by way of RAB factor. Therefore, any cost which is not mandatory or beyond the pre-determined scope of work should be disallowed.
 - (b) Financial Close for future expansion As per the CP No.14/2013-14, Financial Close was not achieved for future expansion of Rs. 4,027 crores as there is funding gap due to inability of BIAL's shareholder to infuse additional equity. As per the CP No. 22/2013-14, funding gap still persists as BIAL's shareholders have confirmed their inability to infuse additional equity and Real Estate Business Plans have not been firmed up yet. In absence of Real Estate Business Plan, cash flows from monetisation of land and real estate deposits are not considered which could have been used as source of financing the funding gap."
- 9.58 Sanjeev Dyamannavar has commented on Capital expenditure incurred by BIAL as

follows:

"... some where we feel BIAL has planned at lower capacity during year construction 2005 -2008 when we compare with Hyderabad Rajiv Gandhi International Airport capacity at the opening date respectively: Terminal Building capacity of RGIAL was 1.17 Million Sq Ft and capacity of 12 Million passenger with multi-level entry and exist which will avoid the congestion at the Airport entry. Look at BIAL was constructed with terminal capacity of 75,000 Sq Ft and less than 10 Million passenger capacity. Now BIAL is facing serious congestion at the Departure area where Taxis are made to wait for even 15 Min to drop passengers. With further growth of the Passengers using BIAL airport, this will become constraint and Promoters will need spend huge money to handle the Dep and Arr Taxis / Cars / Buses. This will further need capital investment whereas RGIAL Hyderabad, Delhi, Mumbai are well taken care.

Now as construction cost has gone up and terminal expansion of 1A is getting burdened to Passengers with UDF.

3. Why Passengers to pay for the VIP Terminal and its running expenditure thru UDF: New VIP Terminal costing Rs 12.25 Crore which is spread across 38176 Sq. Ft. with building area 10441 sq ft.

One time investment for such facility is fine with recovery from UDF but running expenditure from the common passengers is not correct. All expenditure of capital investment for VIP facility and running expenditure for VIP facility should not be burdened on passengers. Mechanism need to be worked with Govt of India (GOI) and State govt GOK for VIP facility capital and running expenditure. There are many people who misuse these facility in the name of VIP's."

9.59 British Airways has stated that:

"British Airways continues to believe that it is critical that any capital investments made by the airport have been properly and thoroughly consulted upon with stakeholders, to ensure that airline customers endorse the airport's spending plans. It must be remembered that when the airport is considering spending capital expenditure that it is effectively spending airlines' money. There must be no ability for the airport to just spend freely and then collect the costs incurred from its customers after the fact.

Airlines are committed to delivering for customers and recognise that we must do so at a price that they can afford to pay consequently for us and for them. Affordability

and value for money are paramount, especially when making investment decisions within our own businesses, particularly in the light of weak demand and high fuel costs. This means strict controls on cost so that we can deliver efficiently for the passenger. We would like AERA to ensure that they allow the airlines the opportunity to try and ensure that Kempegowda International Airport focus on efficient delivery for our customers with the same intensity as we do. Simply truing up costs incurred after the fact with no scrutiny of efficiency is a recipe for grossly inefficient spending by a bloated and insulated airports at the expense of the airline customers.

British Airways would welcome the addition by AERA of strict terms and obligations on Kempegowda International Airport to ensure that proper consultation has taken place prior to capital investments. Beyond a requirement for full and thorough properly conducted consultations with airlines prior to commitment of future capital expenditure, it will also be necessary in the case of AERA proposing to true-up the difference between the Capital Expenditure considered at this time and those that were actually incurred based on evidential submission. To ensure that the airport cannot interpret this to mean that they are in anyway insulated from ensuring ongoing efficient project management Kempegowda International Airport must be certain of the need to manage their capital project costs well. It is not right that we, as an airline customer of the airport should be made to pay for the failure of the airport to control project costs. The airport needs to have some risk associated with their project management; it cannot be fully insulated from the cost overruns associated with poor management discipline and practice. It would be usual for the regulator to form an independent view of the effectiveness of the airport' performance. In this regard it maybe through the use of independent auditors and then disallow that proportion of the project costs that were avoidable. The RAB could then be adjusted downward to ensure the airlines are not funding inefficiency and bad practice. British Airways would urge AERA to adopt this."

9.60 Cathay Pacific has stated that:

"There is no prior detailed and public discussion or consultation among the airport users about the project cost who eventually are the stakeholders that need to bear the costs. In the proposed Master Plan, a new runway, new terminal (T2) and associated airfield and apron works would be needed in 2017/18. While we support the need for continual investment in airport infrastructure to meet growth such investment should be timely and not carried out ahead of actual needs. With the

airport's projections on air traffic movement in the past 5 years, we doubt if these new facilities are in need to be included in the project costs. More detailed study would be needed before these new facilities to be determined."

9.61 Lufthansa Airlines has stated that:

"We do not agree with the proposal of Authority to consider Capital Expenditure as per Table 12 for addition to RAB during the current control period for the present purpose of the determination of tariff for aeronautical services during the current control period and to true-up the difference between the Capital Expenditure considered now and that actually incurred based on evidential submissions along with auditor certificates and to true up the additions to RAB based on the results of the independent study proposed by the Authority as detailed in Para 5.31 at the time of determination of aeronautical tariff for the next control period.

User cannot be burdened with costs of services not made operational and/or available to the user. This is contrary to AERA guidelines 2011 and the provisions of Section 13(2) of the AERA Act which provides for revision of tariff in public interest during the control period itself."

d. BIAL's response to Stakeholder Comments on Issues pertaining to Future Capital Expenditure

- 9.62 Subsequent to the receipt of comments from the Stakeholders CP 14 and CP 22, the Authority forwarded these comments to BIAL seeking its response to these comments. BIAL has provided responses to the Stakeholders' comments, which are presented below:
- 9.63 On construction of VVIP terminal commented by Sanjeev Dyamannavar, BIAL has stated that:

"Development of VIP Terminal is mandated under the Concession agreement."

9.64 On BPAC's comments on Terminal Expansion cost, BIAL has stated that:

"Aspects regarding expansion cost etc. have gone through consultative process. The costs incurred for Terminal expansion and justifications therefor have been provided to AERA ..."

"Service level – This issue is being raised belatedly by BPAC. All aspects pertaining to this issue have been duly deliberated and addressed in the previous consultation process and are at present not germane for future consideration. The high ASQ ratings that BIAL has received is a clear indication of the high quality of service provided by BIAL.

Common Contractors – it is more in the nature of unsubstantiated allegation rather than a response to the consultation process.

On Employees in BIAL process executing projects elsewhere – BIAL strongly disputes and denies the allegation. BIAL has a very robust HR and payroll accounting process and consequently the allegations are devoid of merits. BIAL further submits that the same are also subject to regular statutory audits and internal audits carried out by internationally reputed audit and accountancy firm(s).

Variation in completion cost - The allegation is baseless and vexatious. AERA has taken note of the specific cost for the project and exact information regarding expenditure that has been submitted by BIAL.

Consultation process - The allegation that no effective public consultation was conducted is once again devoid of merits. BIAL has complied with all thresholds regarding public consultation from time to time. Details regarding public consultation process adopted by BIAL have already been submitted to AERA and are available on its website. Further the cost estimates of the project have been shared with stakeholders as part of the consultation process.

Conflict of interest - Allegations are frivolous and vexatious. Further the responses are extraneous to the present consultation process.

Contactor being ex stakeholder of BIAL - Terminal expansion project was awarded to M/s L&T as a contractor through an open global competitive bid/ tender process. The factum of L&T having been a shareholder of BIAL at a prior point in time has no relevance whatsoever to the tender process and at any event has no relevance to the present consultative process.

Complete details of capital expenditure on aero and non-aero operations have already been submitted to AERA.

Future Projects - Capital expenditure for aeronautical future expansions will have to go through a consultative process. At that point in time, the stakeholders would be entitled to participate in such consultation processes.

Terminal footprint - The basis on which BPAC's comment has been made is not provided and in any event necessary details have been furnished to AERA

Concerns about accounting practices - The statement is more philosophical and does not call for specific response. BIAL follows all applicable accounting practices and its accounts are audited by an internationally reputed accountancy and audit firm complying with the thresholds of transparency that similar activities would demand."

9.65 On British Airways' comment, BIAL stated that:

"BIAL submits that consultation process will be followed and aeronautical capital expenditure will be due for detailed stakeholder's consultation. It is not correct for British Airways to submit that airport is spending money of the airlines.

BIAL submits that it is a developing airport and has expanded its capacity considerably during the control period. Hence, past expenses cannot be considered as the basis for estimating expenses in the coming years. However, BIAL has done bottom up projections while arriving at the cost estimates and detailed submissions have been made earlier in response to CP 14 and CP 22.

BIAL submits that consultation process will be followed and aeronautical capital expenditure will be due for detailed stakeholder's consultation and there is no need for further processes."

9.66 On Lufthansa Airlines, Cathay Pacific and IATA's comments, BIAL has stated that "BIAL refers to various details furnished to AERA in response to clarifications sought with regard to requirement for future capex and are available in public domain. BIAL submits that consultation process will be followed and aeronautical capital expenditure will be due for detailed stakeholder's consultation

It is further submitted that as part of regulatory mechanism for tariff determination only assets that are getting capitalized during respective control period will form part of RAB."

9.67 On FIA's comments on Future Capital Expenditure BIAL has stated that:

"Clarifications as regards Project Cost and benchmarking of costs have already been submitted.

BIAL submits that the estimation of future capex is a major element of the regulatory building blocks. As part of AERA's consultation process, details were submitted on the requirement of future capex and its impact on the proposed tariff. However, BIAL submits that entire aeronautical capital expenditure will be due for detailed stakeholder's consultation and informed decision will be taken as per the consultation process. It is relevant to submit that the private promoters as well as government

promoters have made it abundantly clear that they would not be able to infuse any additional equity.

BIAL has furnished details of expenses incurred towards capital expenditure for Terminal - 1 expansion as sought by AERA and relevant details are part of Annexure to CP 22.

Maintenance Capital Expenditure - BIAL submits that necessary details have been furnished vide BIAL's response to CP 22 and vide letter dated January 30, 2014."

e. BIAL's own comments on Issues pertaining to Future Capital Expenditure

9.68 On the issue of future capital expenditure, BIAL stated as comment to CP 22 as follows:

"The Authority recognizes at Clause 28.5 of the CP (at page 290) that a sum of Rs. 4027 Crores is required by BIAL to meet the needs for requisite expansion. Further, Authority has noted that, out of the sum of Rs. 4027 Crores required, a sum of Rs. 649 Crores be brought in as equity by the shareholders, including the State shareholders. The overall target debt to equity ratio as calculated by BIAL stands at 70:30. BIAL is currently undertaking expansion of the current terminal building and proposes to construct a second runway and also develop necessary and ancillary infrastructure. In line with Authority's notings, the said activities will collectively require an amount of approximately Rs. 1046 Crore to be invested by way of equity. In the current regulatory scheme, when effectively, BIAL would get a return of 9.33% as opposed to 16%; it would be onerous to expect the promoters to infuse further equity.

Based on the debt to equity ratio, the Airports Authority of India (AAI) and KSIIDC would have to infuse Rs. 260 Crore towards their share of equity infusion. Moreover, the Authority has noted that, if AAI is unable to make proportionate equity infusion, KSIIDC is under an obligation to infuse not only its share of fresh equity contribution but also contribute the additional share towards AAI as well. It is submitted that the notings in the CP in this regard are not in line with the provisions of Share Holders Agreements. As the state promoters, i.e. State of Karnataka and AAI have declined to infuse further equity, BIAL submits that the proposals in the CP may not be feasible."

9.69 In response to CP 22, BIAL has commented on the Future Capital Expenditure as follows:

"BIAL has very clearly substantiated the reasonableness of these costs through the benchmarking exercise using the CPWD and market rates as requested by the Authority. These workings have been submitted in BIAL's response to the 20th Dec 2013 queries.

Authority may note that any variations to budgetary estimates (which BIAL has now demonstrated that its reasonable) and actual costs can be in any event be reconciled and trued-up in the subsequent control periods.

BIAL wishes to state very clearly that it will not be able to commence the second runway and second terminal (T2) projects in the absence of clarity/ certainty on methodology of tariff determination for the next control period and also the cash flow issues needs to be addressed adequately during the current control period.

BIAL traffic has grown by 8 percent in 2013-14. Authority has already acknowledged that the requirement of Second terminal and second runway is essential. Lack of clarity will have severe negative consequence to airlines, passengers and the economic development. BIAL therefore urges Authority to reconsider its views in light of the additional information provided"

f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to Future Capital Expenditure

- 9.70 The Authority has carefully considered the submissions above made by BIAL and the various stakeholders.
- 9.71 The Authority has noted that Capital Expenditure to the tune of Rs. 1500 crores approx. is carried out already in 2013-14 and proposed to be capitalised. The Authority has also noted that additionally, Maintenance Capital Expenditure to the tune of approx. Rs. 400 Crore is proposed to be spent and capitalised during 2014-15 and 2015-16.
- 9.72 The Authority had also noted BIAL's proposal to commence additional projects relating to Terminal 2, Runway 2 and allied airfield development works, for which works would commence during the current control period remain in Work in progress of approx. Rs. 2000 crores as of 31st March 2016 ((Refer Para 9.46 above and Table 21).
- 9.73 The Authority notes the concern expressed by FIA, IATA and BPAC on the Capital expenditure proposed to be incurred by BIAL during the current control period and added to the RAB. In order to assess the reasonableness of the cost, the Authority had, in CP 22 proposed (Refer Para 9.50.2 above) and has now decided to carry out an independent evaluation of the costs.
- 9.74 The Authority notes IATA's comments on the Consultation Process and has, in CP

22 provided detailed process to be followed for user consultation, including an illustrative list of the components to be presented to the Stakeholders for consultation. The Authority expects that BIAL will follow the same and IATA would, as stated in their comments, actively participate in such user consultations.

- 9.75 The Authority notes AAI's comment that expenditure "which are revenue" should not be added to capital cost. The Authority understands that what AAI may mean is expenditure which is in the nature of revenue expenditure are not to be capitalised. The Authority agrees with AAI's comments and notes that BIAL has informed that the maintenance capital expenditure projects are all of capital nature. Also, the Authority has decided to true up the RAB based on the actual capital expenditure being incurred by BIAL.
- 9.76 On comment by AAI that the Security equipments be funded through PSF security component, the Authority had in its CP 22 noted the MOCA circular on Capital expenditure for Security purposes. This is further clarified by MoCA circular dated 18th February 2014 wherein it was stated that:

"It has been observed by this Ministry that Private/ JV airport operators are meeting their Capital expenditure out of PSF (SC) funds which is improper as these airport operators are not endowed with authority to do so as per the provisions of OMDAs/SSAs

The aforesaid issue has been examined in this Ministry at length and it has now been decided that since PSF (SC) funds are meant only for meeting revenue expenditure on deployment of CISF and other security forces at the airports, the total capital expenditure incurred by the airport operators out of the PSF (SC) Escrow account now opened and maintained by the respective airport operators in fiduciary capacity, together with the interest has to be reimbursed back to the respective Escrow accounts. ..."

- 9.77 Accordingly, the Authority has considered security related capital expenditure as proposed to be incurred by BIAL as part of its Future Capital Expenditure as part of the capital expenditure.
- 9.78 The Authority notes the concerns raised by BPAC on the conflict of interest on the costs that may be added to the Project cost. The Authority also notes that BIAL has responded to the same stating that BIAL has robust internal process and audits. The Authority notes that BIAL is a Board managed company and had noted that the decisions on carrying out Terminal

- 1 expansion and related expenditure were considered by the Board and the Capital expenditure cost has also been approved by the Board of BIAL. The Authority also notes that works relating to Terminal 1 expansion had commenced before the Regulatory framework of the Authority was finalised in February 2011. The Authority had also, in its CP 22, proposed to carry out an independent study on the costs incurred by BIAL on the Capital Expenditure Projects and carry out appropriate adjustments, if any, in the determination of Aeronautical Tariffs for the next control period.
- 9.79 The Authority notes that STUP Consultant estimates provided for Terminal 1 Expansion and related works include, for certain items, a 20% additional cost which, prima facie to the Authority do not appear to be in line with the CPWD norms. The Authority has decided to commission an independent study to assess the reasonableness of the costs capitalised and carry out adjustments, if any for the current control period at the time of determination of Aeronautical tariff for the next control period.
- 9.80 On query of BPAC as to why the citizen forums and Industry bodies were not involved for consultation, the Authority notes that the activities relating to Terminal 1 Expansion had commenced before the Regulatory framework of the Authority was finalised in February 2011.
- 9.81 The Authority also notes BPAC's comment on cost estimation for Future Capital Expenditure to the tune of Rs. 10000 crores that a dollar conversion based cost of similar projects in US or Europe should not be considered. The Authority notes that BPAC has not provided any objective and verifiable data to substantiate that the cost estimates were based on dollar conversion. However, the Authority had detailed the steps and process to be followed by BIAL in incurring future capital expenditure including process of estimation (Refer Para 9.46.1 to Para 9.46.3 above)
- 9.82 The Authority also notes BPAC's comments on doubt on the suitability of site for building a runway, considering the cost of site preparation works. The Authority had carried out a field visit in December 2013 along with the officials of BIAL to the proposed site and has apprised itself of the site conditions. The Authority was informed of the specific site condition and the analysis done by BIAL on the study of alignment of runway position including spacing required etc. The Authority notes that as per GoK letter also, the Master Plan for BIAL included operation of two parallel runways and hence there is a requirement to carry out appropriate activities of site levelling, filling etc., to make it suitable for construction of runway. Hence,

the Authority notes that BPAC's comment on runway suitability is misplaced. The Authority also notes that BPAC, through its Industry representation in CII etc. can request for effective participation in the Stakeholder consultation process. While BIAL had not provided the detailed estimate of costs for the site preparatory works, the Authority has laid down the principles to be followed for estimation as detailed in Para 9.46.1 to Para 9.46.3 above.

- 9.83 The Authority notes BPAC's comment that the flexible pavements of enjoy a warrantee of 12 years and the rigid pavements, 20 years. The Authority expects BIAL to take into account the warranties in the contract while incurring additional expenditure.
- 9.84 The Authority also notes BPAC's query on why passengers should pay for a facility not made available to them. The Authority notes that pre-financing is an accepted principle in economic regulation of Airports. In case of BIAL, the Authority has already reviewed BIAL's submission on the Till and detailed its Analysis and the reasoning for making computation of Aeronautical Tariffs and UDF under 40% Shared Till along with a methodology of carrying out adjustment to ARR and RAB. (Refer Para 4 above).
- 9.85 The Authority notes BPACs comments on Capital Investment for VIP facility. The Authority notes that VIP Terminal is considered as an integral part of the Terminal facilities provided at the Airports and the cost of any asset relating to the Airport has to be considered as part of the Aeronautical RAB.
- 9.86 The Authority notes FIA's comment that gold plating should be avoided. The Authority is in agreement with FIA's comment and had accordingly considered EIL's report on the amounts estimated by EIL to be unreasonable as a reduction to be made from Opening RAB. Similarly, the Authority had proposed in CP 22, to commission an independent study to review the reasonableness of costs incurred and capitalised during the current control period and carry out adjustments, if required, in determination of tariffs for the next control period. The Authority has also laid down detailed process including manner of estimating costs of the Terminal 2, Runway 2 and other Airside development costs, for which Capital expenditure is proposed to be commenced during the current control period. (Refer Para 9.46.1 to Para 9.46.3 above)
- 9.87 The Authority has noted FIA's comment that the "Financial close" of the Project has not been achieved. The Authority has noted this fact in its CP 22 on analysis of Weighted Average Cost of Capital also (Refer Para 15.17 below). The Authority notes that financing of Airport is the primary responsibility of the Airport Operator and the Authority would

appropriately consider the actual financing methodology used by the Airport Operator and true up the Weighted Average Cost of Capital for the current control period at the beginning of the next control period (as detailed in its Decision No. 11 a iii below).

- 9.88 On Sanjeev Dyamannavar's note on capacity and cost incurred for Phase 1 the Authority notes that the Authority has considered the report of EIL and had decided to carry out appropriate adjustments in the Opening RAB.
- expenditure cost that the Airport needs to have "some risk associated with their project management; it cannot be fully insulated from the cost overruns associated with poor management discipline and practice". The Authority understands that the variation between the approved Project cost for Terminal 1 and related works is approx. 5% (Rs. 1547 crores as compared to Rs. 1479 crores) and this variation is considered reasonable by the Authority. Moreover, the Authority has also decided to carry out an independent assessment of reasonableness of costs capitalised during the current control period and carry out adjustments, if necessary to the RAB for the current control period at the time of determination of Aeronautical tariffs at the beginning of the next control period. The Authority has also prescribed detailed process for estimation of costs and consultation process for the future capital expenditure (Terminal 2, Second Runway and related airfield development costs) to be incurred (Refer 9.46 above)
- The Authority has noted Cathay Pacific comments that new facilities need not be included in the project cost. Similar comment has also been made by Lufthansa Airlines that "User cannot be burdened with costs of services not made operational and/or available to the user". The Authority has not considered the new facilities of Terminal 2, Runway 2 and related airside development as cost to be added to the RAB during the current control period but has only noted the submission made by BIAL in this regard. The Authority notes that the Terminal 1 Expansion etc. have been already operationalised and are available to the users for the balance of the current control period. On the costs incurred by BIAL during the current control period and capitalised as part of RAB, the Authority has decided to commission a study to evaluate the reasonableness of the same and to true up the difference for the current control period, in the determination of Aeronautical Tariff for the next control period.
- 9.91 The Authority notes that BIAL, in its response to Stakeholders' comments has submitted that:

"BIAL has very clearly substantiated the reasonableness of these costs through the benchmarking exercise using the CPWD and market rates as requested by the Authority. These workings have been submitted in BIAL's response to the 20th Dec 2014 queries.

Authority may note that any variations to budgetary estimates (which BIAL has now demonstrated that it's reasonable) and actual costs can be in any event be reconciled and trued-up in the subsequent control periods."

- 9.92 The Authority has reviewed the submissions made by BIAL on 17th January 2014. In BIAL's submission dated 17th January 2014, BIAL has provided analysis for Runway, Apron and Taxiway and for Earthworks.
- 9.93 The Authority has reproduced below BIAL's estimate provided for Runway as a Typical case and details its comments as below

Description	Unit	Thickness (in m)	Area (in sqm)	Quantit y	Rate (in Rs.)	Amount (in Rs.)	CPWD – DSR 2013 item reference
Details of Runway 100 m x 75 m							
Main Pavement – 60m x 100 x = 6000 sqm							
Preparation and consolidation of sub grade with power road roller of 8 to 12 tonne capacity	Sqm			6000	73.55	441300	Item 16.1
Supply and laying of Munum & Compaction	Cum	0.900	6000	5400	864.90	4670460	Item 16.3.10 / 2.3.1
Stabilized subgrade	Cum	0.300	6000	1800	864.90	1556820	Item 16.3.10 / 2.3.1
СТВ	Cum	0.500	6000	3000	3003	9009300	Item 16.80
DBM	Cum	0.225	6000	1350	8724.75	11778413	Item 16.54.1
AC	Cum	0.150	6000	900	9562.60	8606340	Item 15.57.2
Extra for higher specifications of binder for AC & DBM						6115426	30% of AC & DBM cost
P/L tack coat On W.B.M.	Sqm	1	6000	6000	43.65	261900	Item 16.30.1
P/L tack coatOn bituminous surface	Sqm	3	6000	18000	31.75	571500	Item 16.30.2

Description	Unit	Thickness (in m)	Area (in sqm)	Quantit y	Rate (in Rs.)	Amount (in Rs.)	CPWD – DSR 2013 item
		, ,		,	, ,	. ,	reference
Fine dressing the ground (Area grading) and Turfing with grass turf	100 Sqm			10800	809.60	87437	Item 23.7 / 23.10.2
Tabilised subgrade for turfing	Cum	0.500	10800	5400	864.90	4670460	Item 16.3.10 / 2.3.1
Top Soil – Supply of good earth & sludge and spreading the sludge, good earth in required proportion for turfing	Cum	0.150	10800	1620	572.70	927774	Item 23.2 / 23.3 / 23.8
Sub Total (A)						48697129	(A)
Shoulder Pavement 15 m x 100 m = 1500 sqm							
Preparation and consolidation of sub grade with power road roller of 8 to 12 tonne capacity				1500	73.55	110325	Item 16.1
Supply and laying of Munum & Compaction	Cum	0.600	1500	900	864.90	778410	Item 16.3.10 / 2.3.1
Stabilized subgrade	Cum	0.300	1500	450	864.90	389205	Item 16.3.10 / 2.3.1
СТВ	Cum	0.500	1500	750	3003	2252325	Item 16.80
DBM	Cum	0.150	1500	225	8724.75	1963069	Item 16.54.1
AC	Cum	0.100	1500	150	9562.60	1434390	Item 15.57.2
Extra for higher specifications of binder for AC & DBM	Cum					1019238	30% of AC & DBM cost
P/L tack coat On W.B.M.	Sqm	1	1500	1500	43.65	65475	Item 16.30.1
P/L tack coatOn bituminous surface	Sqm	1	1500	1500	31.75	47625	Item 16.30.2
Sub Total (B)						8060061	(B)

Description	Unit	Thickness (in m)	Area (in sqm)	Quantit y	Rate (in Rs.)	Amount (in Rs.)	CPWD – DSR 2013 item reference
Sub Total (A + B) = C						56757190	(C)
New Pit Duct Bank system i/c gatic covers for RC chambers & AGL SYSTEM, NAVAIDS, Communication & HT/LT cables, conduits etc.	% of 'C'				15%	8513579	
New Drainage system i/c gatic covers for RC chambers	% of 'C'				15%	8513579	
Misc. works – Airfield Line marking, Approach roads, rainwater harvesting, guidance signage, other ancillary / temporary works, safety items safety item viz. water field barriers, obstruction lights, safety barrier comes etc.	% of 'C'				15%	8513579	
Total						82297926	(D)
Add 10% for PMC / Design	% of 'D'				10%	8229793	Assumed as per international industry norms
Add 10% for Contingencies	% of 'D'				10%	8229793	Assumed as per international industry norms
Grand Total				7500		98757511	
CPWC 2013 Rate per One Sqm						13168	
Rate per Sqm discounted by 5% pa to arrive at year 2011 equivalent rate.						11974	BIAL's MYTP budgets are based on 2011 and indexed to year of

Description	Unit	Thickness	Area	Quantit	Rate	Amount	CPWD – DSR
'		(in m)	(in sqm)	У	(in Rs.)	(in Rs.)	2013 item
							reference
							expenditure in
							the future.
						12160	D- 42460/
BIAL Rate per						12160	Rs.12160/sqm x Area 378000
Sqm as per MYTP							
submission at the							sqm = Rs 459
2011 base year							crore at 2011
							rates. After
							indexing this
							to Rs 543
							crore as per
							BIAL MYTP
							submission

9.94 In the estimation reproduced in Para 9.93 above, the Authority notes that for a standard area of 7500 sq. m the cost upto Item C (which is a summary of Items listed under Part A and Part B) total to Rs. 5.67 crores. These are stated to be computed as per CPWD DSR 2013 rates (except the cost of 30% on account of Binders to Asphalt concrete which appears to be high). Over and above this cost of Rs. 5.67 crores an additional amount of about 45% has been added (under three different line items of 15% each). These additions are attributed to what BIAL has stated "assumed as per Industry norms". After the addition of 45%, total for items A and B has been worked out by BIAL at Rs. 8.23 crores (Summary D). In addition to D, the Authority notes that BIAL has added another 20% for PMC / Design and Contingencies terming the same as "assumed as per International Industry norms" making the cost total to Rs. 9.87 crores for the same area – a total increase of 74% (Rs. 9.87 crores minus Rs. 5.67 crores) on the price that BIAL has stated as computed as per CPWD schedule. BIAL has not however given details of either "industry norms" or "international industry norms". The Authority expects that the design parameters (for example thickness of various layers over the sub-strata etc.) shall be commensurable with the requirements of the critical aircraft and site conditions.

9.95 The Authority has noted the above analysis only to show that the rate analysis and basis for rates provided BIAL appear far in excess of the CPWD rates. The Authority reiterates the methodology of estimation, analysis, consultation and approval process detailed by the Authority in CP 22 and reproduced in Para 9.46.1 to 9.46.3 above and expects BIAL to prepare its estimate along these lines.

9.96 The Authority notes that the workings provided by BIAL cannot be considered as

to clearly substantiate the reasonableness of costs and budget estimates cannot be considered to be reasonable by the Authority and need to be estimated fully in line with CPWD estimates, analysed, reviewed and approved by the Board and also considered as part of detailed stakeholder consultation. The Authority expects that detailed market cost estimates as and when made by BIAL would reflect the actual costs that BIAL expects to be incurred for various elements of the CPWD schedule as well as any additional costs clearly indicated with scope and justification with appropriate approvals for the same.

9.97 The Authority has reviewed BIAL's response vide letter dated 30th January 2014 on the Authority's query on West Apron Extension. BIAL has submitted that:

"As a part of the future Airfield development, an area of approximately 2,20,000 square meters was earmarked in 2006-2007 for envisaged expansion of apron on the west side. The aforesaid expansion was to be carried out in immediate future after commencement of Airport Operations.

During the course of T1 project development, it was established that this area consisted of hard rock which would have warranted blasting to reach the desired excavation levels required for development of future Apron.

As blasting would have not been possible in close proximity of an operational airport, it was decided to take up the excavation works in this area immediately along with the ongoing Airport development works.

Various works were to be carried out so as to keep the top level of the Granular Sub base layer, 550 mm lower than the final finished apron level. This 550 mm would have allowed the placement of subsequent pavement layers (DLC, PQC).

The total value of these works was estimated as INR 29.00 Cr and was issued to the contractor vide VO 11 A dated 2nd May 2007. This work was completed and certified before commencement of operations in May 2008. Further works inclusive of pavement layers (DLC, PQC) and services (drainage, electrical, etc.) were to be taken up immediately after stabilization of airport operations.

However due to drop in the traffic volumes and resultant decrease in estimated requirement of apron stands, subsequent development in this area was put on hold till May 2010.

Ideally the work would have commenced from above the Granular sub base layer laid in 2008 but over two years of delay had led to growth of weeds and shrubs and deterioration of the GSB surface. Further BIAL were also forced to create temporary

drainage channels to prevent localized ponding of water resulting out of extensive weed growth. As such, by 2010 the GSB layer laid in 2008 was found unsuitable to receive further pavement layers and corrective measures were carried out to make it suitable for apron construction.

Since it was not possible to re-use the entire GSB excavated (which was carried out as part of various corrective measures) from the apron bed (bottom 3-4 cm would get contaminated with base soil), additional quantity of GSB was also procured to make up for the compacted layer thickness.

These works were carried out at an approximate cost of INR 12.50 Cr.

Consequently West Apron project taken up in 2010 and capitalization of same proposed in 2013-14 and does not include the initial work carried out."

9.98 The Authority had also carried out discussions with BIAL on the matter of West Apron extension on 23rd April 2014 and 27th April 2014. The Authority notes from the above that the cost proposed to be capitalised as a part of West Apron Extension includes an approximate cost of Rs. 12.50 crores spent additionally in order to repair and make the earlier laid Granular Sub base fit to take additional load and complete the West Apron Extension.

9.99 BIAL's submissions made vide letter dated 30th April 2014 are as given below:

"As discussed in the meeting on 23rd April 2014 in AERA office, BIAL carried out preliminary works for West apron admeasuring about 2,23,964 Sq m (refer exhibit 1) through a Variation Order (VO) for INR 29.00 Cr under initial phase works.

This VO amount of Rs. 29 Cr is capitalized as part of Phase I works. The VO issued to contractor is attached along for reference of the Authority as Annexure A. The scope included clearing and grubbing, earth cutting and filling up to sub grade, hard rock excavation and preparation of thick granular sub base. This work is referred in EIL analysis for New Apron on page 91 of the EIL report, refer exhibit 2.

Exhibit 1: West Apron Area referred under VO to initial phase contract, Source: BIAL drawing

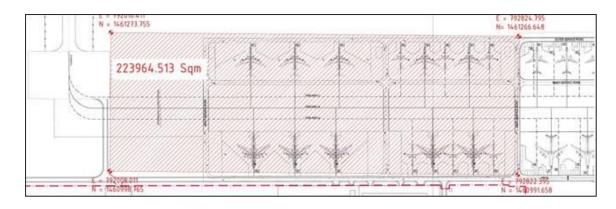


Exhibit 2: Part of EIL report page 91, Source: EIL report received from AERA

	New Apron Area in Sqm= [(b-a)] (c)	237205]			4
SI No.	Description	Thickness (mm)	Area in Sqm	Quantity (CUM)	Rate in Cum	Total Rate
1.2	APRON	t	borc	q=b*t	r	=q*r
1.2.1	Granular Sub Base (GSB)**	150	237205	35581	1150 -	40917814
1.2.2	Subgrade @@	500	237205	118602	115	13639271
1.2.3	Earth filling for leveling surface (say 200mm)@@	200	237205	47441	115	5455709
1.2.4	Earth Work involving Hard Rock **	1135	588502	667950	550	36737240
ote:				Total	Cost- (B)	42738519

^{**-} Controlled blasting shall not be allowed during operation of Airport; hence earthwork & construction of crust up to GSB for entire designated Apron area was taken up during Phase 1 construction.

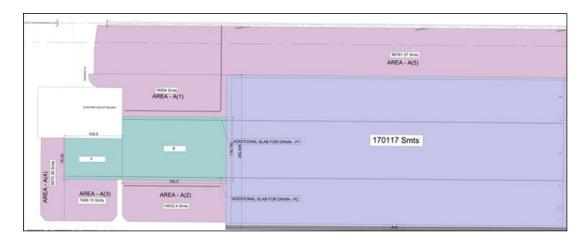
Subsequently West Apron project was further taken up for completion, amounting approx. Rs. 120 Cr around 2010 end and capitalization of same is proposed in 2013-14. The apron area made operational under this scope is about 2,06,440 Sq m.

This project scope involved rectifying initial works of 2008 damaged due to vegetation growth and temporary drainages made to facilitate runoff from this area flooding the existing operational apron during monsoon, rock cutting for laying the drainage & fuel hydrant line, levelling up the area around the new west apron with proper drainages before making it operational, building new road to access the isolation bay etc. The details of the extent worked upon is indicated in the below exhibit 3.

Thus BIAL would like to clarify thus that the cost proposed to be capitalized in Dec 2013 does not include the amount spent earlier.

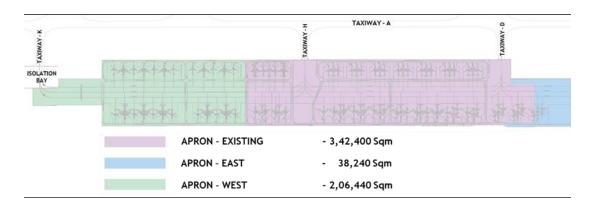
Exhibit 3: 2011 West Apron Project Scope area, Source: BIAL drawing

^{@@-} Quantity of Earth Filling (New Apron) up to Subgrade mentioned in variation order is 6.48 Lakhs which is much heigher than the calculated quantity of 1.65 Lakhs. Variation order is attached in Chapter VII.



Lastly for reference of the Authority BIAL would like to share exhibit 4 which indicates Apron area made operational in phases since its inception.

Exhibit 4: 2014 BIAL Operational Apron Area details, Source: BIAL



9.100 The Authority had discussions with the representatives of BIAL regarding the apron area. The representatives clarified that under Phase-I (which is commented upon by in the EIL Report), the Apron West comprises of an area of 2,23,964 sqm. The then management under Phase – I had undertaken some subgrade work for this purpose. The plan was to use this area as an Apron, in future. However, the BIAL's representatives clarified that in view of declining trend in the traffic, further work on the area of 2,23,964 sq. m was discontinued. This was the position at the time of opening of the terminal in around 2008 (at this time, as mentioned, some subgrade work on Apron West had already been done). No further work on Apron West was undertaken till around 2011 by which time the new management had taken over (around 2009-10). The new management divided the original Apron West into two parts – (a) Apron West and (b) Apron West (Optional). Apron West (Optional) constituted an area of 31,160 sq m and Apron West, on the other hand, constituted the entire remaining area of the original 223,964 sq m with the addition of an area of around 13,636 sq m, which

according to BIAL representatives gave an approach to the taxiway through the isolation bay.

- 9.101 The discussions now, therefore, is with regard to the total area of Apron West, as it is now termed, of 206,440 sqm.
- 9.102 BIAL's representatives clarified that the EIL's Report mentions an area of 588,502 sq. m. giving the cost at Rs. 50.61 crores for the subgrade work. This area is worked out in accordance with the plan (with dimensions) given in the Report.
- 9.103 In accordance with the EIL Report, Rs. 50.61 crores was spent on an area of 5.88 lakh sq m. After 2011, the work of Apron West was taken up by BIAL at an estimated cost of Rs. 120 crores, duly approved by the Board. This cost was incurred and Apron West was brought to the operational stage. The amount of Rs. 120 crores comprises of two elements:
 - 9.103.1 Rs. 12 crores was spent to bring the old subways (constructed in Phase I) and which it, in the intervening years, deteriorated to bring back to acceptable strength, standard and condition.
 - 9.103.2 The remaining amount of Rs. 108 crores was spent on laying the top layer (Pavement Quality Concrete) so as to make it fully functional.
- 9.104 In addition to refurbishing and upgradation of Apron West (206440 sqm.) BIAL also undertook completely new additional work on Apron East (38,240 sqm.) as a part of T-1 expansion. This work was undertaken to make it Code F compliant and to match with the extended pier on the eastern side.
- 9.105 According to EIL Report, the finished apron is shown to have an area of 3.51 lakh sq m. at a total cost of Rs. 108.56 crores. EIL has also given details of the work done for what EIL has termed as 'new apron area' of 237205 sqm. The items of work involved are also given in the EIL Final Report. It also gives the work undertaken for earth work (including hard rock) for the entire apron area of 5.88 lakh sqm. as well as expenditure required to part complete new apron area of 2.07 lakh sqm. The Authority notes from EIL report that the total cost of finished apron 3.51 lakhs sqm. as well as 'new apron' 2.37 lakh sqm. at Rs. 150 crores corresponding to 5.88 lakh sqm. This amount has already been capitalized and taken into initial RAB.
- 9.106 The Authority has also noted BIAL's response submitted vide letter dated 30th January 2014 wherein on Rs. 42 crores proposed to be incurred towards Airfield Pavement works which the Authority had commented in CP 22 (Refer Para 9.27 above). BIAL's response is as follows:

"The Airfield pavements at BIA were regularly maintained and maintenance schedules include weekly inspections & maintenance. Preventive maintenance is also carried out during lean period and also during the weekly maintenance slot period. However as the operations continued, ageing resulted in loss of binder and the aggregates started getting dislodged from the top layer of the Airfield Pavements. Left unattended the increased aggregate dislodgement will be a serious FOD hazard to operations.

The pavement behavior was analyzed for the probable risk involved and the work is taken to ensure minimizing the safety risk and operational disruptions due to occurrence of incidents due pavement problems, to ensure making available a safe and reliable pavement for operations.

As a part of the ensuring the safe operations pavements measures have been taken up in a phased manner, depending on the anticipated pavement deterioration.

During 2012 Mar – April, as a short term measure, replacement of 20 m width of (10 m on either side of C/L of runway) RUNWAY & critical areas on the Taxiway A & Taxiway F for 16m width (8 m on either side) has been completed to an extent of 1,05,000 Sqm. The replaced locations are performing satisfactorily till date.

Provisions have been made in 14-15 (29.10 Crores) & 15-16 (12.35 Crores) for the remaining areas and are towards the mitigation measures to complete the Long term mitigations and to address the risks. However these will be taken up based on further observations and deteriorations."

- 9.107 The Authority hence decides to consider the cost of Airfield Pavement of Rs. 41.6 crores as part of the Maintenance Capital Expenditure proposed to be incurred by BIAL and added to the RAB.
- 9.108 The Authority has noted BIAL's submission dated 30th January 2014 on Terminal 2 Area plan as given below:

"The planning and design of T1 as originally developed based on realities at that stage. Major decisions of initial stage development to be noted are:

- a) Development of a simple terminal building spread over approximately 73,000 m2 with a one and a half level floor plan that was appropriate for the approximately 10-12 mppa traffic that it was designed for;
- b) Not having grade separated departures and arrivals roads that meant that the curbside was restricted to a single level.

By the time the airport was commissioned in April 2008, traffic forecasts has been revised upwards twice and the airport opened at just below the terminal capacity. It was also readily apparent that the terminal needed to be urgently expanded in order to cater to increased demand levels.

As a result and based on a revised traffic forecast, fleet mix forecast and updated planning studies, an expansion was planned to double the floor area of T1 to approximately 158,000 m2 and increase its capacity to approximately 20mppa.

The T1 expansion was envisaged as a measure to increase terminal and associated apron capacity as BIAL were developing a long-range master plan to cater to long-term demand. Due to the existing building conditions and various other operational and site restrictions, the expansion was planned keeping these ground realities.

In 2010 BIAL management engaged Leigh Fisher (formerly Jacobs Consultancy) to undertake a comprehensive review of the master plan. The revised master plan outlined a phased short and long-term development programme to cater to over 55 mppa.

The major projects outlined in the Master Plan included a second runway on the south side of the Airport, a second terminal on the east side of the Airport to cater to approximately 35 mppa and various other airfield, landside and support facility improvements and expansions to enable the Airport to cater to over 55 mppa.

It was clear during the development of the Master Plan and based on the forecasts developed by L&B in 2010 that the Airport had already moved into being a 'medium-sized airport' (i.e. approximately 15-25 mppa in volume) and that in the longer-term the Airport would become a large airport (i.e. over 40 mppa in volume).

This by definition necessitated thinking of the future Terminal 2 (or T2) in a different way from the expanded T1 and also forced the master planners and BIAL to approach the planning for T2 based on three key factors outlined below:

- a) Firstly, developing the T2 space program on the basis of individual peaks for international and domestic traffic, because that is the conservative and prudent way to do this for future schedules where coincident peaking has to be taken into account;
- b) Secondly, T2 is envisaged to be developed in two phases and for this reason there is a built-in floor space premium for the first phase particularly in the processor to enable it to be expanded to its ultimate capacity of 35 mppa with minimal disruption to operations;

c) Thirdly, T2 is being planned primarily for full service carriers including major international flag carriers who have larger space expectations particularly to accommodate lounges and other facilities for frequent flyers and business/first class passengers. So while T1 is designed to cater 80% domestic and 20% international, T2 is being proposed to handle about 40% international traffic as per current market share. This additional international traffic demands more area to cater to the full service international carriers and long haul flights.

The effect of these three factors on the T1 and T2 areas are summarized in the Table further:

Terminal 1	Terminal 2
Original concept for an approximately 12 mppa terminal was suited to a single level curb serving both arrivals and departures for all ground transportation modes. Impractical to introduce second level curb into T1 expansion to achieve 20mppa	Planned to open at 20 mppa and expanded to 35 mppa would necessitate at least two levels
BIAL was able to take advantage of the current scheduling where international and domestic passenger flows do not peak at the same time. The capacity of T1 at 20 mppa therefore, is the maximum capacity afforded by the ability to cross-utilize domestic and international checkin and bag claim facilities	Since future T2 will serve predominantly full service carriers serving both international and domestic passengers, the airlines will synchronize international and domestic schedules to enhance hubbing strategy. In future peaks may become more coincident eliminating the saving that would otherwise be available through cross utilization. This results in a requirement for more check-in counters and bag claim units than would otherwise be required. T2 is planned to accommodate coincident peaks.
Terminal 1 currently serves predominantly LCC carriers with an overall high proportion of origin/destination traffic and minimal connections. A large number of passengers are expected to be served through remote stands and by bussing operations on the North Apron.	Full service carriers and major international flag carriers have larger space expectations to accommodate lounges and other facilities for frequent flyers and business/first class passengers. The need to accommodate network carriers leads to a greater proportion of contact stands, much higher terminal gate frontage and thus larger pier areas. In addition, increased hubbing activity requires increased dwell times for a

Terminal 1	Terminal 2				
	higher proportion of connecting				
	passengers than at T1.				
	Higher percentage of contact stands and				
	dwell times result in a higher floor area				
	requirement on per PHP basis.				

Authority therefore may note that T1 space planning and T2 space planning are not comparable for the reasons outlined.

Further to the planning guidelines outlined above, the Terminal 2 design basis is based on peak hour figures derived from L&B 2013 traffic forecast. BIAL would like to elaborate these design details for T2 substantiating size of approximately 230,000 Sqm for phase 1 of 20 mppa through a presentation to Authority.

We request the Authority to note that the benchmark exercise done by BIAL for the ultimate programme for the future T2 (i.e. approximately 365,000 m2 for 35 mppa).

Ultimate T2 of 35mppa capacity was benchmarked with other major airport terminals such as Incheon, London Heathrow, Mumbai and New Delhi (i.e. at some airports with over 30-35 mppa in annual volume) and the comparison is provided in Table 1 overleaf.

Table 1

Benchmark Table comparing Future BIAL T2 with similar major terminals as per BIAL master plan report.

1. Geography and General Details
Airport
Terminal
2. Passenger Movements
Terminal design capacity (mppa)
Terminal design peak-hour
passengers (PHP)
PHP as % of annual design capacity
Departing passengers (millions)
Arriving passengers (millions)
International passengers as a % of
total
3. Terminal Building
Quantities

BLR
BIAL
T2
35.0
8,001 ¹
0.0286%
17.5
17.5
22%

Benchmark Airports					
вом	DEL				
Chhatrapati	Indira				
Shivaji	Gandhi				
T2	T3				
40.0	34.0				
7,920 ¹	9,450 ¹				
0.0248%	0.0278%				
20.0	17.0				
20.0	17.0				
35%	34%				

Floor area (m²)	365,501	407,100	553,887
Utilization / Productivity			
Floor area			
Floor area (m²) / Design capacity (mppa)	10,443	10,178	16,291
Floor area (m²) / Design PHP	46	51	59

Source: Leigh Fisher (formerly Jacobs Consultancy)

evaluated during the design-development and DPR process.

Notes: 1. The two-way design PHP for BOM T2, DEL T3 and BLR T2 have been taken as the 80th percentage point of the combined arrival and departures peak

It is evident from Table 1 that the planned programme for T2 as outlined in the 201011 Master Plan is in line with similar major terminals across the world. It is also acknowledged that the design, layout, size and key elements of the future T2 will be

9.109 The Authority has noted the detailed submission made by BIAL on T2 area planning as given in Para 9.108 above. The Authority has noted that BIAL has stated that Terminal 1 Area and Terminal 2 Area should not be compared, based on the reasons provided by BIAL. The Authority notes that BIAL has projected for Terminal 2 Phase 1 and Phase 2 together to handle a total passenger capacity of 35 Million per annum. For this purpose, a total Terminal Area of 3,65,601 sq. m has been planned by BIAL. This is based on a PHP of 8001 for 35 million passengers, which translates into a Floor area of 46 sq. m per passenger for the specified service levels. The Authority notes that BIAL has stated that this area of 46 sq. m is comparable and lower than the floor area constructed by MIAL and DIAL for peak hour passenger of MIAL and BIAL. The Authority's comments on this area as follows:

9.109.1 BIAL has stated that Terminal 1 expansion was planned as a "simple building". In Authority's understanding, the term "simple" would have relevance to the specifications and not the area of Terminal building (which would come under the "scope" of the work). The Authority also notes that where the specifications are of a simple building, the Airport Operator would have cost efficiency as compared to the not so simple buildings. The Authority notes however that the cost of construction of T1 expansion is about Rs. 1235.2 crores (Terminal Building – Rs. 1105.50 crores plus Roof works – Rs. 129.70 crores as per Table 20) for an area of 87483 sq. m including canopy (Terminal Area – 85000 sq. m plus NEC – 191 sq. m plus NCP – 1392 sq. m as per Para 9.17 above). Construction of canopy is an integral part of the terminal

- building. Hence, per sq. m cost works out to Rs. 1.41 lacs per sq. m. The Authority is unable to term this cost as that for a "simple" building.
- 9.109.2 The Authority notes that BIAL has stated that T2 space program was planned "on the basis of individual peaks for international and domestic traffic, because that is the conservative and prudent way to do this for future schedules where coincident peaking has to be taken into account". From this sentence, the Authority understands that BIAL has planned and computed the area requirement considering peaking of domestic traffic and International traffic separately and then apparently may have added the two together. The Authority is unable to accept this argument put forth by BIAL. In Authority's understanding based on all the available literature, the Peak Hour Passenger (PHP) capacity is defined accordingly to standard methodology based on the total flow of passenger traffic in a given hour. Hence, in Authority's view the reasoning put forth by BIAL that the separate peaks for international and domestic traffic have been considered because that is the conservative and prudent way, is not in order.
- 9.109.3 BIAL has also stated that "T2 is envisaged to be developed in two phases and for this reason there is a built-in floor space premium for the first phase particularly in the processor to enable it to be expanded to its ultimate capacity of 35 mppa with minimal disruption to operations". The Authority notes that BIAL has not given any estimate of the quantum of built-in floor space "premium" in the projected area of 2,30,000 sq. m (Terminal 2 Phase 1) for a passenger through put of 20 million per annum.
- 9.109.4 The Authority notes that BIAL has also stated that "T2 is being planned primarily for full service carriers including major international flag carriers who have larger space expectations particularly to accommodate lounges and other facilities for frequent flyers and business/first class passengers. So while T1 is designed to cater 80% domestic and 20% international, T2 is being proposed to handle about 40% international traffic as per current market share. This additional international traffic demands more area to cater to the full service international carriers and long haul flights". The Authority notes that first, the statement made by BIAL that the current market share of International passengers is 40% of the total number of passengers does not appear to be in conformity with BIAL's own submission in MYTP 2013, where the percentage of International passengers to total passengers is stated to be around 20% for 2013-14. BIAL's projections into the next 2 years also reflect the same percentage.

9.109.5 Secondly, the Authority has noted the report of "Norms and Standards for Capacity of Airport Terminals Inter Ministerial group (IMG)" which were considered and accepted by the Empowered sub-committee on Infrastructure (ESCOI) chaired by Deputy Chairman, planning commission, published in January 2009. This report provides, inter alia, IMG's recommendation on Unit Area Norms and Unit Cost of Construction. IMG, while noting the design and approach towards Airport Terminals have stated that:

"...Earlier, a terminal was a building where a passenger commenced and concluded an air journey. In the present times, a lot more is expected from a Terminal - not only it should be functionally efficient, it should also be aesthetically and architecturally appealing. It encompasses a wide variety of activities related to aviation, leisure, comfort, shopping and business apart from Customs, Immigration, Security etc. Comparison with a 'World-Class' airport in neighbouring countries is also a crucial factor in planning Airport Terminals."

"Construction cost is mainly driven by the target Level of Service Standards"

9.109.6 On Unit Area norms, IMG has stated that:

"Overall space/area norm should be such as to provide a reasonable level of service for all components required in a Terminal Building. Commercial or Retail area providing amenities like food & beverages, book shops, counters for car rental, vending machines, public rest rooms etc., normally require 8-12 per cent of the overall area, and should be planned and provided accordingly. In bigger airports, i.e., with annual passenger traffic exceeding 10 million, commercial area could be upto 20 per cent of overall area.

... Keeping in view the IATA norms and discussion above, the norms as given in Table 4, are considered appropriate for Indian Airports.

		Area Norm –
SI No	Nature of Terminal	Sqm/ php
1	Domestic Terminals	
	a) Traffic up to 100 php	12
	b) Traffic between 100 – 150 php	15
	c) Traffic between 150 – 1000 php	18
	d) Traffic above 1000 php	20
2	Integrated terminal for handling both domestic and international	25
3	International Terminals	27.5

9.109.7 On the Unit cost of construction, IMG had recommended as follows:

"In an airport terminal, the cost of construction is driven by 'facilities' and 'finishes'. It is, therefore, imperative for planners to achieve a judicious balance between design specifications and costs associated with each element. 'Value for the Money should be the motto' (emphasis added). Since the architects, project engineers and contractors of a project may have the tendency to overdesign and use expensive finishes, there should be some institutional check and balance for specifying an indicative/ benchmark unit cost within which an airport should be designed and constructed.

The cost of construction is, however, dependent upon various variables. It is easily impacted by locational factors. Therefore, it may not be possible to lay down any general norms in this regard. It is, at the same time, important to benchmark the cost of construction across projects being implemented with similar planning horizon.

IMG is of the opinion that for appropriate benchmarking, an in-house appraisal mechanism could be established in the Ministry of Civil Aviation. The Appraisal Committee established by MoCA should assess the reasonableness of the proposed unit cost of Airport Terminals costing more than Rs. 150 crore. The Appraisal Committee should specify the ceiling unit cost and the architects/engineers of AAI should plan and implement the project within the ceiling, subject to revision on account of increase in WPI.

In the case of airports developed through Public Private Partnerships, the project authorities may adopt a case by case approach with respect to norms relating to unit area and unit costs."

9.109.8 As regards the need to balance the functionality with aesthetic design, the Authority has come across the observations made by Profs. Odoni and Neufville in the second edition of their book "Airport Systems" page 44 McGraw Hill, 2014.

"...airport planners and designers will have to think in terms of profitability, revenues, and service to users.

The objectives consequently focus more on performance than on monuments. Airports will build more low-cost, efficient terminals. Value for money, good service, and functionality will become dominant considerations. Architectural significance and grand visions will be important but may become secondary considerations. In

general, airport planning and design will become more democratic, more in tune with everyday needs, and less directive or technocratic.

The criteria of excellence will correspondingly focus on cost- effectiveness, value for money, efficiency both technical and economic, and profitability. Airport planners and designers will have to factor these considerations into the purely technical analyses of traditional airport engineering."

9.109.9 Furthermore, Odoni and Neufville continue highlighting the need for a balance to be struck between functionality and architectural aesthetics on Page 507 thus:

"...The concept of the airport as a monument conflicts with economic efficiency. Magnificent curved structures (e.g., the Renzo Piano design for Osaka/Kansai) are difficult to construct, expensive to maintain, and nearly impossible to expand compatibly. Custom-tailored interior details (e.g., Sir Norman Foster's for London/Stansted) are correspondingly both expensive and difficult to maintain. These extra costs may be tolerable if the airport owners remain committed to maintaining a monumental concept. However, airport operators and their clients are typically more interested cost-efficient operations.

Many airport operators aim to run their facilities economically. They neither want nor can afford to maintain airports as monuments."

- 9.109.10 Considering a peak hour capacity of 6540 passengers corresponding to a Passenger through put of 20 Million, as submitted by BIAL earlier, the Authority notes that the total space requirement for an integrated terminal, considering IMG's recommendation works out to a total Terminal building area of 1,63,500 sq. m. If the ratio of International and domestic passengers (79:21) as obtained today is taken into consideration, and considering 20 sq. m for domestic and 27.5 sq. m for International, the estimated area works out to 1.41 lakhs sq. m. Even considering Domestic and International passenger traffic to be in the ratio of 60:40, the estimated area would work out to 1,50,420 sq. m (6540*60%*20 plus 6540*40%*27.5). The Authority however notes that the Terminal 2 Phase 1 and Phase 2 are presumed to be part of integrated terminals. Hence, the area of approx. 1.6 lakh sq. m to 1.7 lakh sq. m would be considered reasonable to handle a total peak hour passenger capacity of 6540 which should reasonably take care of requirements, if any, of central processing area.
- 9.109.11 The Authority notes that BIAL has computed a total area of 365,601 sq. m for a PHP of 8001 passengers. Considering the IMG norm of 25 sq. m this would translate to a total area required of 2,00,025 sq. m. The Authority notes that BIAL's estimate of 46

- sq. m per PHP translating to an area of 365,501 is more than 80% higher than the estimate as per the IMG norms.
- 9.109.12 The Authority notes that BIAL has compared the area per peak hour passenger (estimated at 46 sq. m for Terminal 2 of BIAL) with that of the area per peak hour passenger of Mumbai (Terminal 2) and Delhi (Terminal 3) (51 sq. m and 59 sq. m respectively). The Authority notes that constructions in MIAL and DIAL have been made before the establishment of AERA and the relevant protocols of Stakeholders' consultation as defined in Airport Guidelines. Further the Authority notes that the IMG report was approved only in April 2009. The Authority has already noted that the total area of Terminal-1 as well as Terminal-1 expansion in case of BIAL conform to IMG norms. The Authority does not find any warrant in the argument that Terminal-2 Phase 1 and Phase 2 should however, not conform to IMG norms. Hence, comparison with MIAL and DIAL airports to justify the Terminal Area planning is misplaced. The Authority reiterates that the area estimation has to be done in line with the IMG norms laid down and BIAL may after revisiting the necessary calculation for need, scope and specifications (together with the cost estimates - Refer Para 9.46 above) of Terminal-2 Phase 1 (for the time being), place the same before the Stakeholders' for consultation and obtain appropriate approval before commencement of work.
- 9.109.13 Hence, in Authority's view an area of 1.6 lakh sq. m to 1.7 lakh sq. m for a passenger throughput capacity of 20 million per annum (Terminal 2 Phase 1) at a PHP of 6540 is consistent with the IMG norms and the ASQ rating of 3.5 for the design capacity as specified in the Concession Agreement. Hence the Authority is not persuaded to accept the estimated area of 365,501 sq. m submitted by BIAL for the total Terminal-2 capacity (Phase 1 and Phase 2) of 35 million passengers per annum.
- 9.109.14 The Authority further notes that BIAL has also submitted the Variable Tariff Proposal which the Authority has analysed and decided to adopt (Refer Para 25.82 below) which BIAL expects will improve the capacity utilisation at BIAL. Hence, the estimates considered by the Authority of approx. 1.6 lakh to 1.7 lakh sq. m as detailed in 9.109.13 above should be sufficiently address the requirement.
- 9.109.15 The Authority has also noted that IMG norms for Terminal building space plan consider the need to have "world class" terminal buildings. The Authority has also noted that the concept of "Value for money" in the matter of designing a Terminal building has been mentioned both in academic literature (Odoni et al) as well as its

practical manifestation in the IMG report where it has been recommended that "Value for money should be the motto" for cost of construction. BIAL, in their cost estimates have also specified about "assumed as per International Industry norms" (Refer Para 9.93 above). The Authority therefore, feels that BIAL's concern to implement "International standards" is reflected in the IMG norms. Hence, in the spirit of the general emphasis on the concept of "value for money", the Authority expects that the cost estimates for the Project should be made considering CPWD norms which are in public domain and have general acceptance. (Refer Para 9.46 above).

- 9.110 The Authority notes that "BIAL would like to elaborate these design details for T2 substantiating size of approximately 230,000 Sq m for phase 1 of 20 mppa through a presentation to Authority". The Authority also notes that BIAL has stated that "the design, layout, side and key elements of the future T2 will be evaluated during the design development and DPR process". The Authority therefore expects that during the process, BIAL will carry out the activities, keeping in view, the Authority's observations made above and in line with methodology detailed by the Authority in Para 9.46 above. These will be reviewed by the Authority as and when BIAL submits the MYTP for the next control period.
- 9.111 The Authority notes BIALs comment that BIAL will not be able to commence the second runway and second terminal in the absence of clarity on the methodology of tariff determination for the next control period and also the cash flow issues needs to be addressed adequately during the current control period. The Authority has already detailed its comment regarding this matter in Para 4.249 above. The Authority reiterates that means of financing the capital requirement for the Project is the primary responsibility of the Airport Operator. The methodology of tariff determination is clearly stated in AERA Act, Airport Order and Airport Guidelines and there is regulatory certainty. The Authority notes that BIAL has been changing their stand on the need and purpose for a Shared Revenue Till, which was earlier submitted for the purpose of funding Capital Expansion and later, in comments to CP 22, BIAL has stated that there should not be any restriction and BIAL should be free to use the Tariffs collected for any purpose it deems fit.
- 9.112 The factors to be considered for determination of the Aeronautical tariff for the next control period, for BIAL, would depend on the specific conditions and the needs to be stated by BIAL and will have to be appropriately evaluated and determined by the Authority

considering the facts and details of the relevant control period at the time of such determination.

9.113 The Authority had requested for the details of actuals costs capitalised till 2013-14 based on the unaudited balance sheet, which was provided by BIAL on 12th May 2014. The Authority, during discussions with BIAL was informed that the cost capitalised in FY 2013-14 relating to Terminal-1 Expansion was Rs. 1461 Crores and the balance of Rs. 86 Crores as compared to the Budget approved by the Board of Rs. 1547 Crores was proposed to be spent in 2014-15. The Authority has appropriately carried out the changes to the Model in discussion with BIAL for the above and to bring the Capital Works in progress as of March 2014 in line with actuals.

9.114 The Authority had already noted that the work of Terminal 1 Expansion had already commenced. The approvals of the competent authority viz. the Board etc. were obtained with respect to the overall scope as well as incurring of Capital Expenditure thereon. The Authority's decision to commission an independent study is with respect to assessing the reasonableness of expenditure for the specification adopted and completed for works capitalised till March 2014 (this includes the Terminal 1 Expansion and other related works).

9.115 Accordingly, the revised additions to RAB for the control period decided to be adopted by the Authority is as follows:

Table 23: Assets decided to be considered as part of addition to RAB for the First control period - Rs. Crores

Project	Date of Capitalisation	Basic Cost and charges	Financing allowance - Projects	Total Cost to be added to RAB
Apron Expansion	February-14	121.15	23.12	144.27
Terminal 1 Expansion	February-14	1342.30	168.63	1510.94
Other Projects i.e. Miscellaneous	February-14	16.39		16.39
Terminal 1 Expansion - Additional	March-15	80.22		80.22
Other Projects	March-15	98.32		98.32
Expansion Projects Capitalised (A)			1850.13
	31st March 2012	15.43		15.43
	31st March 2013	22.52		22.52
Maintenance Capex Projects	31st March 2014	0.00		0.00
	31 st March 2015	264.50		264.50
	31st March 2016	61.66		61.66
Maintenance Capital Expenditu	364.11			
Total Capitalisation				2214.24

Project	Date of Capitalisation	Basic Cost and charges	Financing allowance - Projects	Total Cost to be added to RAB	
Maintenance capital expenditure for 2011-12 and 2012-13 given net of disposals					

Decision No. 5. Future Capital Expenditure including General Capital Expenditure

a. The Authority decides

- To consider Capital Expenditure (Refer Table 23) for addition to RAB during the current control period, for the present, for the purpose of the determination of tariff for aeronautical services during the current control period.
- To commission an independent study on the reasonableness of the costs incurred and capitalised by BIAL during the current control period (Refer Para 9.114 above).
- iii. To note the proposal of BIAL for additional infrastructure proposed to be created during 2014-15, 2015-16 and the next control period (01.04.2016 31.03.2021). The Authority expects BIAL to firm up the scope, standard of work, design and cost of the proposed additional infrastructure (Refer Para 9.46 above and Table 21).
- iv. To note the recommendations of IMG (accepted by ESCOI) (Refer Para 9.109.6 above) for the purposes of calculation of area of Terminal-2 for 20 Million passengers, the indicative figure for which is around 1.63 lakh sq. mtrs.
- v. To true-up the difference between the Capitalised Expenditure as well as expenditure to be capitalised during the current control period as has been considered now (Refer Table 23) and the expenditure that would actually be incurred, based on evidential submissions along with auditor certificates.
- vi. To true up the additions to RAB based on the results of the independent study proposed by the Authority as detailed in Para ii above at the time of determination of aeronautical tariff for the next control period.

10 Regulatory Asset Base (RAB) and Depreciation

a. BIAL' submission on Regulatory Asset Base and Depreciation

- 10.1 BIAL had, in their MYTP 2012 provided the details of the Initial Project cost capitalised in the financial books of the company during 2008-09 and the Net block of Assets of Rs. 1595.69 Crores as of 31st March 2011, as per the audited Financials, was considered as Opening RAB for the Control period, under Single Till. Under Dual Till Rs. 1300.74 crores was considered as Opening Net block for computation of Average RAB.
- 10.2 Following table depicts the average RAB for the control period as submitted by BIAL as part of MYTP 2012 under Single Till.

Table 24: Average RAB computation by BIAL under Single Till MYTP 2012 - Rs. Crores

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Opening Regulatory Asset Base	1,595.69	1,543.96	1,615.11	3,175.32	3,121.22
Investment / Additions to RAB	69.96	198.87	1,725.30	142.97	78.38
Deletion/Disallowance	-	-	-	-	-
Depreciation & Amortization	(121.68)	(127.71)	(165.09)	(197.07)	(193.61)
Closing Regulatory Asset Base	1,543.96	1,615.11	3,175.32	3,121.22	3,005.99
Average RAB for Return	1,569.83	1,579.54	2,395.22	3,148.27	3,063.61

10.3 BIAL had submitted that there was no exclusion of assets from the Initial RAB. No reductions/ deletions to RAB were been proposed by BIAL during the first control period.

Depreciation

- 10.4 BIAL had submitted that the value of assets considered for Depreciation i.e. additions to RAB and the methodology of depreciation proposed were in line with the prescriptions of Airport Guidelines namely:
 - 10.4.1 Depreciation allowed upto a maximum of 90% of the original cost of the asset on straight line basis
 - 10.4.2 Depreciation on additions made at 50% of the applicable depreciation rate
- 10.5 Depreciation rates adopted by BIAL were as given below:

Table 25: Depreciation rates proposed by BIAL

Asset Type	Depn. Rate
Buildings1-T,B,R – Buildings, Roads, Culverts, Apron	3.34%
Buildings2-RW/TW – Runway/ Taxiway	5.00%
Buildings3-WMS – Water Management System	3.34%
PM1 - EquipAirport/ Comm/ E&M/Office, Vehicles	10.34%

Asset Type	Depn. Rate
PM2-Lighting	10.34%
PM3-Safety – Safety and Security	16.21%
PM4 - IT Equipment	16.21%
Software	20.00%
ICT – Blended – ICT Refresh	16.21%
FF – Furniture and Fixtures	6.33%
Intangibles	3.33%

10.6 Pursuant to AERAAT Order, BIAL had made submissions to the Authority on various aspects. Extracts of aspects relevant to RAB, submitted by BIAL were given below:

"25. Work in Progress Assets:

Authority's Approach: The Authority has proposed to deduct accumulated capital receipts of the nature of contributions from stakeholders including total contributions pertaining to work in progress assets including by way of development fees, capital grants and subsidies.

Observations: As stated in the context of concessional loans, the purpose of a subsidy or grant by a stakeholder such as the government is completely lost, if benefits there from do not accrue to the airport operator.

Submissions: The airport operator must be entitled to benefits and returns on all assets, irrespective of the nature of sources of capital for creation of such assets. The proposed regulations need not be applicable to services other than regulated services.

Scope of RAB or RAB Boundary

Authority's Approach: The Authority, in clauses 7.1 to 7.4 of Order No. 13 and clause 5.2 of Direction No. 5 has proposed principles with respect to exclusion and inclusion of assets in the RAB. The Authority has proposed that all fixed assets of the airport operator would constitute RAB assets subject to principles of inclusion and exclusion. The principles of inclusion and exclusion have been outlined in Order No. 13 and Direction No. 5.

Observations: In clause 7.2 of Order No. 13, the Authority has set out that all "airport assets" will come under the scope of Single Till. Surprisingly, in clause 7.3, the Authority has extended the scope of assets to "all the fixed assets of the airport operator". Consistent with what is stated above in this regard, the Authority ought not to include any assets or in any manner regulate assets pertaining to services other

than regulated services. The AERA Act also does not permit regulation beyond the precincts of the airport. The proposed regulations with respect to principles of exclusion or inclusion depending on whether an asset derives material commercial advantage from the airport on account of its location etc. are inapposite. Under the AERA Act, it is the function of the Authority to determine tariffs for aeronautical services and for that purpose, consider the factors prescribed in Section 13(1)(a). In setting out principles of exclusion and inclusion and in defining the scope of RAB to include all non-aeronautical assets, the Authority has exceeded its mandate and jurisdiction.

Submissions: In BIAL's humble view, consideration of all assets of the airport operator as the starting point needs to be revisited. The Authority can only consider those assets that are essential for providing the regulated services and should not consider any other assets that are required for providing services other than regulated services. BIAL reiterates that all assets with fixed locations inside terminal buildings should not be included in the scope of RAB and only those assets essential for performance of regulated services should be included. In his light, principles relating to exclusion and inclusion of assets needs to be relooked into.

29. Initial RAB

Authority's Approach: The Authority proposes to not just consider the original cost of fixed assets as indicated in the last audited accounts, but further proposes to assess the cost by considering (i) evidence of competitive procurement for investments of more than 5% of the opening RAB of the first tariff year; (ii) evidence that investment was made in accordance with the approved plan; and (iii) evidence that investment, if any, over and above the approved investments, was necessary for providing better services or on account of requests from users or stakeholders.

The Authority has proposed to deduct accumulated capital receipts of the nature of contributions from stakeholders including total contributions pertaining to the fixed assets which are included in the scope of the RAB, including by way of development fees, capital grants and subsidies.

Observations: The airport operators, in exercise of their entrepreneurial freedom and enterprise, made multiple investments for development and/or modernization of major airports. In case of BIA, exercise of entrepreneurial skills was especially important and crucial because BIA was a Greenfield airport. Investments have been made by BIAL in line with the master plan provided in the Concession Agreement.

Investments were approved by the Airports Authority of India and the State Government as both the State parties are represented on the Board of BIAL. In this scenario, the Authority should not assess or evaluate the process or necessity of creation of assets. Once accounts have been audited, such audited accounts indicate the actual expenditure incurred for facilities that are available for all those who use airports and therefore, it is only fair that all such assets and the expenses incurred for their creation are included as a part of the RAB. There were no restrictions at the time of making of investments and such restrictions cannot be now imposed post facto.

As stated in the context of concessional loans, the purpose of a subsidy or grant by a stakeholder such as the government is completely lost, if benefits there from do not accrue to the airport operator.

Submissions: The proposal of the Authority for evaluating cost of fixed assets needs to be dropped. The costs indicated in the last audited accounts can be considered for the purpose of arriving at the initial cost of fixed assets and there need not be an enquiry conducted by the Authority in that regard. A subsidy or a contribution is provided as a sop and this should not be negated by not providing for returns on such contributions/grants/subsidies. The proposal for deducting subsidies/ contributions/ grants or any contributions from stakeholders for arriving at the original cost of fixed assets can be dropped. The airport operator must be entitled to benefits and returns on all assets, irrespective of the nature of sources of capital for creation of such assets. Without prejudice to the above, in the calculation of weighted average cost of capital, per clause 5.1.1 read with clause 5.1.5 of Direction No.5, interest free or concessional loan arrangements will be considered at the actual cost of such arrangements. However, even at the time of calculation of initial RAB, accumulated capital receipts of the nature of contributions from stakeholders are proposed to be reduced / subtracted from initial RAB. Thus, concessional loans or contributions from stakeholders are factored in twice, resulting in an unfair reduction of the returns to the airport operators. Additionally, without prejudice to the above, the proposed regulations in relation to arriving at original cost of fixed assets should not be applied in respect of services other than regulated services and book value of such assets should be considered.

33. Passenger Service Fee

Authority's Approach: In clause 16.2 of Order No.13 and clause 5.2 of Direction No.5, the Authority has proposed that the facilitation component in relation to security

expenditure will be considered for remuneration through other tariff components as a part of the overall yield per passenger. The Authority has proposed that initial capital expenditure on security related assets shall be included as a part of the RAB. The Authority has further proposed that any incremental capital expenditure on security related assets shall be met out of the passenger service fee. The Authority has proposed to issue separate guidelines for determination of passenger service fee.

Observations: Costs and expenses in relation to security related expenditure is likely to be audited by the Comptroller and Auditor General.

Submissions: Expenses that may be disallowed by the CAG should be included either as a part of the RAB or as operations and maintenance expenditure. BIAL looks forward to the PSF guidelines containing necessary protections to safeguard the interests and investments of the airport operators.

35. Mandated Operating Cost Correction

Authority's Approach: In clause 6.16.1 of Direction No.5, while the Authority has proposed to allow error correction for mandated operating costs, the Authority has proposed that mandated capital expenditure incurred by the airport operator shall not be considered for correction within the control period.

Observations and Submissions: BIAL prefers that all mandated expenditure either capital or otherwise be considered by Authority in the calculation of RAB or reimbursed, as the case may be, within the control period.

30. Asset Value Adjustment

Authority's Approach: For assets to be excluded from the scope of RAB, the Authority, in clause 5.2.4 of Direction No.5, has proposed to consider the value of the asset as the higher of: (i) depreciated replacement cost value; (ii) book value; and (iii) transfer value of the asset.

Observations: Book value of assets represents a true and correct valuation inter alia because book value has been considered and approved by the auditors. Replacement cost value will not accurately represent the value of the asset since replacement value necessarily requires consideration of subsequent market phenomenon. For calculation of RAB, the Authority has proposed to consider book value of assets. It is only fair that book value of assets be considered for exclusion of assets from the scope of RAB.

The Authority has further proposed to consider the value at which an asset was excluded for the purposes of subsequent inclusion. This approach may not be appropriate since it may result in unfairness to either the airport operator or the users and also because, it may not reflect the true value of the asset at the time of inclusion. Also, at the time of calculating original cost of fixed assets, it is the book value which is considered and not the asset value. Rule of parity demands that inclusion and exclusion be treated similarly. BIAL therefore proposes that book value of assets be considered uniformly for the purposes of inclusion or exclusion. Likewise, even for subsequent inclusion, fair value rather than the value at which the asset was initially excluded, should be considered.

Submissions: The Authority should revisit its proposal and consider only the book value of assets proposed to be excluded from the scope of RAB. An asset which is excluded from the scope of RAB, at the time of its subsequent inclusion, should be assigned a true value / fair market value and the value assigned to it at the time of exclusion should not be considered.

37. Consultation Protocol:

Authority's Approach: Per clauses 8.1 to 8.22 of Order No.13 and Appendix 1 of Direction No. 5, the Authority has proposed a detailed Consultation Protocol including by way of constituting an Airport Users Consultative Committee ("AUCC"). The Authority proposes to apply the Consultation Protocol as detailed in Appendix 1 of Direction No.5 in respect of aeronautical services as well as services other than aeronautical services.

Observations: Under the AERA Act Authority has to determine tariffs for aeronautical services. The Authority is also required to consider and give effect to the concessions granted by the state, which in the case of BIAL, is the Concession Agreement, State Support Agreement and the Land Lease Deed. As stated above, by effect of the Concession Agreement, the services of cargo, ground handling and supply of fuel are excluded from the ambit of regulation. In summation, under the AERA Act, the Authority can determine tariff only for aeronautical services, excluding cargo, ground handling and supply of fuel. The Authority may not consider determination of tariffs for any other services that may be provided by the airport operator. The function of regulating the consultation process appears to be concomitant to the power of determining tariffs and may not be an independent function. In the absence of jurisdiction to determine tariffs for services other than regulated services, it appears

to be that the Authority has no power or jurisdiction to mandate consultation for such services.

Additionally, the constituents of AUCC include persons who do not fall within the definition of "stakeholder" under the Act.

Submissions: The consultation process/ Consultation Protocol with respect to services other than regulated services can be excluded. BIAL prefers that the constituents of AUCC be restricted to those who fall within the definition of "stakeholder". Specifically, the Authority can exclude cargo, ground handling and fuel supply services from the Consultation Protocol.

- 10.7 BIAL's submissions in MYTP 2013 relating to RAB and Depreciation are as follows:
- 10.8 BIAL, in its MYTP 2013 submissions, had considered Depreciation on assets at 100% of the value without considering any salvage as has been proposed by the Authority in its CP 14.
- 10.9 BIAL had also considered the Opening RAB after removing the Foreign exchange loss/ gain that was capitalised as part of the Asset block in the Financial books. This had resulted in a net increase of Rs. 8.57 Crore in opening value of RAB (due to Forex gain of Rs. 10.59 Crore reduced from amount spent to compute the Opening asset capitalisation value)
- 10.10 Accordingly, BIAL had computed its revised Average RAB considering the revised capital expenditure proposed by it and depreciation.

b. Authority's examination of BIAL's submission on Regulatory Asset Base and Depreciation

- 10.11 Authority's examination on BIAL's submission on Regulatory Asset Base (RAB) in CP 14 were as follows:
- The Authority had carefully considered the various comments made by BIAL on RAB and related aspects as part of the comments regarding Airport Order and Airport Guidelines and the submissions made by BIAL and analysed as below:

Work –In Progress Assets

10.13 The Authority had considered the submissions of BIAL regarding its understanding of the Authority's approach with respect to work in progress assets. BIAL's understanding appeared to be that the Authority had in its guidelines proposed to deduct accumulated capital receipts of the nature of contributions from stakeholders including total contributions

pertaining to work in progress assets including by way of development fees, capital grants and subsidies.

- The Authority's approach of treating capital work in progress is to give financing allowance at the cost of debt for the capital work in progress assets. The question of any deduction therefrom, therefore, does not arise. Secondly, in Authority's view, the nature of contributions from stakeholders is an important factor in determining whether they form part of the Regulatory Asset Base (RAB) or need to be deducted therefrom. For example, any subsidy received from the Government would need to be deducted from Regulatory Asset Base (RAB), which is also defined under the Accounting Standard AS-12.
- 10.15 Similarly, in Authority's view, the purpose of subsidy or grant by the stakeholder such as the Government is to reduce the overall cost of the airport services. If a regulatory regime does not take into account this purpose, then the intent of the Government in making available subsidy or grant or concessional loan is lost.
- The SSA, in case of BIAL, clearly mentions that the State would extend assistance to the project in terms of leasing of land, interest free loan and subvention/subsidy. The Authority did not consider that it would be the Government's intention that it would give subsidy or concessional interest free loans for the project and yet BIAL should be entitled to return (and higher than reasonable return) on such means of finance. Also, the Authority would calculate Weighted Average Cost of Capital (WACC) based on the costs associated with different means of finance on actual basis. Moreover, GoK had agreed to provide financial support to improve the viability of the project and enhance the bankability of the initial phase and had also agreed to have KSIIDC to provide the site on lease to BIAL. It is thus clear that low cost funds (subsidy or concessional loans) were meant to improve the project's bankability and not to allow the project or promoters to have higher returns.

Scope of RAB or RAB Boundary

10.17 Authority had carefully considered BIAL's submission regarding the Scope of RAB or the RAB Boundary. The Authority was however, not convinced of BIAL's submissions made and proposes to consider the prescription as laid down in the Airport Guidelines. Authority's intention is to consider all assets that are used to provide Airport Services, under the purview of RAB.

Initial RAB

- 10.18 The Authority had carefully considered BIAL's submission regarding the Initial RAB. However, the Authority noted that the methodology prescribed in the Airport Guidelines for valuation of the Initial RAB had been devised in order to ensure that only appropriate and reasonable expenditure have been incurred in regard to the Initial RAB which is being considered for the purpose of providing the return.
- The determination of initial RAB for the first control period is required to be made at the inception of the economic regulation. In case the historical cost of assets is not taken into consideration, the airport would end up not receiving any return in respect of such historical costs even though assets created therefrom shall be used for providing services at the airports. While ensuring that the historical costs are taken into consideration, the Authority had also indicated the safeguards to ensure that only the fair costs are taken into consideration and the users remunerate only such investments which have been undertaken in accordance with accepted business practices. Thus, the provision was included to ensure that the Airport Operator receives fair returns on the investments made and users do not pay for any 'gold plating' of such investments.

Consideration of expenditure disallowed from PSF

10.20 The Authority had reviewed BIAL's submission on consideration of capital expenditure that is disallowed from PSF. Detailed guidelines about PSF have already been issued by the Government and needs to be followed strictly.

Mandated Operating Cost Correction

10.21 Authority had carefully reviewed BIAL's suggestion to consider the Mandated Operating Cost Correction within the Control period. However, the Authority was not persuaded to accept this recommendation. The prescribed Airport Guidelines shall apply. Changes to the Capital Expenditure were proposed to be trued up along with carrying cost, at the beginning of the next control period.

Asset Value adjustment

Adjustment. The position in respect of asset value adjustment for the assets excluded from the scope of RAB had been evolved keeping in view the temptation or the possibility of gaming by an operator and to ensure that the users do not suffer due to such gaming.

Consultation Protocol

The capital expenditure under consideration in clause 5.2.5 (b) of the Airport Guidelines is such expenditure in respect of which the operator seeks return through the tariffs to be determined by the Authority. The Authority had put in place a consultative mechanism by way of which the users would be in a position to be a part of decision making in respect of proposed capital expenditure. Wherever the capital expenditure is substantially committed, before the consultation process specified by the Authority by way of Airport Guidelines could be undertaken, the Authority had retained the discretion to review the same. This is only fair as in case of projects which are substantially committed a post facto user consultation would neither be desirable nor in the interest of implementation of the project.

10.24 At the same time, acceptance of the previously committed capital expenditure would amount to giving the airport operator a carte-blanche to make any investment and thereafter expect the users to pay for such investments without any review.

10.25 This is to safeguard against Airport Operator focussing more on Non-Aeronautical activities at the expense of the Aeronautical services. As Non-Aeronautical services is also utilised by Passengers and Cargo users – Authority felt that more broad based consultation in the areas of Non-Aeronautical Services would add robustness to the final decision.

Consideration of MYTP Submission made by BIAL

10.26 BIAL had calculated the RAB for each year as the average of the opening and the closing RAB and the return was calculated on the average RAB. The Authority had decided, vide the Airport Order and Airport Guidelines, that RAB for the purpose of determination of 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 BIAL in the tariff application.

10.27 BIAL had provided auditor's certificate on RAB and Work In Progress Assets. The Authority noted that an amount of Rs. 6.38 crores was to be reduced from RAB on account of disposal of assets, as per the Auditors' certificate. BIAL had informed that the loss on disposal has been included as part of "Operation and Maintenance" expenditure, but the Authority noted that a corresponding reduction had not been made to the RAB. The Authority proposed to adjust the same from the RAB as disposals, in line with the Airport Guidelines, from the

RAB for the year 2011-12.

- 10.28 The Authority noted that depreciation claim for the purpose of RAB will be different from that on the asset values capitalised in books. In view of changes to the asset capitalization values depreciation had to consequently change. Also, this had to be trued up based on the actual costs spent and capitalised in books.
- 10.29 The Authority also proposed to provide for 100% depreciation on additions without considering any salvage value.
- 10.30 Based on the changes proposed to the RAB, as detailed below, the revised Average RAB value for the purpose of return were presented in the ensuing tables:
 - 10.30.1 Reduction of the net block of assets disposed-off to the tune of Rs. 6.38 Crores
 - 10.30.2 Changing the rate of debt for the purpose of computation of Financing allowance
 - 10.30.3 Considering asset capitalisation as proposed by Authority
 - 10.30.4 Consider depreciation on 100% of the asset values (without considering any salvage value)

Table 26: Revised Average RAB computation under Single Till as made by the Authority - CP 14- Rs. Crores

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Opening Regulatory Asset Base	1,595.69	1,470.33	1,358.55	3,184.54	3,058.48
Investment / Additions to RAB	15.41	23.96	2,007.16	96.72	61.68
Deletion/Disallowance	(6.38)	-	-	-	-
Depreciation & Amortization	(134.39)	(135.73)	(181.18)	(222.78)	(215.68)
Closing Regulatory Asset Base	1,470.33	1,358.55	3,184.54	3,058.48	2,904.48
Average RAB for Return	1,533.01	1,414.44	2,271.55	3,121.51	2,981.48

- 10.31 Based on the material before it and its analysis, the Authority had proposed in CP 14:
 - 10.31.1 Not to carry out any adjustment to RAB on account of monetisation of land owing to the development of Hotel, while determining Aeronautical tariffs during the current control period.
 - 10.31.2 To consider Average Regulatory Asset Base as detailed in Table 26 under Single Till after making adjustments as detailed in Para 10.30 above
 - 10.31.3 To consider depreciation on 100% of the asset values (without considering any salvage value). To consider Depreciation as detailed in Table 26 under Single Till
 - 10.31.4 Taking note that the Hotel project was under Arbitration, not to consider Rs. 76.50 Crores of Interest Free Security Deposit as well as Rs. 43 crores of interest earned on the deposits for the period from December 2006 till March 2013, for the purpose of

- tariff determination for the present, pending final outcome of the arbitration proceedings. (Refer Para 11.11 below)
- 10.31.5 To True up the Average RAB and the depreciation in the first year of the next control period based on the actual capital expenditure incurred in the current control period.
- 10.32 Authority's examination and proposal on BIAL's MYTP 2013 submission on Regulatory Asset Base (RAB) BIAL is as below:
- 10.33 The Authority had carefully gone through the submissions made by BIAL relating to Average RAB for the purpose of computing the return. The Authority noted that BIAL had made adjustments to Opening RAB due to adjustment of Foreign Exchange impact on the asset values. The Authority however did not propose to consider any change in the Opening RAB value other than those disclosed in audited financial statement as of 31st March 2011 to be considered as part of Opening RAB as of 01.04.2011.
- 10.34 The Authority had also taken note of the final report for "Construction of International Airport facilities at Devanahalli, Bangalore by BIAL" of Engineers India Limited (EIL) dated September 2009 for AAI.
- 10.35 From the report, the Authority understood that AAI had appointed EIL as Independent Engineer for verification of Capital Expenditure incurred for Bangalore International Airport and the scope of works was to:

"Study the overall Development plan / master plan indicating various airport facilities for BIAL.

Study for all drawings, specifications and procurement documents for cost assessment.

Carry out verifications to assess the cost incurred as per the various awarded works."

10.36 The Authority noted that EIL had provided its report followed by various appendices and had concluded in Para 11 of its report as follows:

"The development of the airport has been done by a consortium, which has members who have proven technologies in their respective fields of Project execution and has accordingly undertaken execution of EPC Contractors on lumpsum bidding. The cost of EPC contractors hence do not only include the cost of project components (as per market rate of individual items), but also includes its engineering and review costs and the incidental expenditure towards construction including deployment, training and provision of supervision services etc. Hence the comparison of cost incurred with

respect to market rates is a complex activity and results in unjustified costs incurred. However, the different costs have been compared keeping the above in view and the few items, where even after loading the requisite factor, the rates appear to be unjustified have been identified in the report.

The overall estimate for the project includes civil, architectural, electrical, mechanical and IT works. The cost incurred for the Main Passenger Terminal building and the runway etc. seems to be in order.

However, the cost incurred by BIAL appears to be on the higher side on certain items like HVAC (Terminal Building), escalators, elevators, trolleys, VVIP Building, Localiser and DVOR buildings, Inbuilt furniture for PTB building, taxiways & RET and Aprons etc.

The back-up papers which have been received from BIAL as well as the working sheets of EIT with back-up papers are included in the report. The overall impact with respect to the cost of the project may seem to be minor in nature, but is considerable while comparing the individual items"

10.37 The Authority noted that EIL, in Chapter 2 of their report has provided a summary of justified cost against actual cost as detailed below:

		Project : Verification of capital expenditure incurred for Bangalore International Airport Limited (BIAL) submitted by EIL					
SUM	MARY OF JUSTIFIED COST AGAINST A	CTUAL COST					
SI. No.	Asset Group	Actual Cost	Justified Cost	Variation (Refer note 1)			
1.	AIR CONDITIONING			,			
	a) HVAC(TERMINAL BUILDING)	263162576	224952000	-38210576			
	b) HVAC (ATC BLOCK)	34624664	34624664				
2.	AIRPORT EQUIPMENT	2740246615	2636898215	-103348400			
3.	APRON						
	a) APRON (RIGID PAVEMENT)	1369565908	1173241574	196324334			
	b) MAJOR EARTHWORK	406871053	406871053				
	c) APRON DUCT BANK	6761976	6761976				
4.	BUILDINGS	3047680334	2996186793	-51493541			
5.	COMMUNICATION EQUIPMENT	261614388	261614388				
6.	ELECTRICAL INSTALLATION	551658865	551658865				
7.	FURNITURE & FIXTURES	602521809	324841997	-277679812			
8.	INTANGIBLES	231680000	231680000				
9.	IT EQUIPMENT	595954503	59594503				
10.	LARGE VEHICLES	164543145	164543145				
11.	LIGHTING & BEACONING	338970740	338970740				
12.	OFFICE EQUIPMENT	6844798	6844798				
13.	POWER HOUSE EQUIPMENT	535214663	535214663				
14.	ROADS	2267068320	2267068320				
15.	RUNWAY	5526959353	5526959353	•			

TOTAL COST							
	TOTAL COST	46200072542	45506242004	604E20744			
21.	WATER MANAGEMENT SYSTEM	443039458	443039458				
	b) RET/PAVED SHOULDER FOR RET						
	a) TAXIWAY						
20.	TAXIWAYS	668303902	640831824	-27472078			
19.	SOFTWARE & PROGRAM LICENSES	77132613	77132613				
18.	SMALL VEHICLES	34064725	34064725				
17.	SECURITY FENCING	210031	210031				
16.	SAFETY & SECURITY EQUIPMENT	1080441503	1080441503				

Note 1: For Asset Group where variation in Nil, the cost incurred by BIAL is less than or equal to cost estimated by EIL.

- 10.38 The Authority noted that a total cost of Rs. 69.45 Crore has been listed against various items as variation by EIL.
- 10.39 The Authority had also requested for response from AAI on the EIL Report. AAI had vide Letter No. AAI/BIAL-25/MYTP/2014/53 dated 15th January 2014 stated that:
 - "...M/s Engineers India Limited was appointed as Independent Engineer by AAI for verification of Capital Expenditure incurred for Bangalore International Airport. The report submitted by Engineers India Ltd. has been accepted by AAI and a copy of the same has been forwarded to AERA. AAI has no further comments/ observations to make on the report..."
- 10.40 After deliberating on the above material the Authority proposed to reduce the Opening RAB as of 24^{th} May 2008 (the day of the commencement of Airport Operations) by Rs. 69.45 crore. The Opening RAB as of 1^{st} April 2011 of BIAL after accounting for depreciation for the period 24^{th} May $2008 31^{st}$ March 2011 was as given below:

Table 27: Computation of amount deductible from Opening RAB as of 1st April 2011 based on the EIL Report

Asset							
Description				Depreciation			
(Chapter 2	Amount to			for 3 years	Net block to	Reduction	Reduction
for	reduce (as per		Depn	(2008-09 to	adjust from	from Aero	from Non-
deduction)	EIL Report)	Category	Rate	2010-11)	Opening RAB	RAB	Aero RAB
	0.00.40.==6						13,46,568
HVAC	3,82,10,576	PM1	10.34%	1,12,79,218	2,69,31,358	2,55,84,790	13,40,500
Airport							
Equipment	10,33,48,400	PM1	10.34%	3,05,06,975	7,28,41,425	6,91,99,353	36,42,071
		Building 1 -					
Apron	19,63,24,334	TBR	3.34%	1,87,19,552	17,76,04,782	15,27,40,112	2,48,64,669
		Building 1 -					
Buildings	5,14,93,541	TBR	3.34%	49,09,916	4,65,83,625	4,00,61,917	65,21,707
		FF -					
		Furniture					
Furniture &		and					60.05.004
Fixtures	27,76,79,812	Fixtures	6.33%	5,01,79,100	22,75,00,712	22,06,75,690	68,25,021
Taxiways -		Building 2 -					
RET	2,74,72,078	RW/TW	5.00%	39,21,357	2,35,50,721	2,35,50,721	-
TOTAL	69,45,28,741			11,95,16,119	57,50,12,622	53,18,12,585	4,32,00,037

- 10.41 The Authority had considered the Opening RAB in its CP 14 at Rs. 1595.69 crore. After the above adjustment, this value would be revised to Rs. 1538.09 crore. Accordingly, the Aeronautical RAB would also reduce proportionately based on the asset allocation between the Aeronautical assets and Non-Aeronautical assets.
- The Authority also noted that the large Capitalisation proposed for 2013-14 viz. Terminal-1 expansion Project and related works, West Apron Extension etc. had not been capitalised till December 2013. While BIAL had computed depreciation in accordance with the guidelines of providing depreciation for additions during the year at half the normal rate of depreciation, the Authority proposed to consider depreciation on these assets capitalised in 2013-14 only for a period of 3 months from 2013-14.
- 10.43 Based on the above, the revised RAB as computed by the Authority under Single Till and 40% Shared Revenue Till were as given below:

Table 28: Revised Average RAB computation under Single Till as made by the Authority - CP 22 - Rs. Crore

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Opening Regulatory Asset Base	1538.09	1423.21	1314.16	2856.22	2965.17
Investment / Additions to RAB	26.50	23.92	1695.97	339.58	61.68
Deletion/Disallowance	11.09	1.40	0.00	0.00	0.00
Depreciation & Amortization	130.29	131.56	153.92	230.62	236.56
Closing Regulatory Asset Base	1423.21	1314.16	2856.22	2965.17	2790.29
Average RAB for Return	1480.65	1368.69	2085.19	2910.69	2877.73

Table 29: Revised Average RAB computation under 40% Shared Revenue Till as made by the Authority CP 22 - Rs. Crore

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Opening Regulatory Asset Base	1359.39	1257.05	1158.82	2523.92	2628.93
Investment / Additions to RAB	26.21	21.89	1503.93	312.13	57.57
Deletion/Disallowance	11.09	1.40	0.00	0.00	0.00
Depreciation & Amortization	117.46	118.72	138.83	207.12	212.68
Closing Regulatory Asset Base	1257.05	1158.82	2523.92	2628.93	2473.82
Average RAB for Return	1308.22	1207.93	1841.37	2576.42	2551.37

- 10.44 Based on the material before it and its analysis, the Authority had proposed in CP 22 as below:
 - 10.44.1 To consider Opening RAB as of 1st April 2011 as per the audited financial statements of BIAL and to carry out deductions to Opening RAB based on EIL Report as detailed in Table 27.

- 10.44.2 To consider Average Regulatory Asset Base as detailed in Table 28 under Single Till and Table 29 under 40% Shared Revenue Till respectively
- 10.44.3 To consider depreciation on 100% of the asset values (without considering any salvage value). To consider Depreciation as detailed in Table 28 under Single Till and Table 29 under 40% Shared Revenue Till respectively.
- 10.44.4 To true up the Average RAB and the depreciation in the first year of the next control period based on the actual capitalised expenditure incurred in the current control period.

c. Stakeholder Comments on Issues pertaining to Regulatory Asset Base (RAB) and Depreciation

Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14 and CP 22. Stakeholders have also commented on determination of Regulatory Asset Base (RAB) in respect of Kempegowda International Airport Bengaluru. These comments are presented below:

10.46 FIA stated as below:

"Authority has to commission its independent study to value Initial RAB considering competitive procurement of investments and investment has to be approved one, as mandated in clause 5.4.3 of Airport Guidelines. It should not base the same on Audited financial."

"While standing on its view of land value adjustment, authority has not done so in contravention of AERA guidelines and Single till order. This implies huge burden on passengers and airlines.

BIAL to submit concrete proposal for binding the funding gap thru monetization of land, real estate deposits or other instrument. Aeronautical tariff like UDF can't be suitably determined for capex funding in absence of the same.

Authority has not factored security deposit of Rs 76.5 Cr and Interest on it of Rs 43 Cr but taken into account the cost of arbitration, legal fee as aeronautical expenditure, which is not correct. So has to factor all these in this control period."

10.47 Zurich Airport has stated as follows:

"In case a Single Till approach is applied, the RAB has to cover the total assets of the airport operator. The RAB has to be determined independently of the way individual

assets are financed. Land values as well as projects in planning stages for which costs have been incurred and already capitalized in the balance sheet, must be included in the RAB to take into account economic realities. The land respectively its value has to be allocated proportionally to the RAB and its economically correct land value must be considered."

10.48 Blue Dart has stated as below:

"BIAL is proposing to spend Rs. 45.82 Crores towards the redesign of the road network, this has been proposed as part of General Capital Expenditure/Maintenance Capital Expenditure. Building a road network is not part of the Airport/Aeronautical Services and should not be included in the RAB. It is the obligation of the State to build a road network to access the Airport, Further, if there is a fault in the design of the road network, then BIAL or the State should bear the cost. The same should not be passed on to Airport Users. Hence, we strongly oppose inclusion of the extraneous cost of Rs. 45.82 crores in the RAB"

10.49 Further subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 22. Stakeholders have also commented on determination of Regulatory Asset Base (RAB) in respect of Kempegowda International Airport Bengaluru. These comments are presented below:

10.50 BPAC stated as under:

- "a. For non-development of committed assets like hotel etc. on time, why not a penalty be imposed?
- b. Regarding consideration of depreciation on 100% of the asset values (without considering any salvage value), we have concerns as it would lead to higher expenditure and lesser profitability. May please reconsider.
- c. We understand that the arbitration process on hotel is over now and hence the current status including the change of ownership if any need to be considered. Or else, the amount of security deposit to be transferred to an ESCROW account."
- 10.51 Sanjeev Dyamannavar has stated as follows relating to Trumpet flyover cost incurred by BIAL as part of Opening RAB:

"A. Providing proper road connectivity to Airport are responsibility of State Govt (GOK) and Central Govt (NHAI)

Even NHAI had worked on the Trumpet Interchange and called tenders during April'2006 with approximate Total Project cost of Rs 45 Crore with all estimates as per NHAI procedure. Later BIAL has built the same Trumpet flyover at the actual cost of Rs 137.83 Crore. Even NHAI had meeting with BIAL, GOK during the same period. GOK has spent Rs 17.81 Crore in acquiring the land for Trumpet as per IDD / GOK.

During 2010, NHAI had called tender for the Up gradation of Highway NH-7 from Hebbal Flyover 556.840 Kms to 534.72 Kms at Devanhalli including Trumpet Flyover connecting BIAL airport.

NHAI Ref: Upgradation, Operation and Maintenance of KM 534.720 to 556.840 of Hyderabad Bangalore section of NH-7 in Karnataka under NHDP Phas-VII and Package No: NS-2/BOT/KNT-2 between National Highway Authority of India and Navayuga Devanhallai Tollway Private Limited on 30th April'2010.

Corresponding concession agreement attached with mail.

Now NHAI is collecting toll for the same facility before BIAL Airport entry. That means, passengers are paying double the tax one to NHAI and second to BIAL thru UDF.

B. Also BIAL considering Trumpet Flyover as 100% Aeronautical Assets Now BIAL has claimed with cost of building the same Trumpet Flyover at Rs 137.83 Crore and also BIAL has further treated Asset allocation basis as Aeronautical Assets

Basis for allocation: Movement of Passengers and staff. From the above, cost of the Trumpet has increased from Rs 45 Crore to 137.83 Crore. Also GOK has spent 17.81 Crore in land acquiring and NHAI had initiated Trumpet project during 2006. Now why Airport passengers are forced to pay the Trumpet flyover cost thru UDF which is unfair and need to be clarified with NHAI, GOK and BIAL who should pay for the same.

Following attachments forwarded for your reference

- 3. NHAI Trumpet Flyover Tender advertisement
- 4. NHAI Bid Document for Trumpet Flyover
- 5. NHAI Concessional agreement with Navayuag for NH-7 road from Hebbal to Devanhalli including Trumpet flyover
- 6. UDD / GOK order on land acquiring for Trumpet at the cost of Rs 17. 81 Crore
- 7. Cost Estimates for Trumpet Flyover at BIAL NH-7.

Even Hebbal Flyover which was constructed during 2003 by Gammon India was Rs 48 Crore which was built during 2003 and having similar Trumpet Interchange of BIAL with Ring Road crossing Grade separator, Railway line Crossing, NH-7 which is 5.23 Kms length. BIAL Trumpet was constructed just 4 years down the lane as compared to Hebbal Flyover."

d. BIAL's response to Stakeholder Comments on Issues pertaining to Regulatory Asset Base (RAB) and Depreciation

- Subsequent to the receipt of comments from the Stakeholders on CP 14 and CP 22, the Authority forwarded these comments to BIAL seeking its response to these comments.

 BIAL has provided responses to the Stakeholders' comments, which are presented below:
- 10.53 On comment from Sanjeev Dyamannavar on Trumpet Interchange cost, BIAL has stated that:

"Trumpet

BIAL is not privy to the details of the NHAI project and is thus not in a position to comment upon the same. Since the airport opening date was fast approaching BIAL was forced to undertake development of trumpet interchange. The toll collection by NHAI is not in respect of trumpet interchange but in respect of the road to Hyderabad."

- On FIA and BPAC's comment on 100% depreciation, BIAL has stated that:

 "BIAL submits that as per Companies Act and Income tax Act 100% depreciation is

 permissible and 100% depreciation is also an accepted practice as per general
 accounting and auditing practices (GAAP). BIAL submits that this issue has been
 considered by AERA at length in CP 14 and CP No. 22 and AERA has proceeded to
 provide for 100% depreciation in acceptance of BIAL's submissions."
- 10.55 On FIA's comment that there has to be an independent assessment on initial RAB BIAL has stated that:

"BIAL has submitted a detailed response to EIL's report vide its letter dated January 3, 2014. Further, even AAI has submitted that it has no comments to offer on EIL's report and therefore BIAL submits that EIL's report cannot be considered."

- e. BIAL's own comments on Issues pertaining to Regulatory Asset Base (RAB) and Depreciation
- 10.56 On the issue of Regulatory Assets Base, in response to CP 14, BIAL stated that:

"SCOPE OF RAB OR RAB BOUNDARY

In paragraph 10.21 of the CP, it is provided that BIAL's submissions with regard to RAB boundary are not acceptable and that Authority will abide by the directions contained in Airport Guidelines (clause 5.2 of Airport Guidelines). BIAL submits that the CP does not contain reasons for rejection of BIAL's submissions with regard to scope of RAB. BIAL reiterates its submissions made earlier in relation to RAB boundary and requests that the same be considered by Authority. BIAL submits that all assets that are to be excluded from the scope of regulation as per the Concession Agreement, i.e. activities other than regulated services detailed in Schedule 6 thereto (hereinafter referred as "services other than regulated services") be excluded from the RAB boundary.

BIAL submits that scope of RAB boundary needs to be relooked into and provisions of Concession agreement needs to be considered while arriving at regulated assets.

ASSET VALUE ADJUSTMENT

BIAL requests Authority to revisit its proposal and consider only the book value of assets proposed to be excluded from the scope of RAB. An asset which is excluded from the scope of RAB, at the time of its subsequent inclusion, should be assigned a true value / fair market value. The above will ensure that there is no gaming or unfair advantage obtained by the airport.

CONSULTATION PROTOCOL

The discretion retained by the Authority in paragraph 10.28 of the CP to undertake post facto modifications to committed capital expenditure may cause substantial prejudice to BIAL, including financial losses. As stated earlier, BIAL is a board managed company with adequate representation from Gol, GoK and private promoters. BIAL has undertaken all expansion activities in accordance with Concession Agreement and Master Plan.

Without prejudice to BIAL's submissions on appropriate regulatory till, BIAL submits that, even as per Section 13(1)(a)(v), only revenue from non-aeronautical services is to be considered. Also, in view of clause 10.3 of the Concession Agreement, BIAL submits that no consultation be prescribed in respect of services other than regulated services. BIAL prefers that the constituents of AUCC be restricted to those who fall within the definition of 'stakeholder' under the AERA Act."

10.57 On EIL report, BIAL, in its comments to CP 22 has stated as follows:

"BIAL respectfully submits that the EIL Report cannot be relied on by the Authority. BIAL firstly submits that EIL did not provide any opportunity to BIAL to explain the facts and circumstances under which certain expenditures were incurred. Therefore, principles of natural justice were not complied with. Additionally, EIL in its report at Paragraph 11, concludes that, "... The overall impact with respect to the cost of the project may seem to be minor in nature...". EIL report also concludes with respect to a large number of items that, "...costs are less than or equal to normal costs...". In case expenditure incurred is more than costs estimated by EIL, EIL has provided a calculation of the differential. The observation of EIL is relatable only to such costs which are more than the estimates of EIL. Whereas, if cost incurred is less than or equal to costs estimated by EIL, the differential is not even set out. Moreover, as stated above, EIL concludes that the overall impact with respect to cost of the project is minor in nature. The statutory auditors of BIAL have accepted the project costs. It has also been adopted by the Board. BIAL therefore, respectfully submits that no deductions be made on the basis of EIL's report."

10.58 The Authority has also noted BIAL's comment on accelerated depreciation under taxation as under:

"Request for accelerated depreciation in the regulatory books based on economic useful life of assets instead of lower depreciation rates currently adopted in books based on minimum rates (Sch XIV) provided in the current Companies Act and the concession period.

We may also mention that proposal in New Companies Bill is also recommending higher depreciation rates based on useful life rather than the existing prescribed minimum rates. The resultant increase in book depreciation would have a considerable impact"

10.59 The Authority also notes BIAL's response to EIL report presented as part of its submissions on 30th January 2014 as follows:

"BIAL management has reviewed the costs "not justified" by EIL in their report dated 27th September 2009.

It is observed from Chapter One, conclusion (page 16), IE had concluded that the cost incurred for the Main Passenger Terminal building and Runway etc. seems to be in order, however, cost incurred by BIAL appears to be on higher side on certain items

as listed in below table. The overall impact with respect to the cost of the project is minor.

Sr. No.	Description	Actual cost (in Rs)	Cost as per EIL (in Rs)	Variation (in Rs)
1	Air Conditioning – HVAC terminal Building	26,31,62,576	22,49,52,000	3,82,10,576
2	Airport Equipment	274,02,46,615	263,68,98,215	10,33,48,400
3	Apron Rigid Pavement	136,95,65,908	117,32,41,574	19,63,24,334
4	Buildings	304,76,80,334	299,61,86,793	5,14,93,541
5	Furniture & Fixtures	60,25,21,809	32,48,41,997	27,76,79,812
6	Taxiways	66,83,03,902	64,08,31,824	2,74,72,078
	TOTAL			69,45,28,741

BIAL firmly disagrees with EIL's analysis which is hypothetical and incomplete. BIAL wish to state that the costs are fully justified based on the following information and analysis.

Air Conditioning – HVAC terminal Building: In case of BIAL, chiller plants are located at the Utility Building which is located around 250m away from the Terminal and chiller pipes are brought to Terminal building through tunnels. EIL estimates are based on CPWD rates and do not make provision for additional costs for chillers pipes and associated electrical and pumping costs. Please refer attached relevant extract from EIL report.

Airport Equipment: BIAL earlier EPC contract was a lump sum contract issued to L&T & SIEMENS. As part of this lump sum EPC contract, Siemens, Germany has supplied the Airport systems. The supplied escalators elevators are part of the approved original scope of the Project. The overall cost of Airport equipments is around 17% of the total project cost which is proportionate for a green field airport development. Also the overall airport equipment cost at BIAL is less than 4% in variation to EIL derived cost as per the report which is a marginal difference.

Apron Rigid Pavement: EIL had used CPWD rates, however had not made any appropriate adjustments in rates for airfield pavement which have significantly higher specifications. Furthermore, rates considered by EIL are inappropriate as they do not have any provision for mechanized construction method and also for reinforcement, dowel bars, bond breakers, and other elements such as Apron drainage system, oil water separators; other misc. works such as airfield line marking,

rain water harvesting etc. which constitutes @ 25% - 30% of the pavement cost. In view of this, BIAL apron cost is reasonable and fully justified.

Buildings: The "disallowed" cost of Rs. 5.1 Cr is largely attributed to VIP building and other ancillary buildings. Please refer to extract from EIL schedule.

EIL's analysis is based on CPWD rates which do not provide for high end interior finishes and furniture required for standard of such International Airport's VIP facility. EIL has derived a rate of Rs. 1904/sqft where as BIAL's actual costs supported by actual expenditure amounts to Rs. 8553/sqft. Therefore Authority will note that the rate incurred by BIAL is fully justified and in line with market rates for such high security Terminal facilities.

Furniture and fixtures: BIAL's cost of furniture and fixtures of Rs. 60.25 Cr represents 7% of the overall Terminal cost of Rs. 897 Cr. All furniture and fixtures have been procured through BIAL's procurement process therefore an arbitrary estimate by EIL mounting to a mere 3.5% is unjustified and cannot be substantiated. Furthermore, EIL has also acknowledged in their report that furniture cost based on international benchmarking practices shall be 15-20% of building cost. Refer attached referred pages from EIL report.

Taxiway: EIL had used CPWD rates, however had not made any appropriate adjustments in rates for airfield pavement which have significantly higher specifications. Rates considered by EIL are inappropriate as they do not have provision for mechanized construction method and also drainage system, other misc. works such as airfield line marking, rain water harvesting etc. In view of this, BIAL taxiway cost is reasonable and fully justified.

f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to Regulatory Asset Base (RAB)

- 10.60 The Authority has carefully gone through the comments received from various stakeholders and BIAL's comments to the Stakeholders' comments.
- 10.61 Authority's analysis on Land monetisation etc. are detailed in Para 11 below.
- On FIA's comments that the Authority has to commission an independent study to value the initial RAB considering competitive procurement of investments, the Authority, in CP 22 has reviewed the report of EIL and had proposed to make adjustments to Opening RAB for the values identified by EIL as unjustified. (Refer Para 10.40 above)
- 10.63 On FIA's comment that BIAL has to submit concrete proposal for binding the

funding gap, the Authority had indicated in its proposal on Weighted average cost of capital that the Authority proposes to consider the FRoR as computed by the Business Model for the present, which will be trued up based on the actual means of financing of BIAL, at the end of the control period. (Refer Para Decision No. 11 a iii below)

10.64 FIA has commented that the Authority has considered the cost of arbitration, legal fee etc. as aeronautical expenditure. The Authority had noted in CP 14 and CP 22 (Refer Para 18.35 and 18.42 below) that the Authority has requested for the information from BIAL on the same to exclude the cost from Operating and Maintenance Expenditure. The detail has been furnished by BIAL which has been considered appropriately by the Authority. (Refer Para 18.72 below)

The Authority has reviewed Zurich Airport's comment that land values as well as projects in planning stages for which costs have been incurred and already capitalized in the balance sheet, must be included in the RAB to take into account economic realities. The Authority noted that in case of BIAL, there is no value of land which has been acquired by BIAL and the Authority has considered the assets on the balance sheet of the Airport Operator. Authority's principle on consideration of land value adjustment have been detailed in Para 11 below

The Authority has noted Blue Dart's comment that building a road network is not part of the Airport / Aeronautical Services and should not be included in the RAB and that it is the obligation of the state to build a road network to access the Airport. The Authority notes that BIAL has proposed costs relating to internal road networks which are required to be laid within the land area given for Airport and hence are to be considered as part of the RAB. The Authority expects that the alignment of road works and allied city side developments undertaken by incurring expenditure of Rs. 45.82 crores would not be wasteful in the proposed Terminal-2 construction.

10.67 BPAC has commented on why a penalty should not be imposed for non-development of committed assets like hotel. The Authority has not been able to identify, from the Concession Agreement etc, a time commitment made by BIAL for construction of hotel. The Authority has also noted in Para 11 below that revenues from monetisation of land will be considered at the appropriate time of monetisation based on the communication from GoK.

10.68 The Authority has noted BPAC's concern over depreciation at 100% of the asset

values and the response given by BIAL on the same. The Authority notes that this method of considering 100% asset value is in accordance with the accepted treatment as per Companies Act.

- The Authority notes BPAC's comments that the arbitration process is over and the status including change of ownership needs to be considered. The Authority notes that its principles on consideration of revenues from land monetisation are detailed in Para 11 below and the Authority will consider the same accordingly. Authority's discussion with BIAL on the status of Hotel Arbitration has been detailed in Para 11.77 below.
- 10.70 The Authority notes comments received from Sanjeev Dyamannavar on the cost of Trumpet flyover etc. The Authority has already considered EIL report on unjustified costs incurred part of Airport Project and proposed to reduce the same from the Opening RAB.
- The Authority has noted BIAL's additional submissions on 30th January 2014 on EIL report and its response to CP 22 on the same. The Authority has noted BIAL's submission that "even AAI has submitted that it has no comments to offer on EIL's report and therefore BIAL submits that EIL's report cannot be considered". The Authority is not persuaded by the inference of BIAL that no comments by AAI means that EIL's report is not to be considered. The Authority has forwarded BIAL's comments to AAI for review and comments. Presumably, the Management of BIAL has approved the responses to the EIL's report as submitted to the Authority on 30th January 2014. The Authority notes that AAI is represented in the Board of BIAL at a senior level. As indicated in CP 22 and in Para 10.39 above, AAI has accepted EIL's report. The Authority is, for the purposes of this Order, proceeding disallowing the amount of Rs. 69.45 crores indicated in EIL's report. If the AAI were to review its earlier acceptance of this report, the Authority would accordingly carry out necessary adjustments to Opening RAB at the time of determination of Aeronautical Tariffs and UDF in the next control period.
- The Authority notes that in response to CP 22, BIAL has reiterated its earlier submissions on aspects such as RAB Boundary, Consultation Protocol, Asset value adjustment etc. which BIAL had already submitted in MYTP 2012. The Authority had already analysed these in detail in CP 14. No new points have been made by BIAL in its response to CP 22.
- 10.73 The Authority has noted BIAL's request for "accelerated depreciation". The Authority has discussed the same with BIAL in its meeting on 17th April 2014. BIAL had commented that the submission was to consider revised depreciation rates in line with Companies Act effective from 1st April 2014, wherein different rates of depreciation were

prescribed by the Companies Act. The Authority was informed that the revised depreciation rates was put up to the Board of Directors for approval. The revised rates of deprecation effective 1st April 2014 that was approved by the Board Resolution is as given below:

Table 30: Comparison of Deprecation rates (Change proposed by BIAL effective 1st April 2014)

Asset Type (Details of Key assets)	Proposed Depn. rate	Earlier Depn. rate
Apron	10.00%	3.34%
Runway/ Taxiway	10.00%	5.00%
Roads	20.00%	3.34%
Buildings	3.34%	3.34%
Furniture & Fixtures	12.50%	6.33%
Small Vehicles	12.50%	9.50%
Airport Equipment/ Communication Equipment	13.33%	10.34%
Airconditioning	13.33%	4.75%

The Authority has noted the latest depreciation rate mentioned in the Companies Act effective from 1st April 2014, according to which, only to take an example, of roads, the depreciation rate for the concrete road is given as 10 years. By and large, the private operators have been taking runway equivalent to concrete carpeted road RCC. Bringing into force of the new Companies' Act and the Schedule indicating depreciation rates thereon, the individual discretion of the airport operator to apply its rates of depreciation, in Authority's opinion, can be said to have been considerably reduced. The Authority notes that the category of runway, taxiway, Apron are not mentioned specifically in the Companies Act. It was also not so in the previous Companies Act.

The Authority has noted that the Schedule II (and particularly Part C thereof) of the Companies Act indicates the useful life or residual value of any specified asset. Part B of Schedule II states that "The useful life or residual value of any specific asset, as notified for accounting purposes by a Regulatory Authority constituted under an Act of Parliament or by the Central Government shall be applied in calculating the depreciation to be provided for such asset irrespective of the requirements of this Schedule". After considerable deliberation, the Authority has separately initiated the process to issue such notification as appropriate on the useful life or residual value of an asset specific to the requirements of an airport. Such assets may either not have been clearly mentioned in the Schedule II of the Companies Act or may justifiably have useful life different from that mentioned in the Companies Act. For example, the Authority has noted that AC No: 150/5320-6E, dated 30th September 2009 issued by FAA

of USA, gives certain design standards in respect of Airport pavements as follows: "The FAA design standards for airport pavements use the 20 year structural design life criteria as a policy."

The Authority has been of the considered view that it would be preferable to have, as far as practicable, a broad year to year consistency in what depreciation is charged by the companies as certified by the relevant statutory auditors and what the Authority would take into account in its process of tariff determination. Issue of a notification will ensure this objective. The Authority had discussions on the issue of depreciation with BIAL on 29th May 2014, who indicated that should the authority determine the useful life of different assets through a notification, BIAL would adopt the same in its accounts.

10.77 The Authority noted that the revised depreciation rates as indicated in Schedule II, if adopted in toto, would substantially increase the estimates of depreciation considered by the Authority for the period 2014-15 and 2015-16 from the Authority's estimates in CP 22. As indicated in Para 10.75 above, however, the Authority has separately initiated the process of determining appropriate rates of depreciation. The Authority expects that such an exercise would take some time and hence in the meantime, the Authority has decided to consider the depreciation rates as indicated in CP 22 for the purposes of determination of ARR projections for 2014-15 and 2015-16. Depending on the final notification, the depreciation and consequently the ARR will be trued up at the time of determination of Aeronautical Tariffs for the next control period.

10.78 The Authority also noted that BIAL had capitalised the assets relating to Terminal 1 Expansion in first week of Feb 2014. Hence the Authority decided to consider the depreciation for 1.75 months for 2013-14 on the assets capitalised during 2013-14.

10.79 The revised RAB decided to be considered by the Authority in MYTO for the purpose of providing Fair rate of return, under Single Till and 40% Shared Revenue Till is as follows:

Table 31: RAB and depreciation decided to be considered by the Authority under Single Till - Rs. Crore

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Opening Regulatory Asset Base	1538.09	1423.21	1314.16	2841.37	3052.89
Investment / Additions to RAB	26.50	23.92	1671.59	443.04	61.66
Deletion/Disallowance	11.09	1.40	0.00	0.00	0.00
Depreciation & Amortization	130.29	131.56	144.39	231.51	239.25
Closing Regulatory Asset Base	1423.21	1314.16	2841.37	3052.89	2875.31

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Average RAB for Return	1480.65	1368.69	2077.77	2947.13	2964.10

Table 32: RAB and depreciation decided to be considered by the Authority under 40% Shared Revenue Till - Rs. Crore

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Opening Regulatory Asset Base	1359.39	1257.05	1158.82	2512.13	2704.70
Investment / Additions to RAB	26.21	21.89	1483.73	400.38	57.55
Deletion/Disallowance	11.09	1.40	0.00	0.00	0.00
Depreciation & Amortization	117.46	118.72	130.42	207.81	214.82
Closing Regulatory Asset Base	1257.05	1158.82	2512.13	2704.70	2547.44
Average RAB for Return	1308.22	1207.93	1835.48	2608.42	2626.07

Decision No. 6. Regulatory Asset Base

a. The Authority decides

- To disallow Rs. 69.45 crore from the value of asset created based on the report of EIL which was accepted by AAI and reduce the corresponding depreciated value of Rs. 57.50 crore from the Opening RAB of the current control period (Refer Para 10.71 above).
- ii. To consider Opening RAB as of 1st April 2011 as per the audited financial statements of BIAL and to carry out deductions to Opening RAB based on EIL Report as detailed in Table 27.
- iii. To consider Average Regulatory Asset Base as detailed in Table 31 and Table 32 under Single Till and 40% Shared Revenue Till respectively.
- iv. To consider depreciation on 100% of the asset values (without considering any salvage value). To consider Depreciation as detailed in Table 31 and Table 32 under Single Till and 40% Shared Revenue Till respectively.
- v. To lay down, to the extent required, the depreciation rates for airports, taking into account the provisions of the useful life of assets given in Schedule II of the Companies Act 2013 (Act 18 of 2013), assets that have not been clearly mentioned in the Schedule II of the Companies Act or may have a useful life justifiably different than what is indicated in the Companies Act 2013 in the specific context of the airport sector. The Authority has initiated the process to enable it to issue a notification as appropriate, pursuant to the provisions of Part B of Schedule II of the Companies Act 2013 for this purpose.

vi. To true up the Average RAB and the depreciation in the first year of the next control period based on the actual capitalised expenditure, and depreciation rates adopted in the current control period.

11 Treatment of Land

a. BIAL's submission on Treatment of land

11.1 The Authority noted that a Hotel development project is underway in Bengaluru International Airport. On Hotel Project and Real Estate Development, BIAL had, in its MYTP 2012 submissions stated that:

"a framework agreement for design, construction and operation of Business Hotel Facility at BIAL was entered into with EIH Limited and L&T Limited on 16th November 2006 and the consortium incorporated a company under the name "Bangalore Airport Hotels Limited"

Subsequently the AAI issued a no-objection certificate on 14th November 2008, with a height clearance of 30.36 meters only, as against the proposal of the consortium for a 45m. The consortium then expressed its inability to continue to develop and operate and sought certain additional concession from BIAL or for a settlement of cost incurred and this is currently under dispute and under arbitration proceedings"

- 11.2 Also BIAL had stated that in view of the business plan for real estate activities not being firmed up, real estate business scenario has not been considered in their submissions.
- 11.3 BIAL had, also as part of the submissions made to the Authority in April 2013 pursuant to AERAAT Order stated as follows:

"17. Land Value Adjustment:

Authority's Approach: The Authority has proposed to effect land value adjustments for those assets which are excluded from the scope of RAB. The Authority has proposed, in Clauses 7.7 and 7.8 of Order No.13 and Clause 5.2.4 of Direction No.5 to make an adjustment in respect of any land associated with an asset excluded from the scope of RAB by reducing from the RAB the value of such land being the higher of (i) prevailing market value of such land, or (ii) book value of such land. The Authority has also proposed to commission experts to independently determine and review the market value in respect of such land.

Observations: BIAL was provided land under the Land Lease Deed by the State of Karnataka inter alia as a part of its policy to:

encourage private sector participation in the development of airports; and encourage and provide industrial development, tourism, cargo, movement and general economic and social development of the state of Karnataka.

The State of Karnataka has taken multiple steps for promotion of industries in the state of Karnataka. The Karnataka Industrial Areas Development Board was set up under the Karnataka Industrial Areas Board Development Act, 1966 in order to encourage and promote industrialization of the state. Similarly, the Karnataka State Industrial and Infrastructure Development Corporation (KSIIDC), earlier known as Karnataka State Industrial Investment and Development Corporation, was established in the year 1964, as a wholly owned undertaking of the State of Karnataka inter alia to encourage industrial growth in the state of Karnataka. The State of Karnataka, as a part of its overall objective of encouraging infrastructure and industrial development, also provided Rs. 350 crore to BIAL to improve the viability of the Greenfield airport project and enhance the bankability of the initial phase, as detailed in the State Support Agreement. Thus, the State of Karnataka, as a matter of policy and in order to encourage development of airport infrastructure, provided viability gap funding as well as leased land to BIAL.

As per the Authority's proposals, land value adjustment is proposed in respect of those assets which are excluded from the scope of RAB. On first principles, even under a Single Till mechanism (which is not applicable in the case of BIAL), once assets are excluded from the scope of RAB, no regulation, in any form, is contemplated in respect of such assets. Therefore, the Authority's proposals are not in accordance with the "Single Till' principle itself.

Additionally, the proposal with respect to land value adjustment would completely set at naught the Land Lease Deed as well as the State Support Agreement. Clause 4.2 of the Land Lease Deed provides that BIAL may utilize the leased land inter alia for (i) improving the commercial viability of the project; and/or (ii) such that the utilization facilitates substantive further investment in or around the airport. Land value adjustment as proposed by the Authority is the very antithesis of these objectives. If market value of the land is deducted, BIAL would get little or no benefit from the lease of the land and resultantly, will not be able to utilize any income from utilization of such land to make the airport project more viable. Further, ICAO doc 9562 recognizes the concept of an airport city', i.e. a city built around an airport, which is reminiscent of cities that were built around sea ports and river ports in the past centuries. This objective of development of areas surrounding the airport is sought to be achieved under clause 4.2(v) of the Land Lease Deed. Land value adjustment would be a full and complete disincentive for the airport operator to

utilize the land for facilitating further investment around the airport as BIAL would be forced to buy land, which is already leased to it.

Without prejudice to the above, if market value of lands is reduced from the scope of RAB, effectively, the airport operator is forced to buy such land at prevailing market prices. This is an incongruous situation because such lands have been leased by the state of Karnataka to BIAL for a fixed term of 30 years. BIAL cannot be forced to pay market value of land, which it will never come to own and in respect of which; it will only have leasehold rights.

The proposed land value adjustments would also have the effect of negating the benefits provided to BIAL under the State Support Agreement and the Land Lease Deed. The effect of land value adjustment would be to recast the Land Lease Deed in its entirety. The proposed regulations are beyond the ambit and powers of the Authority.

The proposed regulations in respect of land value adjustments were neither discussed as a part of the White Paper nor as a part of the Consultation Paper. Therefore, neither BIAL nor any of the airport operators had any opportunity to submit their views regarding the proposed regulations in respect of land value adjustments. BIAL therefore requests that these objections be considered and the proposals in respect of land value adjustments dropped.

From a legal standpoint, the Authority simply has no power or jurisdiction to make land value adjustments or in any manner deal with assets that are beyond the scope of RAB. The proposed regulations are wholly beyond the jurisdiction of the Authority and are de hors the functions prescribed under the AERA Act.

Land value adjustment appears to be proposed on a presumption that considerable profits can be generated out of land usage for non-airport activities. Whereas in BIAL's case, scope for land usage for non-airport activities is quite different due to below features:

Airport is located far away from central business district.

No socio eco structure available around the airport

No significant industrial / commercial development in & around

No proper connectivity

Hence, considerable entrepreneurial ability and investment is required to realise any gains out of land usage for non-airport activity.

Realisation of value preceded by significant investment in terms of making the land as serviceable land. Who will fund the same?

The absurdity of the resultant situation is that firstly, BIAL or airport operators are being forced to procure such land effectively from airlines (since reduction in RAB will accrue to the benefit of airlines), who are not the owners of such land. Secondly, BIAL is being forced to buy land, which has been leased to it for a fixed period.

It is humbly submitted the Authority should revisit the manner in which Single Till mechanism is proposed to be implemented. The Authority need not make any land value adjustments or in any manner deal with assets that are beyond the scope of RAB. All proposals in this regard need to be cancelled.

11.4 BIAL has, as part of MYTP 2013 submission, detailed the update on Real Estate Development Activity as follows:

"Real Estate Development

1. Airport Business Hotel Project

The Bangalore International Airport at Devanahalli which opened on 24th May 2008 has improved Bangalore's transportation links with other Indian and international cities, and also is becoming a major catalyst for regional economic development in Karnataka and poised to be the Gateway to South India. A business hotel of international standards is an important facility at each international airport.

Pursuant to the Land Lease Deed, BIAL has been granted exclusive lease hold rights to the Project Site for aeronautical and non-aeronautical activities with the development of "hotels" as one of the non-aeronautical activities expressly permitted therein.

In view of the aforesaid, BIAL intends the establishment of a premium business hotel and conference facility at the Project site at standards compliant with international best practices.

Pursuant to the above, various consortiums submitted their proposals against the tender document and the consortium of EIH Limited and Larsen & Toubro Limited were awarded the rights for design, construction, financing, commissioning, maintenance, management and operation of the facility. A Framework Agreement for design, construction and operation of Business Hotel facility at the New Bangalore International Airport limited was entered to by BIAL with EIH Ltd and L&T Ltd on 16th

November 2006. The Consortium incorporated a Joint venture company, "Bangalore Airport Hotels Limited" under the Companies Act, 1956.

L&T had submitted an income statement in response to the tender for airport hotel which is also part of the agreement. The original bid was for airport hotel with a height of 45 m, 321 keys and a total area of 273,404 sq. ft. Since then there has been changes in the specifications due to reduction in building height and hence other options like reduction in rooms and also additional land were explored.

BIAL has consented for commencement of construction by its letter dated 18th September, 2007. BIAL has issued in principle approval for lay-out and plan by its letter dated 16th October, 2007. Subsequent to the execution of Framework Agreement, on 14th November 2008, the Airports Authority of India has issued a no objection certificate with a height clearance for only 30.36 metres above ground level.

In light of these restrictions, the Consortium has expressed to BIAL its inability to continue to develop and operate the facility in accordance with the terms of the Framework Agreement and sought certain additional concessions from BIAL or for a settlement of the cost incurred.

After a series of discussions, since the dispute was not resolved, it was agreed to go in for arbitration to settle the disputes and hence currently the project is on hold and is undergoing an arbitration procedure.

BAHL has paid a security deposit of Rs. 76.5 Cr in 2006 which was reflected as a part of liability in the Financial Statements. In view of the pending disputes, this amount is proposed to be repaid in 2013-14.

L&T BAHL was expected to undertake the Project and construct the hotel in accordance with the terms and conditions stipulated in the Framework Agreement (FWA) and the Sublease Deed. However, L&T BAHL was not able to complete the construction and make the hotel facility ready for operation as certain approvals and clearances were not forthcoming. After number of discussions and communications and on account of disagreements, L&T BAHL had invoked the dispute resolution clause in the FWA and both parties have referred the matter to Arbitration Tribunal. L&T BAHL prayed for declaring the FWA as terminated and claimed compensation for the partial construction of the Airport Hotel. The Tribunal has passed its award on 20 April 2013, where in the Honourable Tribunal has held that the FWA is not enforceable because of frustration and has directed L&T BAHL to handover the

possession of partially constructed facility to the Company on "as is where is" as is and directed the Company to pay a lump sum of Rs. 301 crore and refund the security deposit amounting to Rs. 76.5 crore with interest at 18 percent p.a. from the date of award. BIAL has challenged the arbitral award & filed arbitration suit no 15001/2013 u/s 34 of the arbitration and conciliation act, 1996. BIAL has also entered into discussion for expeditious construction of the Hotel.

2. Future Real Estate development

Neither real estate activity nor investment is envisaged as the business plan for real estate has not yet been firmed up and also no investment has been made as on date.

Hence, real estate business scenario has not been considered in the MYTP and the Business plan submitted now"

b. Authority's examination of BIAL's submission on treatment of land

- 11.5 The Authority had analysed BIAL's submissions with respect to Land value adjustment stated by BIAL in MYTP 2012, in CP 14 as follows:
- The Authority had considered the submission of BIAL regarding its understanding of the Authority's approach with respect to Land Value Adjustment. While the Authority noted that the agreements referred to by BIAL have permitted the Operator to use the land for the stated purposes which may not be considered as "Airport Activities" it may not be correct for BIAL to benefit from the land being given mainly for the purpose of running an airport. It is not Authority's intention to state that BIAL will be forced to buy the land which has been given to it free of cost, but to pass on the benefit of exploitation of the land given, by reducing the Regulatory Asset Base. Authority had already detailed its deliberations on why an upfront deduction is being proposed for Land value adjustment from RAB.
- 11.7 Authority's review and discussions on this, including the deliberation on the decision to carry out an upfront adjustment had been elaborated in Airport Order and Airport Guidelines which state that:

"Land Value Adjustment: For assets excluded from the scope of RAB, an adjustment (Land Value Adjustment) in respect of any corresponding land associated with such asset transferred or leased to or acquired by the Airport Operator in the past would be considered at the higher of (a) the prevailing market value of such land, or (b) the book value of such land. For the purpose of effecting the above land value adjustment, the Authority will require the airport company to notify the location and

book value of such land. The Authority may commission experts to independently determine and review the market value in respect of such land."

- 11.8 By virtue of Para 7.3 of the Airport Order, the Authority had sought to exclude those assets which substantially provide amenities/facilities/services that are not related to or are not normally provided as airport services from the scope of RAB. In fact, therefore, the Authority had sought to separate the non-airport related activities of Airport Company from the airport activities and has, thus, confined its jurisdiction to the airport activities alone. In so far as exclusion of excess land, if any, is considered, the Authority had considered this issue by way of basic illustrative principles and treatment proposed in respect of few illustrated positions, in the Airport Order. The Authority did not wish to go into the issue of when the Airport Operator should or should not use any piece of land for non-airport purposes, nor how much land should be so used because it did not want to put any fetters whatsoever on the operational freedom of the Airport Operator in this matter. Hence the timing and sequencing of using any piece of land for such non airport purposes would lie entirely in the hands of the Airport Operator. However, in order to remove the impact of the element of timing (or for that matter sequencing) of utilization of land for non-airport purposes from RAB calculations, as well as recognising that money is fungible, the basic principle adopted by the Authority was to look at the purpose of utilization of such land for non-airport purposes. The Authority had also stated that it would look at only the first such transaction and not any subsequent ones, distancing itself from the business and operational freedom of the Airport Operator to exploit future benefits. In fact, in sub Para 7.5.5 of the Order, it had been specifically stated that it would not be feasible for the Authority to prescribe treatment for all different forms of land transfers/alienations.
- Therefore, if the operator undertakes any non-airport related activity on the land leased to it by KSIIDC, the Authority would consider each such case specifically on its own merits. Further, in terms of Land Lease Agreement dated 20th January 2005, BIAL does not have any unrestricted right to utilize the land leased to it by the KSIIDC for non-airport related purposes. As per Article 4.2 of the Land Lease Agreement dated 20th January 2005 between KSIIDC and BIAL, BIAL can utilize the site for any other purposes, which in its opinion is:

"Conducive or incidental to implementation of the Project; and/or
Conducive or incidental to operation and management of the airport; and/or

Enhances the passenger/cargo traffic at the airport; and/or
Improves the commercial viability of the Project; and/or
Facilitates substantive further investment in or around the Airport, only with the approval of the KSIIDC."

- 11.10 The Authority notes that all these purposes have direct material linkage with the Project (viz. the Airport) with the only possible exception of "investment around the Airport". While granting approval, KSIIDC may impose certain conditions and stipulation which would conceivably depend on the issue under its consideration.
- However, the Authority noted that in case of BIAL, currently only a Hotel construction activity has been undertaken which was also under Arbitration. Hence, while the Authority stands by its view on the land value adjustment prescribed in the guidelines, no adjustment was proposed to be carried out for the purpose of this MYTP Determination. The Authority noted that BIAL had received Interest free Security Deposit of Rs. 76.50 Crores that it obtained in December 2006. This interest free security deposit was repayable from 2008-09 to 2014-15 as per the agreement between BIAL and EIH Limited and L&T. BIAL had received interest of Rs. 43 Crores on this deposit from December 2006 till March 2013, as per the certificate provided by a Chartered Accountant (Rs. 6.89 crores per annum). The Authority did not propose to take both these amounts into reckoning for tariff determination for the present, pending final outcome of the arbitration proceedings.

BIAL's submission to MoCA

11.12 BIAL in its submission to MoCA in April 2013 had stated that

"Under the State Support Agreement as well as the Concession Agreement, upon termination or expiry, BIAL has an option to continue to exercise leasehold rights with respect to either the CA Excluded Area or SSA Excluded Area, as the case may be. However, rest of the leased area is deemed to have been surrendered. The fact BIAL has an option to exercise leasehold rights with respect to certain portions of the leased land even without the right to operate the airport makes it apparent that leased land was provided to BIAL for the twin purposes of development of the airport and commercial utilization. As stated above, one of the objectives of providing leased land to BIAL for commercial utilization was to incentivize airport development and expansion."

11.13 The Authority noted that BIAL has acknowledged that, "one of the objectives of

providing leased land to BIAL for commercial utilization was to incentivize airport development and expansion". BIAL therefore had recognised the purpose of grant of land was both for airport development as well as its expansion. The Authority noted the Recital F of the Land Lease Deed as well as Clause 4.2 thereof whereby the purpose of land was to "improve the viability of the Project and enhance the bankability of the Initial Phase". In this the words "incentivize" as mentioned in BIAL's submission in Para 11.12 above, did not however appear in the Land Lease Deed in the context of commercial utilisation of the land.

- 11.14 Furthermore, in its submission, BIAL had clubbed together two circumstances namely (a) **termination** (as a consequence of default) of Concession Agreement (with GoI) or State Support Agreement (with GoK) and (b) **expiry** of the term of these two agreements (after a period of 30 years or 60 years as the case may be). Clubbing these two separate circumstances together is in view of the Authority, an erroneous reading of the Concession Agreement, State Support Agreement and the Land Lease Deed. The Land Lease agreement also has provisions in clause 3 regarding "**TERM AND TERMINATION**". According to the Clause 3.1 of the Land Lease Deed, "unless this Deed is terminated prematurely in accordance with the provisions hereof, this Deed shall have a term, which will run concurrent with the term of the Concession Agreement. Accordingly, upon full expiration of the Concession Agreement (including any renewed term there under), this Deed shall terminate automatically."
- The Authority had given careful consideration to the above submission of BIAL. The Land Lease deed defines "CA Excluded area as "... that portion of the Site containing those Non-Airport Activities not being taken over by GoI pursuant to articles 7.2 or 13.5.2 of the Concession Agreement." SSA excluded area is also defined in Land Lease deed meaning "... that portion of the Site containing those Non-Airport Activities not being taken over by GoK pursuant to clauses 4.3 or 19.4.2 of the State Support Agreement".
- 11.16 The relevant portion of Article 7.2 of Concession Agreement reads as "To the extent that BIAL incurs any capital investments, amounts or costs in relation to the provision of Non-Airport Activities and requires such investments, amounts or costs to be included in the calculation of the Termination Amount, Debt or Settlement Amount, BIAL shall seek the prior written consent of Gol." Similarly, the relevant portion of Clause 13.5.2 of the Concession Agreement reads as "Notwithstanding anything contained in Article 13.5.1, prior to any transfer of the Airport, Gol shall have the right conduct a due diligence of the contracts and agreements pertaining to Non-Airport Activities, the rights and obligations of which it is

assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of GoI are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into. GoI shall conduct the due diligence and identify the contracts and agreements that it is prepared to assume within 45 days of the opening of a data room by BIAL for these purposes following the exercise of a right of termination by GoI or BIAL under Article 13.4. For the avoidance of doubt, to the extent GoI opts to take over Non-Airport Activities, which have not been approved by GoI in accordance with Article 7.2, the calculation of Termination Amount or the Settlement Amount shall include investments, amounts or costs of such Non Airport Activities."

- 11.17 The relevant clauses of the State Support Agreement are with reference to the GoK with similar wordings.
- 11.18 The Authority had considered various clauses regarding termination of lease in the Land Lease Deed. The Authority noted that "Site" is to have meaning assigned to it in Clause 2.1, namely, what is indicated in Schedule 'A' of the Land Lease Deed. All in all, the 'Site' comprises of an area of 4008 (Land Lease Deed dated 30th April, 2005 for 3884 acres and additional Land lease deed dated 31st December 2011 for 124 acres).
- 11.19 Clause 3 of the Land Lease Deed is regarding term and termination of the said deed. The Authority, upon reading of Clause 3.7 of the Land Lease Deed, understands that in the event of termination of the land lease deed under normal conditions (including the full term expiration of the Concession Agreement), BIAL shall handover possession of the site to KSIIDC without any encumbrances immediately upon such termination. The question of SSA excluded areas is addressed in Clause 3.4 of the Lease Deed (that incidentally is not mentioned in Clause 3.7 mentioned above).
- Clause 3.4 of the Land Lease Deed provides that "in the event that the Airport is transferred to GoK in accordance with the provisions of Clause 19.4 of the State Support Agreement then upon such transfer, BIAL shall be deemed to have surrendered the Site (with the exception of the SSA Excluded Area) and this Deed shall terminate with respect to the surrendered part and KSIDC shall be at full liberty to deal therewith in the manner it chooses. With regard to the SSA Excluded Areas, KSIDC and BIAL will meet to settle the commercial terms for the continuance of the lease in respect of the SSA Excluded Area and KSIDC shall ensure that BIAL has the rights of access necessary for access to the SSA Excluded Area. While settling the commercial terms so as to enable the continuance of the Lease in respect of the

SSA Excluded Area, the Parties shall bear in mind the then prevailing policies / guidelines of GoK that are applicable for similar activities as are being undertaken on the SSA Excluded Area. Upon the determination of the commercial terms, BIAL shall pay to KSIDC any Lease Rent arrears for the SSA Excluded Area, calculated from the date of surrender of the Site. Until the determination of the commercial terms, BIAL shall pay the Lease Rent for the SSA Excluded Area in accordance with the policies / guidelines of GoK prevailing at that point of time with respect to the particular activity, and such payment of Lease Rent shall be at a rate not less than that mandated by the policy/guideline of GoK prevailing at that point of time with respect to that particular activity. If the Parties do not reach an agreement on the commercial terms within a period of one (1) year of the surrender of the Site, then the matter shall be referred for determination of an Independent Expert mutually agreed between the Parties. The determination of the Independent Expert shall be final and binding on the Parties." The Clause 19.4 mentioned in the State Support Agreement is not with respect to the expiry of the State Support Agreement but with respect to the termination as consequence of default upon relevant parties (GOK and BIAL).

Similarly, Clause 3.5 as corresponding provision regarding the airport being 11.21 transferred to GOI in accordance with the provisions of Article 13.5 of the Concession Agreement. The Clause 3.5 of the Land Lease Deed states that "in the event that the Airport is transferred to GoI in accordance with the provisions of Article 13.5 of the Concession Agreement, then upon such transfer, BIAL shall be deemed to have surrendered the Site (with the exception of the CA Excluded Area) and this Deed shall terminate with respect to the surrendered part and KSIDC shall be at fully liberty to deal therewith in the manner it chooses. With regard to the CA Excluded Area, KSIDC and BIAL will meet to settle the commercial terms for the continuance of the lease in respect of the CA Excluded Area and KSIDC shall ensure that BIAL has the rights of access necessary for access to the CA Excluded Area. While settling the commercial terms so as to enable the continuance of the Lease in respect of the CA Excluded Area, the Parties shall bear in mind the then prevailing policies / quidelines of GoK that are applicable for similar activities as are being undertaken on the CA Excluded Area. Upon the determination of the commercial terms, BIAL shall pay to KSIDC any Lease Rent arrears for the CA Excluded Areas, calculated from the date of surrender of the Site. Until the determination of the commercial terms, BIAL shall pay the Lease Rent for the CA Excluded Area in accordance with the policies / guidelines of GoK prevailing at that point of time with respect to that

particular activity. If the Parties do not reach an agreement on the commercial terms within a period of one (1) year of the surrender of the Site, then the matter shall be referred for determination of an Independent Expert mutually agreed between the Parties. The determination of the Independent Expert shall be final and binding on the Parties". Article 13.5 of the Concession Agreement also refers to not the expiry upon completion of the term under Concession Agreement but to consequence on account of default either by GoI or BIAL. Furthermore, Clause 3.7 of the land Lease Deed provides that in the event of termination of this Deed pursuant to the provisions of Clause 3.1, 3.2 and 3.3, BIAL shall hand over the possession of the site to KSIIDC without any encumbrance immediately upon such termination.

- 11.22 The Authority, therefore, inferred that the question of the SSA excluded areas or for that matter the CA excluded Areas arise in respect termination or in case of default and not in normal expiration of the term. The Authority noted that the CA excluded area or SSA excluded area specifically refer to Non-Airport activities. Furthermore, the Authority noted that clauses 13.5.2 of the Concession Agreement as well as 19.4.2 of the State Support Agreement refer to the circumstance of exercise of a right of termination by GoI, GoK or BIAL as consequences of default by relevant party and not on expiry of either the Concession Agreement or the State Support Agreement.
- 11.23 The Land Lease Agreement, in its recitals, state that:
 - 11.23.1 The Govt. of India, as part of its policy to encourage private sector participation in the development of airport infrastructure has granted it's in principle approval for the development of Greenfield airport, with private sector participation, at Devanahalli, near Bangalore in the State of Karnataka.
 - 11.23.2 GoK, granting approval for the development of Greenfield airport at Devanahalli as part of its policy to encourage and provide industrial development, tourism, cargo movement and the general economic can social development of the State of Karnataka, has granted approval for the development of the Greenfield airport at Devanahalli, near Bangalore.
 - 11.23.3 BIAL has been established for the development, design, financing, construction, completion, maintenance, operation and management of the airport.
- 11.24 Recital 'F' refers to the representations made by the private promoters during the pre-detailed proposal stage of the bidding process. In response thereto, as stated in Recital

- 'F', "Govt. of Karnataka has agreed to provide financial support to improve the viability of the project and enhance the bankability of the initial phase and has also agreed to have KSIIDC to provide the site on lease to BIAL."
- 11.25 Recital "G" states that "Accordingly, GoK through its various organisations and departments has acquired and has otherwise made available the Site South of Devanahalli near Bangalore for the Project and has the same vested with KSIIDC"
- 11.26 The 'Private Promoter' has also defined to mean Siemens, Unique (Zurich) and L&T and such other party as may from time to time be agreed pursuant to the Shareholders' Agreement. The 'Airport' is defined as to mean "the Greenfield international airport comprising of the initial phase to be constructed and operated by BIAL at Devanahalli,...". The "initial phase" is stated to have the same meaning as in the State Support Agreement. The State Support Agreement defines the initial phase as "means design, financing, construction, completion and commissioning of the facilities described in Schedule 5 attached hereto". Schedule 5 correspondingly gives the description of the initial phase of the airport with respect to its location (4008 acres), taxiways, apron, airside service roads, main access road, air traffic control, airfield lighting and other items pertaining to the Airport. The time horizon of the Initial Phase, as per Annex 1 of the Master plan is between 2006 and 2025.
- 11.27 The Lease Agreement also indicates the purpose for which the site may be used as follows:

"4.Use of the Site

4.1KSIIDC hereby grants permission and consent, to BIAL to use the Site, and BIAL agrees to use the Site in accordance with the Master plan, for the carrying out of the Activities and the following:

a)implement the project;

b) development, constructing, building, owning, operating and maintaining the Airport;

c)designing, building, owning, operating and maintaining the utilities, services and facilities required for operating and maintaining the Airport;

d)designing, building, owning, operating, maintaining and using office, management, administration facilities including all infrastructure required for such facilities and canteen facilities;

- e) Implementation of plans for expansion, modernization or renovation of the Airport or utilities and services facilities;
- f) Extraction of ground water and harvesting of rain water for BIAL's requirements;
- g) Developing a greenbelt on the Site as specified in the Master plan; and
- H) Developing and landscaping the Site;

(The "Purposes")

- 4.2.BIAL may, with the approval of KSIIDC (such approval not be unreasonably withheld), in addition to the above Purposes, utilize the Site for any other purposes, which in its opinion is (i) conducive or incidental to implementation of the Project; and/or (ii) conducive or incidental to operation and management of the Airport; and/or (iii) enhances the passenger/cargo traffic at the Airport; and/or (iv) improves the commercial viability of the Project; and/or (v) facilitates substantive further investment in or around the Airport."
- 11.28 The Authority noted that BIAL has agreed to use the site in accordance with the Master Plan and for carrying out of the activities which can be seen to be airport related. The Clause 4.2 above gives the liberty to BIAL, with the approval of KSIIDC, to utilize the site for any other purposes that are also indicated in the Land Lease Deed Agreement, as mentioned above. All these activities appear to be broadly in the nature of airport activities with the possible exception of item (IV), namely, "improves the commercial viability of the Project" and/or (v) facilitates substantive further investment in or around the Airport." The combined reading of all these clauses appear to the Authority to indicate that the primary purpose of lease of land to BIAL was to provide financial support and to improve the viability of the Project and enhance the bankability of the initial phase. Clause (IV) specifically states that the purpose had to be to improve the commercial viability of the Project. Clause (v), on which BIAL has relied also states that the purpose of land utilisation should be to "facilitates substantive further investment in or around the Airport". The "other purpose" for which BIAL can utilise the land (with the previous approval of KSIIDC), will "facilitate" substantive further investment by BIAL himself, or what is more likely (noting the use of the word "facilitate", by third parties. Such third parties would conceivably give to BIAL compensation for use of the land for the other purpose (the purpose that will have to be approved by KSIIDC). In any event, the purpose of land grant to BIAL is clearly specified in the land lease agreement and was not

to give the land to BIAL without any restrictions or to be used in any manner that BIAL in its discretion may deem fit and further appropriate the proceeds to itself, without requiring it to have nexus to improve viability and bankability of the airport project.

11.29 Upon reading the entire provisions contained in the Land Lease Deed, Concession Agreement as well as the State Support agreement, the Authority did not find any conflict between the provisions that BIAL can use the CA excluded or SSA excluded land after the termination of BIAL's right to operate the Airport (as a consequence of default by relevant parties, as well as commercial negotiations with KSIIDC as provided in Clause 3.4 and 3.5 of the Land Lease Deed) and the purpose of the grant of land to inter alia improve the viability of the Project and enhance the bankability of the initial phase (as stated in Recital F of the Land Lease Deed as well as Clause 4 of the Land Lease Deed) (also see Para 11.30 below). The Authority did not believe that the grant of land by KSIIDC to BIAL after acquiring the same (which would be in public interest) and at a rental of 3% to 6% per annum (which may be a concessional rate so that the public utility of Airport is facilitated) can be bereft of any linkage with the Airport project. Use of the land as indicated in clause 4.1 clearly is with respect to Airport activities. The commercial utilisation of land is provided in clause 4.2 and is subject to approval of KSIIDC and also underlines the aspect of improvement of commercial viability of the Airport and / or facilitating substantive further investment in or around the Airport.

The Authority had thus considered the land lease agreement from which it inferred that the land has been leased to BIAL "to provide financial support to improve the viability of the Project and enhance the bankability of the Initial Phase." The Authority addressed the issue of the revenues or receipts from the land only during the concession period because the regulations of Aeronautical Tariffs so far as it pertains to BIAL are relevant only during this period. After expiry of this period, the right of use of such lands (either the CA Excluded Area or SSA Excluded Area) is governed by Clause 3.4 of the Land Lease Deed which makes it clear that continued use of such lands by BIAL is not automatic and is governed by renegotiations including settling the commercial terms. The question of SSA excluded Area or CA excluded areas to remain in possession of BIAL even after it ceases to be the Airport Operator would arise only in the event of termination as a consequence of default by the relevant parties and that too if and only if GoK or GoI decide not to take over the Non-Airport activities in such areas. That apart, the use of lands under clause 4.2 of the Land Lease Deed clearly specifies that "if BIAL wants to utilise the Site for purposes other than mentioned in clause 4.1 (this

clause is related to the Airport as such), it will have to take approval of KSIIDC." Furthermore, such other purposes (under Clause 4.2) also relate the use of land and the purpose of its utilisation clearly to the Airport, viz. to improve the commercial viability of the same and / or facilitating substantive further investment in or around the Airport. The Authority therefore infers that the land lease deed expressly requires the use of entire land (during the Concession Period) for the Project. Upon expiry or termination of the Concession, BIAL would cease to be the Airport Operator and hence, a regulated entity as far as AERA Act is concerned. During the Concession Period, however, the Authority had proposed to connect the use of land, receipts obtained therefrom with economic regulation of the Airport and nexus with the passenger charges through a mechanism of RAB reduction. The Authority had thus taken into consideration the Concession Agreement, the Land Lease Deed as well as the State Support Agreement while proposing this treatment (viz. reduction from RAB) and had not ignored any of them.

11.31 BIAL, in its submission to MoCA dated 15th April 2013 repeated its submission that any revenue from the development of airport does not come within the purview of the Authority due to the definition of Airport under Section 2(b) of the AERA Act and definition of "Aerodrome" under Section 2(2) which reads as follows:

"airport" means a landing and taking off area for aircraft, usually with runways and aircraft maintenance and passenger facilities and includes an aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934 (22 of 1934).

"Aerodrome means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or appertaining thereto"

11.32 BIAL also stated that:

"The airport operator has been allowed to operate non-airport assets, even beyond the tenure of the agreement, which indicates that these assets are not to be viewed in conjunction with essential airport activities. Hence, the regulator should also recognize that the revenues accruing from these services should not be required to cross-subsidize aeronautical revenues, this is without prejudice to the fact that Non Airport Activities are outside the purview of AERA.

Part 2 of Schedule 3 of CA lists Non-Airport Activities. Since these activities are very clearly recognised as Non-Airport Activities, hence, any move by AERA to reduce value of land used for such activities will be beyond its jurisdiction.

Though land outside airport is outside the purview of AERA, assuming, without admitting, that even such land was within the purview of AERA even then under the AERA Act, reducing the notional value of land from RAB is not permitted, as only revenue from services other than aeronautical services could be considered while determining aeronautical tariff.

Clause 4.2 of the Land Lease Deed provides that BIAL may utilize the leased land, inter alia, for (i) improving the commercial viability of the project; and / or (ii) such that the utilization facilitates substantive further investment in or around the airport.

Land value adjustment as proposed by the Authority is the very antithesis of these objectives. If market value of the Land is deducted from RAB, BIAL would get little or no benefit from the lease of the land and resultantly, will not be able to utilize any income from utilization of such land to make the airport project more viable.

This objective of development of areas surrounding the airport is sought to be achieved under clause 4.2(v) of the Land Lease Deed. Land value adjustment would be a full and complete disincentive for the airport operator to utilize the land for facilitating further investment around the airport as BIAL would be virtually forced to buy land, which is already leased to it.

Real Estate Development and its revenue has to be ring fenced in real sense i.e. no cost and no revenue from such activities is to be considered while determining airport charges..."

11.33 The Authority had considered the above submissions of BIAL with respect to the Land Lease agreement and other relevant documents. The Land Lease Agreement was signed between the GoK and BIAL on 20th January, 2005. The Authority expected BIAL to give appropriate proposals for exploitation of land given to it by the GoK for the express purpose – "to improve the viability of the Project and enhance the bankability of the Initial phase and has also agreed to have KSIIDC to provide the Site on lease to BIAL". The land is given for the Project that is defined as "designing, financing, construction, completion, commissioning, maintenance, operation, management and development of the Airport", both in the Concession Agreement as well as the Land Lease Deed. The provisions of the use of the Site (Clause 4) of the Land Lease Deed also have express mention of the use of land for, inter alia,

"conducive or incidental to implementation of the Project" as well as for "improving the commercial viability of the Project". It is thus clear that both the Concession Agreement and the Land Lease Deed expressly link the grant of land to, inter alia, financing the Project. Even otherwise, convenient interpretation that the GoK would on one hand give financial support to improve the viability of the Project and on the other hand, permit the land acquired by the GoK through the legislative instrument of "Land acquisition Act" from private parties to be commercially exploited by BIAL merely as an "incentive" to develop and manage the Airport (without requiring the funds generated from such commercial exploitation for the purposes of Capital or for that matter revenue requirements for the Airport) appeared to the Authority as unsupportable. The Authority noted however that instead of giving such a proposal of raising Capital through commercial exploitation of land, BIAL appeared to interpret the provisions of the different agreements that there is no such linkage between grant of land and the financing, improving the commercial viability etc. of the Airport. It thus appears to have taken out only "financing" as well as "improving the commercial viability of the project" from the list of purposes for which the Site has been leased to it by KSIIDC. The Authority did not find this line of reasoning tenable.

- The Authority under Section 13(1) (a) (i) of the AERA Act is required to determine the tariff for Aeronautical services taking into consideration "the capital expenditure incurred and timely investment in improvement of airport facilities" and under sub-clause (iv) economic and viable operations of BIAL. It, therefore, appears to the Authority that any revenues obtained from commercial exploitation of land in excess of the Airport requirements are required to be ploughed back into the Airport project. Hence, to bring about the required nexus between grant of land and viability and bankability of the Airport, that is mentioned in the various documents signed by BIAL itself with GoK as well as GoI, one of the transparent methods was considered to subtract the fair value of the land that is used for commercial activities, from the Regulatory Asset Base.
- This, in view of the Authority, would establish the nexus between the purpose of grant of land (to improve the project viability) and lowering the charges on the passengers. The Authority, in any case, is mandated to determine tariffs for aeronautical services (including amount of Development Fees) taking into consideration the economic and viable operation of the major airports. Hence, after determining such aeronautical tariffs (as well as UDF), the airport's viability would be ensured in terms of financial returns. Any amount

obtained through commercial exploitation of land would then be over and above what is required for such economic viability or feasibility.

11.36 BIAL had also stated that:

"If market value of the Land is deducted from RAB, BIAL would get little or no benefit from the lease of the land and resultantly, will not be able to utilize any income from utilization of such land to make the airport project more viable.

This objective of development of areas surrounding the airport is sought to be achieved under clause 4.2(v) of the Land Lease Deed. Land value adjustment would be a full and complete disincentive for the airport operator to utilize the land for facilitating further investment around the airport as BIAL would be virtually forced to buy land, which is already leased to it."

- 11.37 From the above submissions, the Authority noted that BIAL is making two distinct and separate arguments (a) BIAL plans to use any income from utilisation of land for commercial exploitation to make the project viable and (b) BIAL plans to use income from commercial utilisation of land so as to facilitate further investment **around** the airport. (See Para 11.27 above)
- 11.38 As regards (a) the Authority noted that BIAL appeared to have in mind to use the income from commercial exploitation of these land for the viability and bankability of the Project, but as of now, has not given any concrete proposal to do so, nor has it indicated the quantum of finances that would be available from such a proposal to make the airport viable. The Authority accordingly proceeded with the exercise of Tariff determination (including UDF) without taking into account any such revenues from commercial exploitation of land in the absence of any concrete proposal from BIAL. As and when BIAL firms up its proposals of commercial exploitation of land and informs the Authority, the Authority proposed to suitably consider the same and give effect to it while determination of aeronautical tariffs. BIAL's concern thus appeared to be only regarding the mechanism viz. reduction of the fair market value of such lands from RAB. The reduction in RAB on account of land monetisation is only a mechanism to give effect to the nexus between grant of land in excess of the airport requirements made to BIAL and the express objective of such grant mentioned in the Lease Deed viz. to improve the project's (namely airport) viability.
- 11.39 As regards (b), the Authority noted that the relevant words of clause 4.2 of the Land Lease Agreement are "facilitates substantive further investment in or around the

Airport". However, BIAL in its submission mentioned in Para 11.3 above has referred to only "facilitating further investment **around** the airport". Hence the concern of BIAL that if the Authority's makes land value adjustment, it would be a full and complete disincentive for the airport operator to utilize the land to make substantive further investments appears to be confined only to further investments around the airport and not to further investments in the airport. The Authority noted therefore that the intention of BIAL appears to be to exploit the land leased to it so as to facilitate substantive further investment around the Airport. This means that according to BIAL, one of the purposes of lease of land to BIAL is to enable BIAL to make "substantive further investments around the airport". The Authority noted that for doing so it requires the approval of KSIIDC as per clause 4.2 of the Land Lease Agreement. BIAL had not given any details of any proposal in this regard, requesting thereupon not to deduct the fair market value of the land that it wishes to commercially exploit so as to "facilitate substantive further investment **around the airport**". As and when BIAL submits such details, the Authority would be able to suitably consider the same. Hence the concern of BIAL regarding land value adjustment under clause 4.2 (v) of the Land Lease Agreement can be suitably considered after it submits appropriate proposal duly approved by KSIIDC to the Authority and thus appears to be unfounded. At any rate, the letter of the GoK (Refer Para 11.59 below) makes GoK's views clear. The Authority has decided to request GoK's inputs on the manner and quantum of land monetisation to be reckoned towards determination of Aeronautical Tariffs. (Refer Para 11.79 below)

11.40 The Authority did not consider it to be the objective of grant of excess land to the airport operator that he can get additional revenue over and above what is considered and determined as a fair rate of return. The land of around 4008 acres (Schedule 2 of the Concession Agreement) had been acquired by the State Govt. under the relevant provisions of Land Acquisition Act (and leased to the airport). The Authority noted that the rent for land is taken at 3% (to be increased to 6% of the cost from the eighth year) based on Rs. 175 crores which the Authority understands may be the acquisition cost under the Land Acquisition Act. The Authority thus understood that the rental does not make distinction between different uses permitted on this land, namely, the airport activities and the other commercial activities (clause 4.2(v)). The Authority understood that land for commercial purposes is generally based on certain well-defined principles of disposal including that of auction and, at any rate, attracts a higher lease rental.

- The lease rental, generally, varies depending on the user and is substantially higher than 3% (to be increased to 6% from the 8th year of operation viz. 24th May 2008) for any commercial exploitation. The Authority, therefore, reasonably concluded that the lease rental of 3% is on account of the land made available only for the stated public purpose like airport and further especially to make the airport feasible. Hence any receipts from the commercial exploitation of land outside the terminal building should also go to reduce the incidence of passenger charges namely UDF. In Authority's view, one of the definitive and transparent mechanisms of doing so was to reduce the value of land used for such commercial exploitation (outside the terminal building) from RAB.
- 11.42 Subtracting the fair market value of such lands under commercial exploitation from RAB is based on the Lease Deed signed between KSIIDC and BIAL. If the land in excess of the airport development is used for commercial exploitation but its benefit does not flow to the Airport, it was not clear to the Authority in what manner the excess land is to be understood to have been given to improve the airport's viability.
- 11.43 The grant of land is one of the elements of assistance to improve the project's viability. The "Project" is the development of airport which also is defined in the Lease agreement. One of the items that the Authority is required to take into consideration while determining aeronautical tariffs is "Revenue from services other than Aeronautical". This would indicate that under the AERA Act such revenues from services other than aeronautical can also to be taken into account while determining aeronautical tariffs.
- 11.44 **Summary of the arguments with respect to Real Estate**: Based on the above considerations, the Authority summarised its analysis regarding the linkage between grant of land and the financing needs of the Airport (both Capital as well as Revenue) as under:
 - 11.44.1 The land lease deed clearly states (Use of Land in clause 4.2) that the purposes of using the land include, inter alia, "(i) conducive or incidental to implementation of the Project and (IV) improves the commercial viability of the Project"
 - 11.44.2 Project is defined to mean "the design, **financing**, construction, completion, commissioning, maintenance, operation, management and development of the Airport". Hence, Land Lease Deed clearly links the financing needs of the Project with grant of land.
 - 11.44.3 SSA excluded area or CA excluded area are only with reference to termination as a consequence of default by the relevant parties and not upon expiry of the term (after

- 30/60 years as the case may be). BIAL can use the SSA or CA excluded area (without being an Airport Operator) only in the event of GoK or GoI not choosing to take over the same, and that too after re-negotiation as per the then prevailing policy of GoK. Hence, the SSA / CA excluded areas have relevance only if there is an event of default.
- 11.44.4 The Authority therefore infers that mere provisions of SSA / CA excluded area in no way detract from the purpose of grant of land for financing the Airport Project.
- Taking into account the above circumstances and noting that BIAL has submitted that their Real Estate Business Plan has not been finalised, the Authority did not propose to make any adjustments to RAB on this account during the current control period. It had therefore calculated the Aeronautical Tariff Proposals without such adjustment to RAB, both under Single and Dual Till and had presented the results thereof for Stakeholders' Consultations.
- 11.46 The Authority had analysed BIAL's submission in MYTP 2013 on treatment of land in CP 22 as follows:
- 11.47 The Authority noted that the dispute with respect to Hotel Project has still not been finally resolved. The Authority had stated its position on consideration of Land Value adjustment and setting aside Interest received on Security Deposit relating to the Hotel Project in CP 22. Accordingly, no adjustment was proposed to be carried out for Land Value adjustment during the current control period and the Authority did not propose to take both the Interest free Security Deposit and the Interest earned thereon into reckoning for tariff determination for the present, pending final outcome of the arbitration proceedings.
- 11.48 As far as treatment of land leased by the GoK to BIAL for the purposes of Airport Project was concerned, the Authority had received letter from GoK dated 26th August 2013. GoK has indicated that:
 - "...The guiding principles for utilisation of land are contained in Land Lease Deed (LLD), Concession Agreement (CA) and State Support Agreement (SSA). The relevant clauses are reproduced in the Annexure enclosed. ..."
- 11.49 The Authority had given detailed consideration to these principles during its analysis of the MYTP 2012 submissions made by BIAL and issue of CP 14. The Authority had felt that all the receipts (either of Capital nature or Revenue nature) obtained from commercial exploitation of land in excess of Airport requirements should be ploughed back entirely into the Airport Project (particularly in accordance with Clause 4.2 (iv) and (v) of the

Land Lease Deed). This alone would be in consonance with the Land Lease Deed as well as other agreements.

The Authority had noted that in Clause 4.2 of the Land Lease Deed, BIAL was required to take approval of KSIIDC for use of Land for certain purposes. Land transactions can be quite complex and the Capital and Revenue receipts generated from such transactions also depend on a variety of factors including its usage, tenure of lease, taxation etc. The Airport Order indicated this aspect (Refer Para 7.5 on "Asset Ring Fencing Principles"). The Authority was cognizant of the fact that land has been acquired by the GoK for the public purpose of establishment of the Airport Project. Hence the Authority felt that GoK would be in appropriate position to ascertain the reasonableness or otherwise of the receipts accruing to BIAL on account of exploitation of land in excess of the requirements of the Airport Project. The Authority had stated that the Authority would take into account the manner of considering the receipts (both Capital and Revenue) to be reckoned towards determination of Aeronautical Tariffs based on appropriate response to be received from GoK and would take the same into account for the purposes of truing up the tariff computations for the current control period while determining Aeronautical tariffs in the next control period.

11.51 The Authority had accordingly proposed as follows:

- 11.51.1 Not to carry out any adjustment to RAB on account of monetisation of land owing to the development of Hotel, while determining Aeronautical tariffs during the current control period, as detailed in its CP14.
- 11.51.2 Taking note that the Hotel project is under Arbitration, not to consider Rs. 76.50 Crores of Interest Free Security Deposit as well as Rs. 43 crores of interest earned on the deposits for the period from December 2006 till March 2013, for the purpose of tariff determination for the present, pending final outcome of the arbitration proceedings. (Refer Para 11.11 above)
- 11.51.3 To take into account the manner and treatment of considering the receipts from commercial exploitation of land (both Capital and Revenue) to be reckoned towards determination of Aeronautical Tariffs based on appropriate response to be received from GoK and take the same into account for the purposes of truing up the tariff computations for the current control period while determining Aeronautical tariffs in the next control period.

c. Stakeholders' comments with respect to treatment of land

11.52 The Authority had received comments from Stakeholders to CP 14 and CP 22. Comments received on manner of treatment of land is as detailed below:

11.53 APAO had stated as under on treatment of land as under:

"Provisions of the Land Lease Deed and the State Support Agreement clearly outline the fact that in order to make the airport project feasible, the State is providing support in the form of resources (finance, land etc.) to enable BIAL to build, own and operate the Airport. This includes BIAL undertaking non-airport activities as stated in 4.7.1.2 and 4.7.1.6.

In the event of the termination or expiry of the State Support Agreement and the Concession Agreement, BIAL has the option to continue to exercise leasehold rights in respect of the SSA Excluded Area or the CA Excluded Area respectively though it would have surrendered the remaining area which was taken on lease. This underlines the fact that these excluded areas were given to the Operator for commercial exploitation whether or not it continued to operate the airport so as to not impair the financially viability of the Operator.

In light of this, the recommendation of the Authority in the Consultation Paper (stated in 4.7.1.7 above) would go against the spirit of the State Support Agreement and the Land Lease Agreement from which it is evident that the very purpose of providing the various resources including land was to make the project feasible. It therefore does not take into consideration the fact that the use of land for non-airport activities was integral to the case for developing the airport and making it financially feasible.

The development of a Greenfield airport is a risky undertaking. It involves the construction of significant infrastructure before even a single plane can fly. There are therefore very high fixed up front costs which are very difficult for an investor to justify. The provision of land for commercial exploitation was therefore intended to provide the investor with additional sources of revenue to enable returns on the airport project to be sufficient to remunerate the capital employed. Nevertheless, the Operator also has to bear the risks associated with the various businesses forming a part of the non-airport activities. For instance, the Bangalore Airport Hotel is saddled with an arbitration award of approximately Rs.3.77 billion. The proposed deduction of the market value of such land from the RAB runs counter to the whole purpose for which it was provided. It would mean that it is effectively being used to reduce

aeronautical revenues rather than to augment the returns to the Operator from the investment made in the project. By significantly reducing the overall returns to the project, this would reduce returns of the developer/operator and negatively impact its financial viability in a way that is retrospective and contrary to natural justice and the principles of good regulation.

In view of the above discussion, it is APAO's view that assigning a value to the land and subtracting the same from the RAB is not consistent with the Concession Agreement. Such adjustment is also a disincentive for land monetization as it negatively impacts the internal accruals which would have been otherwise available for expansion.

The treatment proposed by the Authority also gives rise to a question whether by way of a corollary, the market value of land used for the airport business should be added to the RAB for tariff determination.

Further, 4.7.1.8 above brings out the dichotomy in the position taken by the Authority. On one hand, it states that it does not wish to go into the use of land by the operator for non-airport purposes and on the other, it is taking an inconsistent position that it wants to pass on the benefit of exploitation of the land given, by reducing the Regulatory Asset Base to the users.

It is also worth noting that the proposed treatment of land used for non-airport activities is neither consistent with the theory of single till, nor with international precedents.

First, in so far as there is an economic rationale for single till, it is that all the revenues attributable to airport-related activities should be taken into account. There is no good reason why this should encompass land and activities outside the airport boundary which do not arise directly from operation of the airport.

Second, to the extent that values and/or revenues are moved into and out of the RAB, account needs to be taken of the totality of the financial flows involved. In this case, that would mean the costs of developing any land, not just the revenues or market value.

Based on a review of the practices at several global airports, it is apparent that real estate is kept outside the regulatory till and not used to cross subsidize airport charges. This practice is followed at the Belgium (Bruxelles), France (Charles de Gaulle, Orly), Germany (Frankfurt, Hamburg), Italy (Rome, Milan and Venice),

Australia (Adelaide, Brisbane, Melbourne, Perth and Sydney) and New Zealand (Auckland, Christchurch and Wellington) airports.

In short, AERA's proposal is in principle inconsistent with the agreements on which the airport's development was based and investment attracted (representing a substantial retrospective adjustment to those terms) and is in practice inconsistent with regulatory best practice."

11.54 FIA stated as below:

II.B.BIAL's inordinate delay in firming up Real Estate Business Plan

- 21. Government of Karnataka ("GoK") has given 4008 acres of land to BIAL on lease which, as per Clause 4.2 of the Land Lease Agreement can be used for inter alia "improving the commercial viability of the Project". No details are provided about usage of such land parcel. BIAL has submitted that it has yet not firmed up the Real Estate Business Plan to monetize the land in excess of Airport requirements. BIAL's inability to firm up the Real Estate Business Plan has not been backed by substantial rationale. It appears that Real Estate Business Plan has not been planned/ provided to avoid the regulatory assessment by the Authority which in turn helps BIAL to project higher tariffs
- (a) Regulatory Asset Base-In absence of Real Estate Business Plan, the land that is in excess of airport requirements and BIAL wishes to commercially exploit, cannot be determined. Hence, such land value has not been reduced from RAB by the Authority.

"It is submitted that the Authority should stipulate the time limit within which BIAL has to submit its Real Estate Business Plan for commercial exploitation of land so that it can be appropriately factored in determining aeronautical tariffs (including UDF) for the control period.

Determination of RAB

The Authority has provided, in Clause 7.7 of the Single Till Order and Clause 5.2.4 of AERA Guidelines, that it will make an adjustment in respect of any land associated with an asset excluded from the scope of RAB by reducing from RAB the value of such land being the higher of (i) prevailing market value of such land, or (ii) book value of such land. As per the CP No. 14/2013-14, to which CP No.22/2013-14 is an addendum, it is understood that the Authority has also proposed to commission experts to independently determine and review the market value in respect of such land. It is

submitted that the Authority ought to commission an expert study for determination of fair value of the land, so that it could have been deducted from RAB. BIAL's failure to market/monetise the land cannot work to BIAL's own advantage. The benefit of awarding land to BIAL ought to have been made available to the Stakeholders including the passengers.

As per Paragraph No. 6.20 and Proposal No. 4 (a)(i) of CP No.22/2013-14, for the purpose of commercial exploitation of excess land, BIAL has undertaken construction activity of only one hotel which is also under arbitration, The Authority has proposed not to reduce market value of Hotel land from RAB. Also, as per CP No.14/2013-14, BIAL had submitted that it has not yet firmed up the Real Estate Business Plan with respect to monetization of the lands, hence the fair market value of the land that it wishes to commercially exploit should not be reduced from RAB. In the CP No.22/2013-14 (at Paragraph No. 6.7), BIAL has reiterated that neither real estate activity nor investment is envisaged as the Real Estate Business Plan has not yet been firmed up and no investment has been made as on date. Hence, real estate business scenario has not been considered by BIAL even in its revised MTYP which is reflected in the CP No.22/2013-14 and BIAL's approach has been accepted by the Authority The Authority, while standing on its view of land value adjustment, has not made any land value adjustment which is in contravention of the AERA Guidelines (Clause 5.2.4) and Single Till Order (Clause 7.7 of Single Till Order) and implies huge burden on passengers and airlines. Such a casual approach by the Authority contrary to its own Single Till Order and the AERA Guidelines is unacceptable."

11.55 Zurich Airport has stated that:

"Land value adjustment is proposed on the premise that land was leased to make airport project viable. AERA has misunderstood the concept of viability. A project becomes more viable if it is more profitable. As Greenfield airports or modernization of brownfield airports was considered to be a risky venture, additional land was provided on lease to make the project more viable, i.e. provide more returns to shareholders of airport operator. Weaning away of profits would be contradictory to the purpose for which land was leased."

11.56 Sanjeev V Dyamannavar states as below

From the L&T Bangalore Hotel Limited Balance sheet as on 31st March'2011, it clearly mentions of Hotel in Ph1 and Ph-2.

As per original plan, 312 rooms with built up area of 273,404 Sq ft with Hotel Height of 45M.

During 2011, L&T has completed Ph-1 being with 154 rooms as against 321 rooms with height of 30.36 Mtrs.

Same L&T Bangalore Hotel Limited mentions saying, they have sought additional contiguous land with BIAL admeasuring 2.10 acres to enable Company to construct 321 rooms as envisaged.

Corresponding file of L&T Bangalore Hotel Balance sheet as on 31st March'2011 attached with mail.

Looking at all these and amount BIAL is liable to pay at the cost of Passengers and Govt, complete Airport Hotel issue would have got resolved with just providing extra land of 2.1 acres when BIAL has not firmed its real estate business and also with extra land available at its disposal and also paying 3% lease rent to GOK.

This shows there was no real interest shown from the stake holder who own the Airport in developing.

Now this whole asset is not functional and making it burden on the BIAL. This cannot burdened to the passengers either thru the UDF or thru increased Landing Charges.

We feel AREA should take this strongly and not entertain such things in determination of Airport charges for BIAL.

2. BIAL's future plan for Real Estate Development:

A. BIAL has already received permission for SEZ from SEZ authority on 4th June'2008 for 113 Hectares. This indicates that BIAL has done detailed project report for the SEZ way back 2007 / 2008 before getting approval from the SEZ Board / GOI. After this, there are no developments from BIAL in developing the same with BIAL.

B. Karnataka State Pollution Control Board (KSPCB) details environmental impact assessment on BIAL 4000 acres development:

Environment Impact assessment for the future BIAL airport expansion: Here land use details given for the 4000 Acers as per the details available at Karnataka State Pollution Control board (KSPCB)

4000 Acres of land has been given during year 2005 by GOK to Airport promoters and Airport was commissioned on 24th May'2008. Now its 9th year since land is in possession with Airport Developers where Real Estate Development plans has not yet firmed up and also no investment made as on date. This shows the lack interest by

the Airport Promoters in developing Real Estate Business in Airport Land. Purpose of excess land allocated by GOK to Airport promoters is to get additional revenue from the real estate business with airport premises

Even in consultation paper BIAL airport promoters have admitted or claimed Real Estate Development plans has not yet firmed. But looking at other GOI and GOK approvals for the SEZ at BIAL Devanhalli with following reference:

Ref A: Minutes of the 26th meeting of the SEZ Board of Approval held on 4th June 2008, at 10.00 A.M., to consider proposals for setting up of Special Economic Zones File attached with mail and Page No: 621. Request for setting up of a sector specific Special Economic Zone for Airport based SEZ at BIAL Airport, Devenahalli, Bangalore, Karnataka by Bangalore International Airport Ltd. – 113 hectares (Supplementary Agenda – Item No. 1 - SI. No. 9):

The Board noted that the proposal was deferred in the meeting of the Board of Approval held on 1st May 2008, with a request to the Developer to make a detailed presentation on the proposal. The Developer made a presentation on the proposal, explaining that (MRO) maintenance, repair and overhaul of aircrafts, cargo village, healthcare exports and high tech manufacturing would be carried out in the SEZ. Regarding healthcare exports, the Department of Revenue pointed out that only IT enabled services relating to health sector such as medical transcription, etc. may be carried out in the SEZ and no hospital would be allowed to be set up. The Board further noted that the Developer was in possession of the land. The State Government also recommended the proposal. After detailed deliberations, the Board decided to grant formal approval for setting up of a sector specific Special Economic Zone for Airport based SEZ at BIAL Airport, Devanahalli, Bangalore, Karnataka by Bangalore International Airport Ltd. over an area of 113 hectares.

http://www.sezindia.nic.in/writereaddata/BOA/Minutes%20of%2026th%20BoA%2 Oheld%20on%204th%20June%202008.pdf

Ref $B \setminus :$

Total proposed investment is Rs 3384.65 Crore on 112.96 hectares for SEZ at BIAL.

Ref Sr No -51

http://www.karnatakaindustry.gov.in/documents/formallyapprovedsezs.pdf

Above things shows that BIAL Airport promoters had taken action on the SEZ but not acted on this. Whereas in case of Hyderabad Rajiv Gandhi International Airport at

Hyderabad has Aerospace park already operational at 1000 acres, 250 acres out of that as SEZ. For your reference GMR Aerospace park information can be seen at GMR website.

Even if you look at other airports like Cochin, Mumbai and Delhi have already executed non-aeronautical business as real estate business within Airport boundary to add value to the customer and generate additional income.

Now building this SEZ within BIAL will be costly affairs as the cost of construction has gone up compared to 2007/2008 base prices which will affect the rate of return on investments on real estate business within BIAL. This will have adverse impact on the UDF and returns to the promoters. This need to be questioned to promoters even current date, they claim that they do not have plan.

C. As per BIAL on the Airport City Development: Here as per the GVKs Bangalore Airport website for the Airport City development (landside development). Broadly, the proposed preliminary development mix envisages 4 separate concepts:

- 1. Center of Excellence:
- 2. IT-ITES SEZ
- 3. Business District:
- 4. Central Area:

http://www.bengaluruairport.com/ourBusiness/airportCity.jspx?_afrLoop=1697423 850057388&_afrWindowMode=0&_adf.ctrlstate=aanxvgt93_4

From the above details, it's very clear, real estate development activities are planned but not executed as compared to HIAL Airport / Hyderabad which was opened during same time.

"BIAL should have come up with the plans to commercialize the land as more than 5 years has been passed of handing the land. AERA should stick to the UDF as proposed now and look for benefit to common man"

11.57 BPAC stated as under on treatment of land

"a. For non-development of committed assets like hotel etc. on time, why not a penalty be imposed?

d. Commitment on commercial exploitation of land may be made time bound and appropriate penalty be imposed on failure to adhere to such commitments."

We understand that the arbitration process on hotel is over now and hence the current status including the change of ownership if any need to be considered. Or else, the amount of security deposit to be transferred to an ESCROW account.

Commitment on commercial exploitation of land may be made time bound and appropriate penalty be imposed on failure to adhere to such commitments."

11.58 APAO has reiterated its comment made on CP14, stating as follows in comments to CP 22:

"2.2. Regulatory Asset Base (RAB) and Treatment of Land / Real Estate

As regards the land leased by the Government of Karnataka (GoK) which was used by BIAL for commercial exploitation, the Authority had noted in Consultation Paper No.14 that it may not be correct for BIAL to benefit from the land being given mainly for the purpose of running an airport by exploiting it for commercial purposes. The Authority had thus sought to pass on to the users, the benefit of exploitation of the land so given, by reducing the Regulatory Asset Base. In paragraph 6.23 of Consultation Paper No.22, the Authority has stated as follows:

"Land transactions can be quite complex and the Capital and Revenue receipts generated from such transactions also depend on a variety of factors including its usage, tenure of lease, taxation etc....The Authority is cognizant of the fact that land has been acquired by the GoK for the public purpose of establishment of the Airport Project. Hence the Authority feels that GoK would be in appropriate position to ascertain the reasonableness or otherwise of the receipts accruing to BIAL on account of exploitation of land in excess of the requirements of the Airport Project. The Authority would take into account the manner of considering the receipts (both Capital and Revenue) to be reckoned towards determination of Aeronautical Tariffs based on appropriate response to be received from GoK and would take the same into account for the purposes of truing up the tariff computations for the current control period while determining Aeronautical tariffs in the next control period."

APAO Response:

As per Clause 4.1 of the Land Lease Deed, "KSIIDC hereby grants permission and consent, to BIAL to use the Site, and BIAL agrees to use the Site in accordance with the Master plan, for carrying out of the Activities and the following...". 'Activities' is a defined term and includes both airport and non-airport activities as outlined in Schedule B to the land lease deed. Thus, per clause 4.1, BIAL is entitled and permitted

to undertake all airport and non-airport activities as defined and described in the land lease deed.

As per Clause 4.2 of the Land Lease Deed, "BIAL may, with the approval of KSIIDC (such approval not to be unreasonably withheld), in addition to the above Purposes, utilize the Site for any other purposes, which in its opinion is (i) conducive or incidental to implementation of the Project; and/or (ii) conducive or incidental to the operation and management of the Airport; and/or (iii) enhances the passenger/cargo traffic at the Airport; and/or (iv) improves the commercial viability of the Project; and/or (v) facilitates substantive further investment in or around the Airport."

As per Clause 4.2 (iii) of the State Support Agreement, BIAL shall "promote the development of the Non-Airport Activities with the objective of progressively generating a higher share of revenues for BIAL from such activities"

Further, Clause 10.2 of the State Support Agreement states that "...GoK recognizes that BIAL may carry out any activity or business in connection with or related to the development of the Site or operation of the Airport to generate revenues including the development of commercial ventures such as hotels, restaurants, conference venues, meeting facilities, business centres, trade fairs, real estate, theme parks, amusement arcades, golf courses and other sports and/or entertainment facilities, banks and exchanges and shopping malls". Thus, it can be seen that the Land Lease Deed as well the State Support Agreement explicitly allow commercial exploitation of land.

The GoK has, in a letter written to the Authority dated August 26, 2013, stated as follows:

"...The guiding principles for utilisation of land are contained in Land Lease Deed (LLD), Concession Agreement (CA) and State Support Agreement (SSA). The relevant clauses are reproduced in the Annexure enclosed. ..."

Although the GoK has upheld the sanctity of the Land Lease Deed, Concession Agreement and the State Support Agreement, APAO is unable to fathom the Authority's proposal to seek GoK's opinion in respect of the reasonableness or otherwise of the receipts accruing to BIAL on account of exploitation of land in excess of the requirements of the Airport Project when it has been explicitly stated in the SSA and LLD. In APAO's view, since the guiding principles for utilization of land are already given in the SSA and LLD, there should be no ambiguity regarding the reasonableness of receipts or their treatment as capital or revenue. The details of aeronautical and

non-aeronautical revenue submitted by BIAL to the Authority are in consonance with the usage of land in accordance with both the SSA and LLD. APAO is therefore categorically of the view that the details submitted by BIAL should be considered by the Authority in determination of aeronautical tariffs and that an opinion from GoK in this regard would be unnecessary. As stated in our submission related to Consultation Paper No.14, it is APAO's view that assigning a value to the land and subtracting the same from the RAB is not consistent with the Concession Agreement. Such adjustment is also a disincentive for land monetization as it negatively impacts the internal accruals which would have been otherwise available for expansion. Such adjustment is in principle inconsistent with various clauses of the LLD and of the SSA on which the airport's development was based and investment attracted (representing a substantial retrospective adjustment to those terms) and is in practice inconsistent with regulatory best practice."

11.59 On land use GOK has stated as follows:

"The Kempegowda International Airport at Bangalore is one of the fastest growing airports in the country. It is also envisioned to develop this airport as a hub for Southern Region and South East Asia. This calls for expansion of facilities at the airport from time to time in line with the traffic growth and master plan. Keeping this in mind, GOK has provided around 4008 acres of land to BIAL on lease basis to cater to the ultimate capacity of about 50 million passengers with the configuration of, two parallel simultaneously operable runways and the corresponding airside and landside facilities. It may be clarified that no land has been provided exclusively or specifically for commercial or non-airport activities. However, as per the master plan approved by BIAL Board, about 720 acres is available for such activities. As mentioned in the earlier letter dated 26th August 2013, the guiding principles for utilisation of land are contained in the Land Lease Deed, Concession Agreement and State Support Agreement.

With reference to the DO letter dated 24th October 2013 of AERA referred at (5) above, we have no issue with the stand taken by the Authority that whatever revenue BIAL may generate from the commercial exploitation of the "excess" land should be entirely ploughed back into the Airport Project. This is in consonance with our views (please refer our letter dated 26th August 2013) wherein we have stated that the passengers' interest is paramount. We feel that our passengers should enjoy world class facilities....

As regards monetising land transactions is concerned, AERA may commission an independent study from a professional agency (as has been proposed by AERA in respect of other aspects such as assessing reasonableness of asset allocation, reasonableness of capital cost incurred etc.) and a copy of such study report may be made available to the GOK."

d. BIAL's comments on Stakeholders' comments with respect to treatment of land

11.60 On Sanjeev Dyamannavar's comments, BIAL has stated as follows:

"2 (A) (B) and (C) BIAL reiterates its submissions made in this regard earlier inter alia in Appeal No.2/2011, Appeal No. 7/2011 responses dated April 8, 2013, September 22, 2013, February 28 2014. BIAL submits that real estate development is a part of the master plan for environmental clearance purposes and appropriate investments will be made keeping in mind market conditions and regulatory clarity. BIAL however reiterates that 'real estate' activities are beyond the purview of regulation by AERA.

11.61 On GOK letter, BIAL has commented as:

"This is in response to Government of Karnataka (GOK) letter dated 6th March 2014.

BIAL has made detailed submissions to the AERA ...

As regards the contention of GOK that revenue generated from commercial exploitation of excess land should be utilised for development of the project and that Real estate income should not be considered for cross subsiding aeronautical charges by way of reduction from RAB, BIAL submits that the above approach is appropriate. We also agree with view of GoK that passengers should enjoy world-class facilities. All our efforts are towards creating world-class facilities.

We note that GoK concur with the plea of BIAL that incremental amount generated because of adoption of Shared Revenue Till should not be reduced from RAB at the end of the current control period as it tantamount to making it a single till, thereby constraining the cash flow and exposing the airport to enormous operational risks including the risk of plummeting standards of maintenance and inability to meet debt repayment covenants. In relation to deduction from RAB, we would like to submit that any deduction from a given value, where such value was never added, is uncalled for, unjustified and unacceptable.

Regarding GoK's view on appointment of professional agency for monitoring land transactions, BIAL submits that the Land Lease deed has clear provisions in terms of utilisation of land for Non Airport activities/commercial purposes. Hence, there is no

need for appointing any agency for monitoring land transactions which would in any case, be transparent and compliant with good governance."

11.62 On BPAC comments, BIAL has stated that:

"The arbitration process regarding the hotel and the subsequent process before the court of district judge at Devanahalli have culminated in a settlement between the parties, including treatment of the security deposit. Information regarding the settlement is being submitted to AERA as a part BIAL's response in the present consultation process.

BIAL submits that real estate activities are outside the purview of regulation without prejudice. BIAL submits that commercial exploitation of land has to be evaluated on the basis of investments, return and market conditions."

11.63 On FIA's comments on Land usage and its treatment in computation of Aeronautical tariffs, BIAL has stated that:

"BIAL reiterates its submissions made in this regard earlier inter alia in Appeal 2/2011, Appeal 7/2011, and responses dated April 8, 2013, September 22, 2013 and February 28, 2014. In the absence of regulatory clarity, BIAL has submitted its views on real estate as part of its submissions. BIAL however reiterates that 'real estate' activities are beyond the purview of regulation by AERA.

BIAL submits that the arbitration proceedings were concluded and an award dated April 20, 2013 was passed. BIAL had subsequently filed A.S No 15001/2013 challenging the said arbitral award in the court of the Hon'ble district judge at Devanahalli. During the pendency of A.S No 15001/2013, the parties have entered into a settlement agreement and subsequently pursuant to the settlement agreement, A.S No. 15001/2013 was withdrawn vide memo of withdrawal dated March 12,2014.

BIAL reiterates its submissions made in this regard and in relation to real estate activities earlier inter alia in Appeal No 2/2011, Appeal No 7/2011, and responses dated April 08, 2013, September 22, 2013 and February 28, 2014. BIAL reiterates that 'real estate' activities are beyond the purview of regulation by AERA."

e. BIAL's own comments on Authority's proposals on treatment of land

11.64 On treatment of land and hotel under arbitration, BIAL, in response to CP 14 has stated as follows:

"LAND VALUE ADJUSTMENT

- a. Authority has proposed not to undertake land value adjustment in this control period. However, paragraph 10.16 of the CP provides that, Authority reiterates its views on land value adjustment prescribed in the Airport Guidelines, i.e. Direction No.5. In that light, the CP has indicated that land value adjustment will be applied with respect to land utilized for construction of the hotel. However, on account of pendency of arbitration proceedings with regard to the hotel, the CP provides that there will be no land value adjustment in the current control period.
- b. In paragraph 10.11 of the CP, it has been stated that deliberations on why upfront deduction is being proposed have been detailed earlier. We submit that no reasoning for land value adjustment is provided in Order No.13 or Direction No.5. The aforesaid order and directions only set out the proposed mechanism to effect land value adjustment and do not indicate reasons for upfront deduction being proposed. Also, no consultations were held in this regard prior to issuance of Order No.13. In this context, we reiterate submissions made in our written submissions dated April 08, 2013.
- c. BIAL submits that, at paragraph 10.13 of the CP, Authority has specifically stated that it confines its jurisdiction to assets, upon which airport activities alone are conducted. Therefore, by its own admission, Authority does not have powers to exercise jurisdiction over such land where activities that are not connected with the airport are conducted.
- d. BIAL submits with utmost respect that, even as admitted by the Authority and in accordance with the AERA Act, the Authority's jurisdiction is restricted to airport activities alone. Consequently, the land value adjustment as proposed by Authority needs to be relooked into and not to be made applicable to BIAL.
- e. BIAL humbly submits that proposals regarding land value adjustment are not in accordance with the AERA Act. Without prejudice to BIAL's submission regarding regulatory till mechanism, per Authority's interpretation of Section 13(1)(a)(v), Authority can consider revenue received from services other than aeronautical services for determination of aeronautical tariffs. The proposed land value deduction is upfront and without taking into account whether actual revenue is generated and if so, the extent thereof. At the time when land value adjustment is proposed to be made, BIAL may not have, and/or be, in a position to generate any revenue in respect

of such land. Effecting land value adjustment, prior to utilization of land will therefore run contrarian to the viability of the project.

- f. Authority has stated in clause 10.11 that "it may not be correct for BIAL to benefit from the land being given mainly for the purpose of running an airport". The land lease deed entitles BIAL to use leased land for airport activities as well as non-airport activities. As per BIAL, leased land was provided to it inter alia to enable BIAL to generate revenues therefrom. Utilization of leased land for commercial purposes was one of the incentives provided to BIAL. BIAL requests the Authority to consider the terms of the land lease deed and land value adjustment needs to be relooked into.
- g. BIAL submits that Authority's reliance on clause 4.2 of the land lease deed is not apposite. Per clause 4.1 of the land lease deed, BIAL is entitled to use leased land both for aeronautical as well as non-aeronautical activities. Relevant portion of clause 4.1 is extracted below for immediate reference:

"KSIIDC hereby grants permission and consent, to BIAL to use the Site, and BIAL agrees to use the Site in accordance with the Master plan, for carrying out of the Activities and the following..."

'Activities' is a defined term and includes both airport and non-airport activities as outlined in Schedule B to the land lease deed. Thus, per clause 4.1, BIAL is entitled and permitted to undertake all airport and non-airport activities as defined and described in the land lease deed. Clause 4.2 requires BIAL to seek KSIIDC's permission if the proposed utilization is in addition to the purposes set out in clause 4.1. From a conjoint reading of clauses 4.1 and 4.2, BIAL submits that no prior permission of KSIIDC is required for carrying out non-airport activities set out in Schedule B. Without prejudice, even clause 4.2 provides that KSIIDC shall not withhold its approval unreasonably.

- h. BIAL submits that land value adjustment appears to have been proposed on the premise that BIAL will make extraordinary profits on leased land and therefore, despite upfront deduction, BIAL will be able to obtain adequate returns from such land. This premise may not be in line with the business realities being faced by BIAL for the following reasons:
- (i) Leased land is located far away from Bangalore city;
- (ii) Monetization requires entrepreneurial ability to market the potential of leased land for commercial utilization;

- (iii) Leased land is not serviced land and requires huge investment for providing required utilities;
- (iv) Monetization of land, given the lack of commercial and/or industrial development in the vicinity of BIAL, may not result in huge deposits at the inception. Alternatively, the lease rentals/yields/income from the lease land may accrue over years spread over to the entire tenure of lease period. Lack of immediate returns may make monetization commercially unviable;
- (v) Real estate activities can also pose business risks to BIAL and consequently, the airport. While a mechanism is provided for upfront deductions, no mechanisms are proposed in case of business losses. BIAL submits that in case of business losses in real estate activities, proposed land value adjustment will pose tremendous risk to smooth functioning of the airport.

BIAL humbly submits to the Authority that Land value adjustment needs to be relooked into and not to be made applicable to BIAL.

HOTEL ARBITRATION

BIAL had concessioned out construction of a five star facility to a consortium of L&T Limited and EIH Limited. Arbitration was initiated between BIAL and L&T Bangalore Airport Hotel Airports Limited ("BAHL") and the arbitral tribunal has passed an award directing BIAL to pay a sum of Rs. 301 Crore along with interest at the rate of 18% for delayed payment as well as refund of security deposit of Rs. 76.5 Crore along with interest at the rate of 18% from the date of the award. BIAL has challenged the arbitral award and filed Arbitration Suit No.15001/2013 under Section 34 of the Arbitration and Conciliation Act, 1996 before the Principal District and Sessions Judge, Devanahalli, Bangalore. BIAL has also entered into discussions for expeditious construction of the hotel. BIAL is faced with huge risk of cash flow and other risks in relation to the hotel project.

12. REAL ESTATE: As regards proposals in the CP, BIAL submits as under:

The state of Karnataka has already specified the uses to which the leased land can be put to in the land lease deed;

Authority has determined that certain real estate activities on leased land will not form a part of RAB. Such assets and underlying land needs to be excluded from regulation; and

Real estate activities are not connected to the 'airport'. Thus, even under single till, activities beyond the 'airport' may not be within the purview of the Authority. Airport has been defined under the AERA Act as follows:

"'airport' means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes an aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934 (22 of 1934)".

Aerodrome has been defined in the Aircraft Act, 1934 as follows:

"'aerodrome' means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or appertaining thereto;"

AERA Act requires determination of tariffs for aeronautical services provided at the airport and therefore, excludes land value adjustment.

BIAL submits that the non-obstante provision contained in Article 13.5.2 of the Concession Agreement makes it apparent that even post expiry of the term, risk of non-airport activities continues with BIAL. Moreover, Article 13.7, which deals with termination upon efflux of time, makes a specific reference to Article 13.5.2. BIAL therefore submits that it will continue to be saddled with risks associated with non-aeronautical services post termination on default and/or termination on account of efflux of time. BIAL submits that, provisions in relation to CA Excluded Area and SSA Excluded Area denote the following:

- (i) That BIAL will be saddled with risks associated with non-airport activities even after it has ceased to operate the airport;
- (ii) That airport activities and non-airport activities are treated as fundamentally different activities under the Concession Agreement;

In view of the above, BIAL submits that proposals in relation to land value adjustment, which make the non-airport activities riskier, be revoked.

BIAL has made detailed submissions in respect of land value adjustment hereinabove in relation to Proposal No.5 and the same is reiterated herein for the sake of brevity. In this backdrop, BIAL once again requests Authority to consider our proposals regarding exclusion of land value adjustment."

11.65 In BIAL's comments to CP 22 BIAL has stated that:

"BIAL reiterates submissions in this regard as part of its submissions dated April, 2013 and September, 2013. BIAL reiterates that, as per clause 4.1 of the Land Lease Deed

(LLD) read with Schedule B, BIAL is free to utilize the land for Airport & Non Airport activities. Clause 4.2 of the LLD requires BIAL to seek the approval of the Government if any activities that are not covered in Schedule B are proposed to be undertaken. Thus, Clause 4.2 is inapplicable to situations when clause 4.1 is applicable. BIAL therefore respectfully submits that Authority's reliance on clause 4.2 to the exclusion of clause 4.1 is erroneous. Moreover, the State Support Agreement (SSA), vide clause 10.2 specifically recognizes that BIAL may carry out any Non-Airport Activities. Further as per clause 4.2 (iii) of SSA, BIAL has been mandated to promote the development of Non-Airport Activities. Therefore, the proposals in relation to land value adjustment are not in consonance with the provisions of the LLD, SSA or Concession Agreement. The above submissions are supported by GoK in its letter dated 26th August, 2013.

As stated earlier, even under Section 13(1) (a) (v), Authority has no jurisdiction over real estate activities since these activities are not non aeronautical but non-airport.

HOTEL ARBITRATION

BIAL had concessioned out construction of a five star facility to a consortium of L&T Limited and EIH Limited. Arbitration was initiated between BIAL and L&T Bangalore Airport Hotel Airports Limited ("BAHL") and the arbitral tribunal has passed an award directing BIAL to pay a sum of Rs. 301 Crore along with interest at the rate of 18% for delayed payment as well as refund of security deposit of Rs. 76.5 Crore along with interest at the rate of 18% from the date of the award. BIAL has challenged the arbitral award and filed Arbitration Suit No.15001/2013 under Section 34 of the Arbitration and Conciliation Act, 1996 before the Principal District and Sessions Judge, Devanahalli, Bangalore.

As submitted earlier, BIAL submits that hotel and the underlying land has to be kept outside the purview of regulation."

f. Authority's examination of Stakeholders' comments (including comments from BIAL) with respect to treatment of land

- 11.66 The Authority has carefully reviewed the comments received from various stakeholders on the treatment of land given by the GoK for the Project.
- 11.67 The Authority notes that APAO has supported BIAL's contention that land should be kept outside the purview of the regulation and that FIA, BPAC, Sanjeev Dyamannavar and other stakeholders have stated that land value should be adjusted. The Authority has also

carefully gone through the comments provided by GoK in this regard.

- The Authority has noted that APAO has stated in its comments to CP 14 that in the event of termination or expiry, BIAL has an option to continue to exercise leasehold rights. The Authority has carefully examined the various clauses and the recital in the Land lease Deed and State Support Agreement and had detailed its analysis as part of CP 14 (Reproduced in Para 11.12 to Para 11.44 above). The Authority had analysed the different treatment that would be given in case of termination as opposed to expiry of the period of lease. The Authority does not wish to detail the arguments on the same again here.
- 11.69 The Authority notes that APAO has commented that the provision of land was intended to provide the investor will additional source of revenue and that deduction of market value of land runs counter where the same is used to reduce aeronautical revenues rather than to augment the returns to the Airport Operator. The Authority's regulatory framework provides for fair rate of return to be given to the Airport Operator and as detailed by the Authority in Authority's analysis the Authority understands that it cannot be the intent of GoK to acquire land in excess of the Airport requirement without a specific link to ensure that the returns from the same are used to reduce the burden on the passengers. Moreover, reduction from RAB of the market value so monetised was suggested by the Authority as one of the mechanism to bring about nexus between the land monetisation and the Public purpose of Airport as well as reducing the burden on the passengers. The Authority also notes that comments from GoK vide letter dated Para 11.59 above make it clear that GoK "have no issue with the stand taken by the Authority that whatever revenue BIAL may generate from the commercial exploitation of the "excess" land should be entirely ploughed back into the Airport Project".
- 11.70 The Authority has also noted APAO's question whether by way of a corollary, the market value of the land used for airport business should be added to the RAB for tariff determination. The Authority notes that it is a common economic principle that return is to be provided only for the costs incurred by the Airport Operator in creation of assets. The Authority is unable to understand how will there be a return provided to the Airport Operator by notionally adding a value of land to the RAB. The Authority's proposal of carrying out land value adjustment is only due to the fact that the land has been provided by the GoK for the purpose of Airport Project and any gains from use of excess land should be used towards setting off the Aeronautical tariff.

- The Authority has noted that APAO has given details of several global airports where real estate is kept outside the Regulatory Till. The Authority notes that the Regulatory Framework for the Airports in India have to be implemented considering the prevailing conditions in each Airport. The Authority is also not aware if in the airports cited by APAO, whether there was land given by the Government to the Private Operator based on which the Private Operator could carry out the Airport Project. The Authority also understands that in some of the Airports cited above the pattern of ownership or the Regulatory Framework are different from what exists in India.
- 11.72 The Authority notes FIA's comment that BIAL has delayed firming up Business pan to avoid regulatory assessment and help project higher tariffs and has urged the Authority to stipulate a time limit within which BIAL has to submit the real estate business plan. Similarly the Authority notes a comment from BPAC on why a penalty should not be imposed for non-development of committed assets like hotel. The Authority also notes Sanjeev Dyamannavar's comment on approved SEZ and that the projects have not been executed by BIAL, unlike real estate developments which have taken place in other airports such as Delhi, Mumbai, Hyderabad etc.
- 11.73 The Authority notes that the Airport Project is of a long duration with the initial concession period of 30 years extendable to another 30 years at the option of BIAL. The Authority notes that such real estate developments could take place within the concession period based on the business plan, economic scenario and various other factors which BIAL may evaluate, which the Authority would not comment on. The Authority also notes that there are no defined timelines for development of the real estate provided in the Concession Agreement/ Land Lease deed/ State Support Agreement. The Authority had noted that the revenues from land monetisation would be reckoned towards determination of Aeronautical tariffs as and when the same is carried out by BIAL. Hence the Authority is unable to consider the argument of FIA / BPAC that there has to be a timeline and penalty for the delay or non-development of real estate.
- 11.74 FIA has noted that the Authority proposes to commission experts to independently determine and review the market value of land. The Authority infers that FIA is referring to the Airport Guidelines. The Authority has also noted FIA's comment that the Authority has not considered any land value adjustment for the hotel being developed. The Authority has decided to request GoK, being the entity who has acquired the land and leased the land to

BIAL, to determine the manner of reckoning the land monetisation in determination of aeronautical tariffs and to indicate the quantum thereof. The Authority decides to request GoK to communicate to the Authority in this regard, which will be appropriately considered at the time of truing up of the Aeronautical tariffs for the current control period, during the determination of Aeronautical Tariffs for the next control period.

- 11.75 The Authority has noted Sanjeev Dyamannavar's comment on the additional land that could have been given to resolve the dispute on the Hotel Project and complete the hotel. The Authority has also noted BPAC comment that the arbitration process is over and the current status including change of ownership should be considered. The Authority has stated earlier that the Authority does not wish to go into the land transactions that may be carried out by the Airport Operators but would only consider a mechanism to reckon the land monetisation in determination of Aeronautical Tariffs for which the Authority proposes to write to GoK as detailed in Para 11.74 above
- 11.76 The Authority notes that APAO is unable to fathom Authority's proposal to seek GoK's opinion on land monetisation. The Authority notes that GoK is the owner of the land provided to BIAL and hence accordingly would be able to detail the manner of treatment of the land. The Authority also has noted that GoK has clearly stated in its response that:
 - "...we have no issue with the stand taken by the Authority that whatever revenue BIAL may generate from the commercial exploitation of the "excess" land should be entirely ploughed back into the Airport Project. This is in consonance with our views (please refer our letter dated 26th August 2013) wherein we have stated that the passengers' interest is paramount. We feel that our passengers should enjoy world class facilities...."
- 11.77 The Authority has had discussions with BIAL on the status of land leased for Hotel Project which was under Arbitration. BIAL has stated that the arbitration process for the Hotel has been completed and a settlement agreement has been entered into. The Authority also notes from the submission made by BIAL that BIAL has made an investment of Rs. 2 crore towards purchase of 100% shares of Bangalore Airport Hotel Limited (BAHL) in December 2013. The Authority is informed that BIAL has entered into settlement pursuant to the Arbitration award and that the settlement amount is also distinct from Rs. 2 crores paid by BIAL for purchase of shares. This investment of Rs. 2 crore is also apart and distinct from the amount of Rs. 1.98 crores that BIAL has spent on arbitration proceedings and has therefore

not been considered as a cost in computation of Operation and Maintenance Expenditure of BIAL (Also refer Para 18.72 below). The Authority infers that this acquisition of shares makes BAHL a 100% subsidiary of BIAL and that the assets of the Hotel would stand in the balance sheet of the subsidiary and not on the Balance sheet of BIAL. In other words, BAHL is a separate legal entity apart and distinct from BIAL. While determining the Aeronautial Tariffs of an Airport company or an operator, the Authority treats such an airport company as a standalone entity. For the present, the Authority has decided not to reckon the land valuation of the Hotel for reduction from RAB as one of the mechanism to bring about nexus between the lease of land to the Airport Project and Aeronautical Tariffs including UDF. (Refer Para 11.34, 11.35 above). As indicated in Para 11.79 below, the Authority, on receipt of response from GoK would accordingly reckon the adjustment to be carried out in truing up the Aeronautical tariffs for the current control period at the time of determination of Aeronautical Tariffs for the next control period.

- 11.78 The Authority notes from GoK's comment that "excess land should be entirely ploughed back into the Airport Project" and that "It may be clarified that no land has been provided exclusively or specifically for commercial or non-airport activities. However, as per the master plan approved by BIAL Board, about 720 acres is available for such activities". From a combined reading of these two sentences, the Authority understands that the land available in excess of normal airport requirement is 720 acres.
- 11.79 While GoK has stated that "AERA may commission an independent study from a professional agency", the Authority has decided to seek GoK's inputs on the manner and quantum of land monetisation to be reckoned towards determination of Aeronautical Tariffs. Based on the input from GoK, the same will be considered for True up of Aeronautical Tariffs for the current control period at the time of determination of Aeronautical Tariffs for the next control period.

Decision No. 7. Treatment of land

a. The Authority decides

- Not to carry out any adjustment to RAB on account of monetisation of land owing to the development of Hotel, while determining Aeronautical tariffs during the current control period.
- ii. Taking note that the Hotel project was under Arbitration and that according to BIAL has now been settled and certain payments are contemplated therein, not to

- consider Rs. 76.50 Crore of Interest Free Security Deposit as well as Rs. 6.89 Crore of interest earned per annum on the Hotel deposit for the period 2011-12 to 2013-14, for the purpose of tariff determination for the present. (Refer Para 11.11 above)
- iii. To take into account the manner and treatment of considering the receipts from commercial exploitation of land (both Capital and Revenue) to be reckoned towards determination of Aeronautical Tariffs based on appropriate response to be received from GoK (Refer Para 11.79 above) and take the same into account for the purposes of truing up the tariff computations for the current control period while determining Aeronautical tariffs in the next control period.

12 Traffic Forecast

a. BIAL Submission on traffic forecast

- 12.1 BIAL had, in their MYTP 2012 submission provided the traffic forecast and had stated that traffic numbers estimated are based on the:
 - 12.1.1 Actual traffic for 2011-12
 - 12.1.2 Management Estimate of the traffic numbers for the period 2012-13 and 2013-14
 - 12.1.3 Estimated Growth in traffic considering the growth rates defined by L&B in their Aviation Activity Forecast study report dated August 2010, for the years 2014-15 and 2015-16.
- 12.2 BIAL had submitted that the actual traffic scenario for 2011-12 and the projected traffic scenario for 2012-13, considering the actual traffic had indicated a de-growth in traffic.
- 12.3 BIAL had proposed a traffic band (both upper and lower) of 5% as part of its MYTP submission.
- The actual traffic and Growth in traffic numbers for BIAL for the period 2008-09 to 2011-12 as submitted by BIAL along with the data for the period 2012-13 submitted by BIAL on 13th May 2013 based on a further query from the Authority, together with the Compounded Annual Growth Rate for the past 5 years and 10 years till 2012-13, were as follows:

Table 33: Actual Traffic Data of Bangalore for the period 2008-09 to 2012-13

Category	Dom / Int'l	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	CAGR 5Y	CAGR 10Y
	Dom	8.59	7.12	7.99	9.36	10.33	9.49	2.01%	14.75%
PAX (Mn)	Int'l	1.55	1.64	1.94	2.27	2.38	2.5	10.10%	21.17%
	Dom	101898	91057	90578	94969	100973	86848	-3.15%	9.15%
ATM #s	Int'l	11700	13920	14075	16818	18222	18340	9.41%	16.76%
Cargo	Dom	69987	58310	90493	101700	103803	82756	3.41%	7.15%
(tons)	Int'l	108160	99690	172677	188693	196186	143911	5.88%	16.76%

12.5 BIAL had proposed the following growth rates for the remaining 3 years in the control period:

Table 34: Traffic Growth rates proposed by BIAL for the period 2013-14 to 2015-16 - MYTP 2012

Category	Dom / Intl	2013-14	2014-15	2015-16
DAY (Adilli	Domestic	8.50%	11.42%	11.11%
PAX (Millions)	International	11.30%	12.88%	12.36%

Category	Dom / Intl	2013-14	2014-15	2015-16
A T. A . / -	Domestic	8.95%	11.76%	11.00%
ATM #s	International	9.25%	11.77%	11.00%
C (1)	Domestic	12.38%	2.07%	-6.51%
Cargo (tons)	International	9.27%	3.97%	-0.97%

12.6 Also, further to a subsequent query, BIAL had, on 15th May 2013 submitted the revised traffic study by Landrum & Brown dated February 2013. Summary of traffic numbers proposed by BIAL for the period 2013-14 to 2015-16 were as given below:

Table 35: Traffic forecast for the period 2013-14 to 2015-16 as projected by L&B in their February 2013 report

Category	Dom / Intl	2013-14	2014-15	2015-16
DAY (MA:II:)	Domestic	10.24	11.49	12.77
PAX (Millions)	International	2.69	3.00	3.31
ATN 4 11 -	Domestic	96980	108440	118480
ATM #s	International	19400	21290	23190
Cargo (tons)	Domestic	240300	260000	282000

12.7 Pursuant to AERAAT Order, BIAL has made submissions to the Authority on various aspects. Extracts of aspects relevant to Traffic Forecasting, submitted by BIAL are given below:

"26. Traffic Forecasting:

Authority's Approach: Per clause 10.3 of Order No.13 and clause 6.15.2 of Direction No.5, any variation of traffic forecast, outside of the bands, will be shared equally between airport operators and users.

Observations: Airport operators have little or no control over the volume of traffic. As it can be understood by examining historical traffic behaviour, traffic normally/ functionally behaves in correlation to general economic scenario in the country and abroad and the general economic situation in the country in a subsequent year is almost impossible to predict. The September 2008 collapse of Lehmann Brothers and the consequent economic downturn was not predicted by leading economists / financial institutions or even governments world over. Further, there are a large number of uncertainties which are simply beyond prediction, such as, failure of a particular carrier resulting into zero ATMs from that carrier. In this context, it may be relevant for us to consider studies of a world renowned economist / thinker Mr. Nassim Nicholas Taleb and his works on insufficiency of knowledge and consequent inability to predict. In the absence of effective tools for prediction being available with the airport operator, it would be a herculean task and a near impossibility for the airport operator to accurately forecast the traffic volumes. More often than not,

unprecedented situations could have the effect of pushing the traffic volumes beyond prescribed bands. In such circumstances, all that the airport operator can do is to provide its services efficiently and the AERA Act prescribes a mechanism for implementation of set service quality parameters. Besides, the proposed regulations will force the airport operator to focus on issues like forecasting, which ought not to be the primary concern of the airport operator. As a result, the airport operator's focus on providing good quality airport services may be diverted. The costs of regulatory compliance will also sky rocket since prediction would require the airport operator to engage with specialized professionals in that field. It is our humble opinion that, a regulation requiring myriad compliances will increase the cost of regulation and will also restrict entrepreneurial freedom.

Submissions: The Authority is submitted to reconsider its proposals not to provide error correction for forecasting errors beyond the bands that may be prescribed by the Authority and should provide for complete error correction. For services other than regulated services, there should be no regulation whatsoever including with respect to forecasting error correction.

BIAL had, in its MYTP 2013 submission, considered the actual traffic for 2011-12 and 2012-13 and had considered the same growth estimates as proposed by it earlier for the periods 2013-14 to 2015-16, except for revising cargo growth projections upwards for the period 2013-14 from 12.38% for Domestic Cargo and 9.27% for International Cargo submitted in MYTP 2012 to 22.89% for Domestic Cargo and 31.12% for International Cargo in MYTP 2013.

b. Authority's Examination of BIAL Submission on Traffic forecast

The Authority had carefully considered the various comments made by BIAL on Traffic Forecasting as part of the comments regarding Airport Order and Airport Guidelines. The Authority had noted the submission of the airport operator that the traffic forecast is after all a forecast and the airport operator does not have much control over the volume of traffic. The Authority noted that in some other regulatory regimes, the regulator projects an appropriate and reasonable traffic forecasts and determines the aeronautical charges thereof. Any benefit or loss owning to the actual traffic being higher or lower than the forecast is, therefore on the airport operator's account. Under the Indian context, however, the Authority felt that it would be reasonable if the traffic projections are trued up with regard to

actual volume of traffic. The Authority emphasised, however, that by doing so, the Authority has, to a large extent, mitigated the risk associated with airport operations and therefore, this should accordingly, be reflected in the fair rate of return on equity.

- 12.10 The Authority noted that there were sharp increases/ decreases in the actual traffic at Bangalore over the past 10 years, with traffic in 2012-13 indicating de-growth in traffic as compared to the previous year.
- 12.11 The Authority noted that the actual traffic for 2012-13 as submitted by BIAL was different than the traffic forecast provided by BIAL for the year. Difference in traffic for 2012-13 was tabulated as below:

Table 36: Difference in Traffic for 2012-13 between the MYTP 2012 submission and actual traffic

Category	Dom / Intl	Actuals	As per BIAL
PAX (Millions)	Domestic	9.49	9.11
	International	2.50	2.47
ATM #s	Domestic	86,848	85,903
	International	18,340	18,743
Cargo (tons)	Domestic	82,756	90,493
	International	1,43,911	1,72,678

- 12.12 The Authority proposed to correct the traffic in the MYTP submission for 2012-13 based on the actual traffic numbers.
- 12.13 Revised traffic numbers the period 2013-14 to 2015-16, by applying the growth rates proposed by BIAL on the actual traffic for 2012-13 were as given below.

Table 37: Revised projected traffic for the period 2013-14 to 2015-16 - CP 14

Category	Dom / Intl	2013-14	2014-15	2015-16
PAX (Millions)	Domestic	10.30	11.47	12.75
	International	2.79	3.15	3.54
ATM #s	Domestic	94,797	1,05,948	1,17,601
	International	20,372	22,769	25,273
Cargo (tons)	Domestic	93,005	94,929	88,749
	International	1,57,258	1,63,503	1,61,916

12.14 On comparison of the L&B projections received (Table 35) vis-a-vis revised projections for future period computed, the Authority noted that the revised projections computed were more or less in line with the L&B Projections. Also the growth rates assumed for the 3 years by BIAL were higher than the CAGR for the past 5 year period. In view of the above, the Authority proposed to consider the Growth rates for 2013-14 to 2015-16 as proposed by BIAL.

- 12.15 In view of the unstable growth with sharp increases and decreases, the Authority proposed to true up the actual traffic, without any band adjustment for the first control period, in the first year of the next control period
- 12.16 Based on the material before it and its analysis, the Authority had proposed in CP 22:
 - 12.16.1 To consider the actual traffic for the periods 2011-12 and 2012-13
 - 12.16.2 To consider the growth rates proposed by BIAL for the balance period of 2013-14 to 2015-16 in the current control period.
 - 12.16.3 To true up the traffic volume based on actual growth during the current control period while determining aeronautical tariffs for the next control period commencing w.e.f 01.04.2016.
- 12.17 Further, the Authority's examination and proposal to MYTP 2013 submission detailed in CP 22 was as below:
- The Authority noted that the projections provided for 2012-13 as part of BIAL's MYTP 2012 submission matches with the actuals for 2012-13 and the actuals are marginally higher than the projections. The Authority noted that the traffic projections for the period 2013-14 to 2015-16 were considering traffic growth rates as given below:

Table 38: Traffic Growth rates considered by BIAL – MYTP 2013

Category		2013-14	2014-15	2015-16
	Domestic	8.50%	11.42%	11.11%
Passengers	International	11.30%	12.88%	12.36%
	Consolidated	9.08%	11.73%	11.38%
ATM	Consolidated	9.49%	11.76%	11.00%
Cargo		28.11%	3.30%	-2.89%

12.19 Based on the above growth rates, the traffic estimates for 2013-14, 2014-15 and 2015-16 computed by BIAL in MYTP 2013 were as below

Table 39: Revised Projected traffic for the period 2013-14 to 2015-16 estimated by BIAL

Category	Dom / Intl	2013-14	% Growth	2014-15	% Growth	2015-16	% Growth
	Domestic	10.30	8.50%	11.47	11.42%	12.75	11.11%
PAX (Millions)	International	2.79	11.30%	3.15	12.88%	3.54	12.36%
	Total	13.08	9.08%	14.62	11.73%	16.28	11.38%
	Domestic	94,834	9.19%	1,05,989	11.76%	1,17,646	11.00%
ATM #s	International	20,336	10.88%	22,728	11.76%	25,228	11.00%

Category	Dom / Intl	2013-14	% Growth	2014-15	% Growth	2015-16	% Growth
	Total	1,15,169	9.49%	1,28,717	11.76%	1,42,874	11.00%
	Domestic	1,01,700	22.89%	1,03,803	2.07%	97,046	-6.51%
Cargo (tons)	International	1,88,693	31.12%	1,96,186	3.97%	1,94,282	-0.97%
	Total	2,90,392	28.11%	2,99,989	3.30%	2,91,328	-2.89%

12.20 The Authority had also received traffic estimate from AAI vide letter number AAI/CHQ/ REV/ Airport Tariff/ AERA/ MYTP/13/996 dated 17th September 2013. Traffic projections estimated by AAI for BIAL were as given below:

Table 40: Traffic projections submitted by AAI with respect to BIAL

Category	Dom / Intl	2013-14	% Growth	2014-15	% Growth	2015-16	% Growth
	Domestic	9.77	3.00%	10.07	3.00%	10.37	3.00%
PAX (Millions)	International	2.68	7.03%	2.87	7.00%	3.07	7.00%
	Total	12.45	3.84%	12.93	3.86%	13.44	3.89%
	Domestic	88,028	2.00%	89,789	2.00%	91,584	2.00%
ATM #s	International	19,440	6.00%	20,607	6.00%	21,843	6.00%
	Total	1,07,468	2.70%	1,10,396	2.72%	1,13,427	2.75%
	Domestic	85,848	4.00%	89,281	4.00%	92,853	4.00%
Cargo (tons)	International	1,49,762	4.00%	1,55,753	4.00%	1,61,983	4.00%
	Total	2,35,610	4.00%	2,45,034	4.00%	2,54,836	4.00%

The Authority noted that passenger traffic growth projections of BIAL were around 10% per annum from 2012-13 till 2017-18. Hence, with this growth rate, the passenger through put at the end of FY 2017-18, according to BIAL would be 20.14 Million. This would match the Terminal capacity of T1 including T1A of 158,667 sq. m. Based on these projections, the Authority noted that BIAL had projected commencement of construction of Terminal 2 (T2) in the current Control period.

As far as the ATMs were concerned (which have a direct bearing on the Runway handling capacity), BIAL's estimate of growth in ATMs was also 10%. On account of these projections, BIAL felt that there may be necessity of a Second Runway whose construction is also proposed by BIAL to commence in this control period. However, the Authority noted that these estimates would need to be juxtaposed against the actual performance over 2013-14 as well as trend in 2014-15 to arrive at the timing of the commencement of T2 as well as the new Runway. For this purpose, the stakeholders' consultations would be most significant. The Authority also understood that in some of the Foreign Airports, the passenger handling

capacity per Runway appeared to be around 25 Mio to 30 Mio per annum.

- 12.23 The Authority proposed to true up the actual traffic, without any Traffic band adjustment for the first control period, in the first year of the next control period, as proposed by it in the earlier CP 14.
- 12.24 Based on the material before it and its analysis, the Authority had proposed in CP 22:
 - 12.24.1 To consider the actual traffic for the periods 2011-12 and 2012-13
 - 12.24.2 To consider the growth rates proposed by BIAL for the balance period of 2013-14 to 2015-16 in the current control period as detailed in Table 20.
 - 12.24.3 To true up the traffic volume based on actual growth during the current control period while determining aeronautical tariffs for the next control period commencing w.e.f 01.04.2016

c. Stakeholder Comments on Issues pertaining to Traffic forecast

- Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff detailed in CP 14 and CP 22. Comments relating to Traffic forecast are presented below:
- 12.26 On the issue of Traffic Forecast, FIA stated that:

"The airport operator is required to submit traffic forecasts as part of the MYTP submissions and that the Authority reserves the right to review such forecast assumptions, methodologies and processes and to determine the final forecast to be used for the determination of tariffs.

BIAL had submitted traffic study by Landrum & Brown ("L&B") as requested by the Authority. The Authority found that the final traffic projections of BIAL are more or less in line with L&B study. Therefore, it has accepted the projections of BIAL as is for the period FY 2013-14 to FY 2015-16 without conducting any independent study. However, it must be emphasized here that the BIAL engaged L&B to conduct the traffic study and the Authority had used this study to benchmark the traffic projections of BIAL which is a clear case of conflict of interest. This also implies that L&B traffic projections cannot be considered to be an independent study. The Authority should take note of this fact and conduct/commission its own assessment of traffic forecasts as the same are the base for determining ARR and UDF".

- 12.27 FIA has, in response to CP 22, reiterated its comment made in CP 14.
- 12.28 On the issue of Traffic Forecast, BPAC stated that

"Traffic projections once frozen for deciding investments should not be reworked or manipulated to justify the variations in investment without undergoing an approval process and consultation process."

d. BIAL's response to Stakeholder Comments on Issues pertaining to Traffic Forecast

- Subsequent to the receipt of comments from the Stakeholders on CP 14 and CP 22, the Authority forwarded these comments to BIAL seeking its response to these comments. BIAL has provided responses to the Stakeholders' comments, which are presented below:
- 12.30 On BPAC's comment, BIAL has stated that:

"BIAL submits that there are specific methodologies and approaches have been in practice so as to capture and evaluate the traffic projections and investment planning. Sufficient data is available in public domain and apprehensions of manipulation are misplaced."

12.31 On FIA's comment on Traffic Forecast, BIAL has commented that:

"BIAL submits that its traffic study has been conducted by internationally reputed and independent consultants who are known for their expertise and integrity. Further, as per CP No. 22, any variation from traffic projections are proposed to be trued up. "

- e. BIAL's own comments on Issues pertaining to Traffic Forecast
- 12.32 On the issue of Traffic Forecast, BIAL did not provide any comments.
- f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to Traffic forecast
- 12.33 The Authority had noted that comments have been received from FIA and BPAC on the traffic projections.
- 12.34 The Authority has noted FIA's comments that the traffic study was commissioned by BIAL which according to FIA is leading to conflict of interest. The Authority has also noted BIAL's response that the independent consultants are known for their expertise and integrity. The Authority noted that the traffic projections are estimates and the Authority had provided for truing up of the actual traffic for the current period at the time of determination of aeronautical tariffs for the next control period. The Authority also notes that the actual figures of traffic for 2012-13 and 2013-14 reasonably match the forecast made by BIAL (Refer Table

- 41) and thus the Authority does not find any reason to disregard the estimates of the consultants engaged by BIAL.
- 12.35 The Authority has noted BPAC's comment that traffic projections frozen for the purpose of Investment planning should not be reworked or manipulated. The Authority noted that BIAL had engaged a consultant to estimate the traffic projections earlier in 2010. The work of Terminal-1 expansion was commenced in 2010 and is now complete. The Authority notes that the consultants engaged by BIAL provided an update in 2013. Based on this update, BIAL has estimated the timelines for Terminal -2 and second Runway as well as other appurtenant facilities. Accordingly, BIAL has proposed additional expenditures indicated in Table 21 that the Authority has noted. Subject to the Stakeholders' consultations and firming up of cost estimates etc., BIAL would then commence the required works. According to BIAL, based on the current traffic projections, Terminal 2- Phase 1 for a capacity of 20 million passengers per annum would be required around 2018. The work of the runway would also have similar timelines. The question of reworking the traffic projections does not appear to be relevant for the present. The Authority notes that once the investment decision is made and activities commence, the same is not kept pending or changed based on subsequent developments regarding actual traffic variations from the estimates should they arise. While the traffic projections would be the basis for arriving at the investment decisions, the Authority had proposed to true up and accordingly adjust the Aeronautical Tariffs for the next control period based on the actual traffic for the 5 years in the current control period.
- 12.36 The Authority had also requested BIAL to provide details of the actual traffic for the year 2013-14. BIAL provide the same vide submission dated 5th May 2014
- 12.37 A comparison on the traffic numbers considered for 2013-14 in MYTP 2013 vis a vis the actual traffic numbers for 2013-14 submitted by BIAL is as given below:

Table 41: Traffic for 2013-14 - Projections -vs- actuals

Category	Dom / Intl	2013-14 as per MYTP 2013	2013-14 Actuals	Difference	Variance %
	Domestic	10.30	10.23	(0.07)	-1%
PAX (Millions)	International	2.79	2.63	(0.16)	-6%
	Total	13.08	12.86	(0.22)	-2%
	Domestic	94,834	99,267	4,433	4%
ATM #s	International	20,336	19,308	(1,028)	-5%
	Total	115,170	118,575	3,405	3%

Category	Dom / Intl	2013-14 as per MYTP 2013	2013-14 Actuals	Difference	Variance %
	Domestic	101,700	91,925	(9,775)	-11%
Cargo (tons)	International	188,693	150,501	(38,192)	-25%
	Total	290,393	242,426	(47,967)	-20%

12.38 The Authority notes that the actual traffic of BIAL is broadly in line with the estimates. The Authority proposed to consider the actual traffic for 2013-14 and projections for 2014-15 and 2015-16 based on the growth rates proposed by BIAL, on the actual traffic of 2013-14. Accordingly, the traffic data decided to be considered by the Authority for the current control period is as follows:

Table 42: Traffic data decided to be adopted by the Authority for the current control period

Category	Dom / Intl	2011-12	2012-13	2013-14	2014-15	2015-16	
			Actuals		Projected		
PAX (Millions)	Domestic	10.33	9.49	10.23	11.40	12.66	
	International	2.38	2.50	2.63	2.97	3.34	
ATM #s	Domestic	100902	86848	99267	111021	123232	
	International	18131	18340	19308	21692	24077	
Cargo (tons)	Domestic	83261	82756	91925	93826	87719	
	International	141733	143911	150501	156478	154959	

Decision No. 8. Traffic Forecast

a. The Authority decides

- i. To consider the actual traffic for the periods 2011-12, 2012-13 and 2013-14.
- ii. To consider the growth rates proposed by BIAL for the balance period of 2014-15 to 2015-16 in the current control period as detailed in Table 42.
- iii. To true up the traffic volume based on actual growth during the current control period while determining aeronautical tariffs for the next control period.

13 Cost of Debt

a. BIAL Submission on Cost of Debt

13.1 BIAL in its MYTP 2012 submission had stated that BIAL has taken loans to finance the Initial Airport construction and the term loan balances in books as of 31st March 2012 and 31st March 2013 were as given below:

Table 43: Details of Loan balances in the books of BIAL as of Mar 2012 and Mar 2013 – MYTP 2012 - Rs. Crore

Particulars	31 st March 2013	31 st March 2012
Rupee Term Loan (incl. addl. Loans)	1,634.90	923.37
Foreign Currency Loan	181.39	204.68
TOTAL	1,816.29	1,128.05

- 13.2 Also, in addition an amount of Rs. 335.50 Crores had been received as Interest free State Support Loan from the GoK which is due to be repaid from 2018-19 onwards. BIAL had, in its submission considered the State Support Loan as part of Debt with a 0% cost.
- 13.3 BIAL had submitted that, during the First Control period, the Capital Expenditure Projects were proposed to be funded based on Rupee Term Loan facilities to be availed as below:

Table 44: Details of capital expenditure proposed to be funded by Debt under Single and Dual Till as per BIAL – MYTP 2012 - Rs. Crores

Particulars	Amount
Amount proposed to be funded by debt under Single Till	2,788.86
Amount proposed to be funded by debt under Dual Till	1,611.11

- BIAL had submitted that the existing Rupee loans have an interest rate which has been recently set upwards to 11.5% and in view of the change in SBI PLR rates, an increase of 1% for 2012-13 and 2% for 2013-14 to 2015-16 was proposed in the submission. Foreign currency loans' interest on the ECB facility taken for the 1st Phase of the Project was considered at 10.15% on a fully hedged basis from the year 2012-13 by BIAL.
- 13.5 Based on the above parameters and the estimated Debt balance for each year in the Control period, BIAL had computed and submitted the Weighted Average Cost of Debt for the control period as follows:

Table 45: Weighted average cost of debt proposed by BIAL under Single Till – MYTP 2012 - Rs. Crore

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Total Interest cost (incl. capitalised)	133.98	183.55	234.18	235.10	323.13
Opening Debt balance	1,619.16	1,435.50	2,109.88	1,983.78	2,113.07
Closing Debt balance	1,435.50	2,109.88	1,983.78	2,113.07	3,275.75

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Average Debt Balance	1,527.33	1,772.69	2,046.83	2,048.43	2,694.41
Weighted Average Interest rate computed	8.77%	10.35%	11.44%	11.48%	11.99%
Weighted Average Interest rate for the period					11.00%

13.6 Pursuant to AERAAT Order dated 15th February 2013, BIAL had made submissions to the Authority on various aspects. Extracts of aspects relevant to Cost of Debt, submitted by BIAL are given below:

"21. Cost of Debt:

Authority's approach: The Authority has proposed an intensive scrutiny approach in clause 6.4 of Order No.13 read with clause 5.14 of Direction No.5 with respect to variation in the cost of debt over a control period. The Authority proposes to consider the forecast cost of existing and future debt within a control period, subject to the Authority being assured of reasonableness of such cost based on review, including of its sources, procedures and methods used for raising such debts. Per clause 5.1.6 of Direction No.5, the Authority would also consider the nature of financial instruments being used or proposed to be used to mobilize debt for determining a cost of debt.

Observations: As per extant international practices and standards with respect to utility regulators, intrusive regulation is employed, only when it is absolutely essential and unavoidable. BIAL understands that the Authority also proposes to determine tariffs with least amount of regulatory intervention in the day-to-day business of, and management of the airport by, the airport operator. The approach adopted with respect to variation and forecast in the cost of debt is intrusive and requires to be revisited. A review of the sources, procedures and methods used for raising debt by the Authority is excessively intrusive and vastly restricts entrepreneurial freedom. If a transparent process is adopted by the airport operator in line with prevalent market practices, there can be no requirement for further regulatory oversight. Any further regulatory oversight will constrain entrepreneurial ability and leveraging of market situation by the airport operator.

Submissions: In determining cost of debt, the Authority need not further require the airport operator to provide justifications if such loans are obtained in a transparent manner. To illustrate, if quotes for loans are called for from more than one bank and thereafter, a competitive quote is considered, BIAL prefers that such loans be accepted as such and without enquiry. Since there is scope for error correction or

truing up of accounts, a less intrusive approach would be in consonance with the overall regulatory objective of achieving efficiency without needlessly exposing airport users to risk. For services other than regulated services, there should be no regulation whatsoever including with respect to cost of debt. Further, in determining cost of debt, any fixing of ceilings on cost of debt need to be avoided.

22. Refinancing of debt:

Authority's Approach: The Authority expects airport operators to make every effort to refinance / restructure debt in clause 6.5 of Order No.13. The costs and benefits associated with refinancing would be passed on to the users.

Observations: The business reality is that refinancing / restructuring of debts is not taken recourse to frequently. Refinancing/ restructuring of debt is also many a times linked with obtaining further debt. To illustrate, certain existing debts may have to be moved to a new lender who is willing to offer further debt on competitive terms. These are decisions that are taken by the airport operator keeping in mind the airport business as a whole and impositions of restrictions in that regard will impede on the operational freedom of the airport operator.

Submissions: These are purely commercial decisions and BIAL prefers that these decisions be left to the wisdom of the airport operator. Since restructuring of debt is linked to myriad other factors, there cannot be expectations in this regard. For services other than regulated services, there should be no regulation whatsoever including with respect to refinancing of loans.

24. Interest Free or Concessional Loan Agreements:

Authority's Approach: Per clause 6.7 of Order No.13 and clause 5.1.5 of Direction No.5, the Authority has proposed to consider interest free or concessional loan arrangements at the actual cost of debt.

Observations: Interest free or concessional loans are provided to the airport operator as a fillip to its business operations and to enhance viability and profitability of the airport operator. By considering interest free or concessional loans at actual cost, such benefit is completely negated. To illustrate, if the airport operator obtains loans at market rates, the market rates would get reflected in the cost of debt and consequently, in the fair rate of return. Likewise, if interest free or concessional loans are obtained, since they will be considered at actual, no benefit will accrue to the airport operator at the time of calculation of fair rate of return. The proposed

arrangements will provide no incentive whatsoever for obtaining interest free or concessional loans and in the scheme of things proposed, interest free or concessional loans will become a misnomer. The proposed regulations are unfair to the airport operator because they deprive the airport operator of a benefit which was specifically conferred on it. For instance, if in a particular control period, the entire financing requirements of the airport operator are met with by interest free loans, the cost of debt will be zero, which in turn, will make the FROR zero / nil leaving the airport operator with no returns. This is certainly not contemplated under the AERA Act.

Submissions: The Authority should consider and provide returns at market rates for interest free or concessional loans. For services other than regulated services, there should be no regulation whatsoever including with respect to interest free or concessional loans.

- 13.7 BIAL, in its revised submissions in MYTP 2013 has considered the cost of debt as per its earlier submissions and has considered the rate of 13.5% for its Rupee Term loan for the period 2013-14 to 2015-16 and at 10.15% for the same period for the Foreign Currency loan.
- 13.8 BIAL had re-estimated the total debt by considering the actual debt balance as of 31st March 2013 and estimated debt for the balance period considering its gearing and other debt covenants built into its Financial model.
- 13.9 Accordingly, it had re-estimated the revised Weighted average cost of debt at 10.78% under Single Till and at 10.53% under Shared Revenue Till.

b. Authority's Examination of BIAL Submissions on Cost of Debt

- 13.10 The Authority in its CP 14 on Cost of Debt had analysed as under:
- 13.11 The Authority has carefully considered the various comments made by BIAL on Cost of Debt and related aspects as part of the comments regarding Airport Order, Airport Guidelines etc.
- 13.12 The Airport Guidelines specify that:
 - 13.12.1 Consider the forecast cost of existing debt, subject to the Authority being assured of the reasonableness of such costs based on a review including of its sources, procedures and methods used for raising such debt(s).
 - 13.12.2 Consider the forecast of future cost of debt proposed to be raised during the Control Period or such debt which may be subject to a floating rate of interest subject to the

- Authority being assured of the reasonableness of such costs based on a review of including of its sources, procedures and methods used for raising such debt(s).
- 13.12.3 Determine a weighted average cost of debt in a control period for the purpose of determination of FRoR and shall be based on the forecast quantum of debt for each Tariff year in a Control Period.
- 13.12.4 Consider for determination of Fair Rate of Return, interest free or concessional loan arrangements, deposits if any at the cost of such arrangements.
- While reasonableness is an important factor, in other regimes, Cost of Debt is assessed ex-ante and is not trued up based on actuals, where the expectation is to manage based on the Cost of Debt allowed. As of now, the debt contracted by BIAL is in the range of Rs 1816.29 crores, as per the Financial Statements submitted for the year ended 31st March 2013. The airport operator was expected to make reasonable efforts to contain the cost of debt if it is to be a cost pass-through as the Authority is proposing to do. Hence the Authority would need to be assured that such efforts are indeed made. However, the Authority noted that BIAL is a Board Managed company with 4 nominees of the State Promoters. It has representation from Senior level officials from GOI, AAI and GOK and is chaired by the Chief Secretary to the GOK. The Authority therefore presumed that while contracting debt, the Board would supervise the Management to make all reasonable efforts to contain the cost of debt.
- 13.14 Having regard to the fact that this was the first Control Period the Authority proposed to true up the Cost of Debt based on the actual cost incurred during the Control period (Except for providing for Foreign Exchange gains / losses for which the Authority's views have been clearly explained earlier in Airport Order)
- 13.15 In this context, the request of BIAL to give it return even on subsidy/ interest-free loan (that BIAL chooses to refer to as "Concessional loan") appeared rather unusual and for reasons mentioned in Para 13.16 below Authority is unable to accede to the same.
- 13.16 The Authority had carefully considered the example given by BIAL in respect of interest free or concessional loan agreement. BIAL had stated that if the interest free or concessional loans are given interest cost at actual, this "arrangement will provide no incentive whatsoever for obtaining interest free or concessional loans and in the scheme of things proposed interest free or concessional loans will become a misnomer." BIAL had further stated by way of an example that in the event the entire financing requirements of the project

operator are met with by interest free loans, the cost of debt will be zero which, in turn, will make the Fair Rate of Return zero leaving the airport operator with no returns.

- 13.17 Fair Rate of Return implies certain reimbursements to the airport operator on the investments made by it, and therefore, necessarily takes into account the costs of the airport operator in obtaining such finances. In the event that the entire capital cost is funded by interest free loan, the airport operator has no cost of obtaining finances. It was also assumed in the example that he had not brought in any equity. Hence neither the question of taking any return on equity nor taking into account any cost of debt arises. However, the guidelines on tariff determination would include other elements of costs like depreciation, operating and maintenance cost, etc. It was not clear to the Authority if the airport operator is not incurring any cost in obtaining finance then, what is the logic of still making some return available to him on such financing. The Authority also noted that this appeared to be a hypothetical example and generally interest free or concessional loans are made available to lower the costs associated with that particular project. Similar arrangement applies to Subsidy which is generally granted by Government to lower the cost associated with a project in question. In case of subsidy, there is a clear Accounting Standard as to how such subsidy is to be treated with reference to project cost. The Authority was thus unable to accept the argument advanced by BIAL in this respect. The Authority also noted that the term 'interest free or concessional loans' applied to such loans which bear interest either at zero rate or at rates lower than what were available in the market. Hence the issue put forth by the Operator of such loans becoming a misnomer only on account of not granting equivalent cost of debt to such loan was not tenable.
- 13.18 On review of submission made by BIAL on the Cost of Debt, the Authority noted that the Interest cost on loans and the Debt balances considered in the Business plan for 2011-12 and 2012-13 vary from the actuals as was available from the audited Financial Statements. The Authority proposed to correct the Interest cost and rate of interest based on the actual numbers available, for the period 2011-12 and 2012-13.
- 13.19 The Authority had carefully examined BIAL's submission on the need for increase in Cost of Debt in future. The Authority noted that the arrangements with Banks were at Floating rates which could increase/ decrease considering various factors, not limited to, the monetary policy of Reserve Bank of India, changes in individual banks' interest rate policies etc. However, there were no evidences / details provided by the company, for the increase in

interest rates proposed by it.

- Based on further information called for by the Authority, BIAL submitted the necessary information with respect to the existing loans taken, as of 31st December 2012. BIAL had also submitted auditor's certificate in support of the Interest rates submitted. The Authority had accordingly taken into account the interest costs as per actuals. The Authority found that based on the different interest rates of different banks and financial institution, ceiling of 12.5% on the interest cost of Rupee debt appeared to be reasonable for the remaining part of the control period. BIAL had however submitted that it expects the interest rates to harden and may go up to 13.5%. The Authority has analysed this concern separately in Para 13.21 below.
- The Authority had noted that the highest rate of interest applicable for BIAL stood at 11.75% for the Rupee Term Loan facility and 12% for the Bridge Loan, as could be seen from the submission and Auditor's certificate. The Authority had referred to the Mid-Quarter Monetary Policy of Reserve Bank of India (RBI). In its Mid Quarter Monetary Policy Review: March, 2013, RBI had reduced the repo rate by 25 basis points to 7.50%. As reported, this reduction in repo rate was passed on by most of the banks to its customers and experts from various banks expected further easing in this year. Further, RBI stated in its review that:

"....The foremost challenge for returning the economy to a high growth trajectory is to revive investment. A competitive interest rate is necessary for this, but not sufficient..."

- In view of the above, the Authority felt that it was not possible to take a definitive view in this matter. However, considering the RBI review and the current rate of interest applicable for BIAL, the Authority felt that the debt contracted by BIAL appears to be at an interest level, above which presently there appears to be little possibility of the cost of debt moving further up. The Authority was cognizant of the fact that while the current highest rate of interest for BIAL is at 12.00%, the loans from other banks are at current rates of interest of around 11.5%. Considering allowing for some head room, the Authority proposed to put a ceiling to the cost of debt for BIAL at 12.50%. In view of the above and for the purpose of determination of aeronautical tariffs, the Authority proposed not to accept an increase of 1% in the rate of interest of rupee term loan (from 12.5%) for the period 2013-14 to 2015-16 as proposed by BIAL as its future cost of debt.
- 13.23 Also, pursuant to a query by the Authority, to support the Interest cost on Foreign

Currency loan including the proposed cost of hedge, BIAL submitted relevant letter from the concerned bank, indicating the complete cost of ECB loan including hedging cost for the period 2013 till 2018. The Authority had accordingly taken this in its calculations for the weighted average cost of debt during the current control period.

- 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) subject to the proposed ceiling of 12.50% for the Rupee term Loan of BIAL and 10.15% for the ECB loan of BIAL. The Authority noted that the Authority may review this ceiling upon reasonable evidence that BIAL may present to the Authority in this behalf.
- 13.25 Revised cost of debt after considering the above changes and based on the reestimated quantum of debt as computed in the Business Model, based on all other changes carried out by the Authority, considered in CP 14 was given as below.

Table 46: Revised weighted average cost of debt under Single Till – CP 14 - Rs. Crores

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Total Interest cost (incl. capitalised)	129.72	145.43	242.41	249.22	298.97
Opening Debt balance	1,619.16	1,461.55	2,149.79	2,433.30	2,149.69
Closing Debt balance	1,461.55	2,149.79	2,433.30	2,149.69	3,221.89
Average Debt Balance	1,540.36	1,805.67	2,291.54	2,291.49	2,685.79
Weighted average Interest rate computed	8.42%	8.05%	10.58%	10.88%	11.13%
Weighted Average Interest rate for the period					10.04%

- 13.26 Based on the material before it and its analysis, the Authority in CP 14 proposed:
 - 13.26.1 To consider the actual cost of Rupee Term Loan and ECB Loan, paid by BIAL, for FY 2011-12 and FY 2012-13 towards the cost of debt for FY 2011-12 and FY 2012-13.
 - 13.26.2 To consider a ceiling in respect of the cost of debt for rupee term loan availed by BIAL at 12.50%.
 - 13.26.3 Not to accept the proposed increase of 1% in the rate of interest of rupee term loan for calculation of future cost of debt for the FY 2014-15 and FY 2015-16.
 - 13.26.4 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 12.50% for the Rupee Term Loan and 10.15% for the ECB Loan.

- 13.26.5 To review this ceiling upon reasonable evidence that BIAL may present to the Authority in this behalf.
- 13.26.6 To consider the Weighted average Cost of debt at 10.04% under Single and Till as detailed in Table 46.
- 13.27 Further Authority's examination and proposal on matter related to Cost of Debt in CP 22 is presented below:
- 13.28 The Authority proposed to consider the cost of debt at 12.5% for Rupee Term Loan and at 10.15% for the Foreign Currency Loan for the periods 2013-14 to 2015-16 in line with the proposal detailed by the Authority in CP 14.
- 13.29 The Authority proposed to consider the Weighted Average cost of debt considering actual cost incurred upto 2012-13 and estimated based on revised rates considered by it in Para 13.28 above.
- 13.30 The Authority had noted from the tariff model, submitted by BIAL, that the weighted average cost of debt differs between the Single Till Tariff model and the Shared Revenue Till tariff model. This was on account of difference in quantum of debt proposed under the different tills, which affects the computation of interest rate for the year.
- 13.31 Revised cost of debt after considering the above changes and based on the reestimated quantum of debt as computed in the Business Model, based on all other changes carried out by the Authority, considered in CP 22 was given as below.

Table 47: Revised weighted average cost of debt under Single Till - CP 22 - Rs. Crore

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Total Interest cost (incl. capitalised)	129.72	150.42	217.96	213.90	287.17
Average Debt Balance	1540.36	1805.67	2082.09	2044.59	2629.13
Average Interest rate computed	8.42%	8.33%	10.47%	10.46%	10.92%
Weighted Average Interest rate for the period	9.89%				

Table 48: Revised Weighted average cost of Debt under 40% Shared Revenue Till - CP 22 - Rs. Crore

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Total Interest cost (incl. capitalised)	129.72	150.42	217.96	213.90	287.32
Average Debt Balance	1540.36	1805.67	2082.09	2044.59	2630.36
Average Interest rate computed	8.42%	8.33%	10.47%	10.46%	10.92%
Weighted Average Interest rate for the period	9.89%				

- 13.32 The Authority proposed to consider other aspects like Interest on concessional loans etc. in line with its analysis detailed in CP 14.
- 13.33 Based on the material before it and its analysis, the Authority proposed:

- 13.33.1 To consider the actual cost of Rupee Term Loan and ECB Loan, paid by BIAL, for FY 2011-12 and FY 2012-13 towards the cost of debt for FY 2011-12 and FY 2012-13.
- 13.33.2 To consider a ceiling in respect of the cost of debt for rupee term loan availed by BIAL at 12.50%.
- 13.33.3 To consider interest for Foreign Currency loan at 10.15%.
- 13.33.4 Not to accept the proposed increase of 1% in the rate of interest of rupee term loan for calculation of future cost of debt for the FY 2014-15 and FY 2015-16.
- 13.33.5 To consider the Weighted average Cost of debt as detailed in Table 47 and Table 48 under Single Till and 40% Shared Revenue Till respectively.
- 13.33.6 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 12.50% for the Rupee Term Loan and 10.15% for the ECB Loan.
- 13.33.7 To review this ceiling upon reasonable evidence that BIAL may present to the Authority in this behalf.

c. Stakeholder Comments on Issues pertaining to Cost of Debt

- Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14 and CP 22. Stakeholders have also commented on cost of debt in respect of Kempegowda International Airport, Bengaluru. These comments are presented below:
- 13.35 FIA on the issue of cost of debt stated that the Authority has not provided breakup of the rupee term loan and ECB loan over the historic period and forecast period to calculate the actual cost of debt.

13.36 FIA had commented that:

"Tax savings should have been considered for determining Cost of Debt

As per Proposal No. 7 of the CP No. 14/2013-14, cost of debt for the control period has been considered as follows:

- (a) FY 2011-12 and FY 2012-13 -To consider the actual cost of Rupee Term Loan and ECB Loan, paid by BIAL, for FY-2011-12 and FY-2012-13 towards the cost of debt for FY 2011-12 and FY 2012-13
- (b) FY 2013-14 to FY 2015-16 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 12.50% for the Rupee Term Loan and 10.15% for the ECB Loan.

The present consultation paper does not provide a breakup of the Rupee Term Loan and ECB Loan over the historic period and forecast period to calculate the actual cost of debt. Cost of debt is the effective rate that a company pays on its current debt post adjustment for tax savings. However, based on aforementioned decision taken by the Authority and review of consultation paper, it appears that cost of debt has not been adjusted for any tax savings

It is to be noted that post adjustment of such tax savings (assuming tax rate at 30%) in cost of debt, FRoR will reduce from 11.82% to 9.70%. It is submitted that the Authority should factor such tax saving for computing FRoR of BIAL."

13.37 On the issue of Cost of Debt, Zurich Airport stated that:

"The cost of debt can either be determined by a credit-dependent surcharge (spread) on a risk-free interest rate or by the effective interests paid (in %). The second approach seems reasonable in the case of Bengaluru International Airport"

13.38 On the issue of Cost of Debt, AAI stated that

"The rate in respect of debt needs to be analysed and fixed with reference to present interest rate with option of truing up the rate"

13.39 BPAC has stated that:

"a. Regarding ceiling in respect of the cost of debt for rupee term loan availed by BIAL at 12.50% and considering interest for Foreign Currency loan at 10.15%, it may be explored if a Government guarantee will reduce the cost of debt.

- b. Regarding the proposed increase of 1% in the rate of interest of rupee term loan, a benchmark could be established and if the interest rates stay above that benchmark then 1% hike could be agreed.
- c. Regarding weighted average Cost of debt, flexibility may be provided by pegging to a benchmark interest rate index."

d. BIAL's response to Stakeholder Comments on Issues pertaining to Cost of Debt

- Subsequent to the receipt of comments from the Stakeholders on CP 14 and CP 22, the Authority forwarded these comments to BIAL seeking its response to these comments.

 BIAL has provided responses to the Stakeholders' comments, which are presented below:
- 13.41 BIAL has responded on BPAC's comment on cost of debt as follows:

"BIAL has already submitted its detailed views and responses to AERA on the issues pertaining to cost of debt; cost of equity; and WACC. Averments of BPAC regarding exploration of government guarantee are extraneous to the present consultation process"

13.42 On FIA's comment that Tax savings should have been considered for computing cost of debt, BIAL has stated that:

"BIAL submits that actual tax is proposed to be allowed as a separate reimbursement and the treatment of tax component has been discussed extensively as part of various consultation processes. In addition, BIAL has also raised additional concerns as part of its submissions to CP 22"

e. BIAL's own comments on Issues pertaining to Cost of Debt

13.43 On the issue of Cost of Debt, BIAL, in response to CP 14 stated that:

"TREATMENT OF INTEREST FREE STATE SUPPORT LOAN

BIAL respectfully submits that subsidies and concessions granted to BIAL be reckoned while calculating return on RAB. BIAL submits that state support of Rs. 350 Crore was promised to make the project viable. BIAL submits that enhancing viability is nothing but enhancing returns on the project to the airport so as to make investments more attractive and forthcoming. It is submitted that, one of the criteria for awarding of airport project was the (lowest) amount of state support required. BIAL therefore submits that the proposed treatment to subsidies and concessional loans is not in accordance with the purpose for which they were provided. BIAL requests that appropriate returns be provided on such loans / subsidies in view of above explanation. In paragraph 10.19, it is proposed that purpose of subsidy or grant is to reduce overall cost of airport services. However, the aforesaid objective is contrary to the State Support Agreement. Recital E to the State Support Agreement records that state support is being provided to "improve the viability of the Project and enhance bankability of the Initial Phase". BIAL therefore submits that the intention of KSIIDC or the State of Karnataka was to provide a financial fillip to the airport/BIAL and BIAL requests that the airport should not be deprived of this fillip. State support was provided on the premise that BIA or airport project will generate internal rate of return of 21.66%. Keeping the same in mind, interest free loan was agreed to be provided so that the aforesaid returns to BIAL are ensured. BIAL requests that the internal rate of return as contemplated as part of Detailed Project Report ("DPR") and

financial close be considered for tariff determination and in line with the same, provide return on concessional loans.

"INTEREST FREE OR CONCESSIONAL LOAN AGREEMENTS

BIAL submits that interest free or concessional loan agreements were meant to be a fillip to BIAL and to make the project more viable in terms of returns to BIAL. BIAL requests Authority to consider this aspect. In the case of BIAL, project Internal Rate of Return of 21.66% was envisaged and was taken as the basis to arrive at interest free loan of Rs.350 Crore that was provided by the State of Karnataka. BIAL requests Authority to take this into account and further requests that the proposals be modified to accommodate the aforesaid and provide returns to BIAL with respect to interest free or concessional agreements / loans.

DEBT CEILING - INR LOANS

In paragraph 12.20, the CP notes that it is not possible to take a definitive view in the matter. BIAL is a board managed company and with professional management being in place, BIAL has been and will continue to ensure that all efforts are put in to minimize cost of debt. However, interest rates are subject to market fluctuations and are impacted by various external factors, such as inflation, RBI policy, etc. which are beyond the control of BIAL. In this backdrop, BIAL submits that proposal 7 be modified, with respect to INR loans, to allow actual cost of debt."

13.44 On the issue of Cost of Debt, BIAL did not make comment in response to CP 22.

f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to Cost of Debt

- 13.45 The Authority has carefully examined the comments received from the stakeholders on the cost of debt to be considered for BIAL.
- The Authority notes FIA's comment that cost of debt has not been adjusted for tax savings while being considered for determination of WACC. The Authority notes that adjusting the cost of debt for tax savings requires that the tax rate to be considered for adjusting should be the effective tax rate applicable for the company. Effective tax rate for a company may vary year on year and its determination requires consideration of all applicable taxes and incidence of book losses. Instead, the Authority has adopted an alternate approach of considering pre-tax cost of debt and considering tax a building block. This approach is highlighted in Consultation Paper No. 3/2009-10 (Appendix 3: Taxation and the cost of

capital), 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 additionally adjusted for aspects like interest tax shield.

- 13.47 The Authority noted that Zurich Airport has provided two methods for arriving at cost of debt and stated that the effective interest paid % would be reasonable in case of BIAL which is the approach adopted by the Authority.
- 13.48 BPAC has commented that it may be explored if a Government Guarantee would reduce the cost of debt and a benchmark could be established and if interest rates stay above that benchmark then 1% hike could be agreed. The Authority understands that as a policy, Government Guarantee for Private companies is generally not available. At any rate, the Authority has already decided to true up the cost of debt on actuals.
- On comments made by BIAL, the Authority notes that the Authority had already provided its detailed analysis as part of CP 14 reproduced above (Refer Para 13.11 above to Para 13.18 above). Apart from the analysis already made, the Authority notes that BIAL has not provided any additional points for fresh consideration for the purpose of this order. The Authority further notes that the IRR of 21.66% as stated by BIAL is not specified in the Concession Agreement entered into by GoI with BIAL or in the State Support Agreement between GoK and BIAL.
- 13.50 The Authority noted BIAL's request for consideration of actual cost of debt. The Authority had noted that the Authority would consider the same considering the ceiling based on evidence to be provided by BIAL.
- The Authority had requested BIAL to submit the financial statements for the year 2013-14. According to the statement provided by BIAL on 5th May 2014 the Authority noted that the actual Interest rate is for 2013-14 9.58% as against the cost of debt of 10.47% considered in CP 22.
- The Authority had decided to consider the actual cost of debt for the period upto 2013-14 and the projected cost of debt for the balance period of 2014-15 and 2015-16. Accordingly the reworked cost of debt decided to be considered by the Authority for the current control period under Single Till and 40% Shared Revenue Till is as below:

Table 49: Computation of Cost of debt decided to be considered by the Authority under Single Till

Particulars	2011-12	2012-13	2013- 14	2014-15	2015-16
Total Interest cost (incl. capitalised)	129.72	150.39	210.40	231.55	282.64
Average Debt Balance	1540.36	1805.67	2197.21	2189.49	2594.49
Average Interest rate computed	8.42%	8.33%	9.58%	10.58%	10.89%
Weighted Average Interest rate for the period					9.73%

Table 50: Computation of Cost of debt decided to be considered by the Authority under 40% Shared Revenue Till

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Total Interest cost (incl. capitalised)	129.72	150.39	210.40	231.55	282.74
Average Debt Balance	1540.36	1805.67	2197.21	2189.49	2595.33
Average Interest rate computed	8.42%	8.33%	9.58%	10.58%	10.89%
Weighted Average Interest rate for the period					9.73%

Decision No. 9. Cost of Debt

a. The Authority decides

- i. To consider the actual interest cost paid for the Rupee Term Loan and ECB Loan, paid by BIAL, for 2011-12, 2012-13 and 2013-14.
- ii. To consider a ceiling in respect of the cost of debt for rupee term loan availed by BIAL at 12.50%.
- iii. To consider interest on Foreign Currency loan (on a Foreign currency Rupee swap) at 10.15% in rupee terms, noting that the ECB loan is fully hedged for its remaining tenure till January 2018.
- iv. To consider the Weighted average Cost of debt as detailed in Table 49 and Table 50 under Single Till and 40% Shared Revenue Till respectively.
- v. To true-up the cost of debt for the current control period with actual values subject to the ceiling of 12.50% for the Rupee Term Loan and 10.15% for the ECB Loan, subject to Para vi below.
- vi. To review this ceiling of 12.50% for Rupee Term Loan upon reasonable evidence that BIAL may present to the Authority in this behalf.
- vii. Not to review the ceiling of 10.15% on the ECB Loan (Refer iii above) but should the actual cost be lower, true up the lower cost.

14 Cost of Equity

a. BIAL Submission on Cost of Equity

- 14.1 BIAL had, in its submission stated that it had engaged KPMG to carry out the study on Cost of Equity for the Airport, wherein which, KPMG had estimated a cost of equity at 27.9% under Single Till and at 28.3% under Dual Till for the First Control period and at 23.5% as per the Optimal Gearing Levels (60% gearing). In the revised Multi Year Tariff Proposal submitted by BIAL in November 2012, BIAL has computed the Fair Rate of Return (FROR) considering cost of equity at 24.4% for the first control period, similar to their initial submission made in September 2011.
- 14.2 **Risk Free Rate** KPMG had submitted that they have considered 10 year bond yield at the valuation date for the purpose of calculation of Rf (due to high trade volumes and a strong resilience to inflation than a 30 year bond). Based on such yield rate, 8.6% risk free rate as on 31st March 2012 had been considered.
- 14.3 Market Risk Premium KPMG had stated that they have considered equity risk premium at 8.73%. This was computed considering the market return computed based on 10 year annualized return on 90 days moving average of market return. Rm had accordingly been considered at 17.33% using BSE Sensex, this historical return being considered as expected average return of market. Hence Risk Premium (Rm Rf) was considered at 8.73% (17.33% minus 8.6%)
- 14.4 **Beta** KPMG had considered Betas of listed international operators in the emerging markets as a reference point for considering Beta of BIAL, as BIAL was not a listed entity. Following are the airports and the relevant Asset Betas considered by KPMG:

Table 51: Details of comparable airports considered by KPMG for identification of Asset Beta

				Debt	
		Equity	Effective	Equity	Asset
Sr. No.	Comparables	Beta	Tax Rate	Ratio	Betas
1	Airports of Thailand Public Company Limited	1.1	23.00%	93.20%	0.64
	Beijing Capital International Airport Company				
2	Limited	1	25.00%	125.30%	0.53
	Grupo Aeroportuario del Centro Norte SAB de				
3	CV	0.8	30.00%	16.90%	0.73
4	Grupo Aeroportuario del Pacifico S.A.B. de CV	0.8	30.00%	8.00%	0.74
5	Grupo Aeroportuario del Sureste, SAB de CV	1.1	30.00%	2.90%	1.04
6	Shanghai International Airport Co., Ltd.	1	25.00%	10.00%	0.91

				Debt	
		Equity	Effective	Equity	Asset
Sr. No.	Comparables	Beta	Tax Rate	Ratio	Betas
7	Xiamen International Airport Co. Ltd.	0.9	25.00%	0.00%	0.94
	Guaogzhou Balyun International Airport Co.				
8	Ltd.	0.9	25.00%	20.30%	0.82
	Median	0.95			0.78

- 14.5 KPMG had stated that they have taken "a filtered approach while identifying comparable airports, like country of operations Emerging markets, Business model, Regulatory environment and liquidity of stock. The equity betas for these shortlisted companies were found and subsequently the asset betas for each of them were calculated by adjusting their respective financial leverage. Based on the analysis of listed airports in the emerging markets, the 3 year median asset beta is about 0.78"
- 14.6 The Median value arrived above has been considered as the reference Asset Beta for BIAL, from which the Equity Beta has been computed as follows:

Equity Beta = Asset Beta * (1+(1-tax rate)*D/E)

- 14.7 For the purpose of computation of Equity Beta, KPMG had considered Minimum alternate tax rate of 20.01% (Consistent with BIAL's submission of the tax rate based on which Income tax reimbursement has been projected) and a Gearing ratio of 70%
- 14.8 Accordingly Equity Beta was computed as:

$$0.78*(1+\{(1-0.2001)*2.3)\} = 2.21$$

14.9 Hence, the Cost of Equity was computed by KPMG as 27.9% as follows:

8.6%+2.21*8.73% = 27.9%

14.10 Extract of KPMG's report detailing the above is given below:

Table 52: Cost of Equity computed by KPMG for BIAL for the first control period under Single Till

Risk free rate	8.60%
Beta	2.21
Equity risk premium (Rm-Rf)	8.70%
Cost of Equity (Re)	27.90%

- 14.11 Pursuant to AERAAT Order, BIAL had made submissions to the Authority on various aspects. Extracts of aspects relevant to Cost of Equity, submitted by BIAL were given below:
 - "16. Although Indian airports operate under regulatory conditions similar to the other capital intensive and long gestation infrastructure assets such as power generation,

power distribution, roads and ports, the risk profile of airports is not comparable with the other infrastructure assets due to the following:

a. Airports have a fair mix of aeronautical, non-aeronautical and real estate related revenues.

b. Cyclical in nature – the degree of severity or volatility in cash flows is higher in the case of airports and hence the risk and return profiles are not comparable.

c. The Indian airport operators are exposed to certain additional unique risks on account of nascent stage of the regulatory framework, capital constraints, financial risks, traffic risk, operators are relatively new, political uncertainties etc.

Considering the unique risks in the airport sector compared to other sectors, we would request the Authority to consider the following factors, otherwise, the airport sector will be perceived as less attractive for investment, which will not be in the long term interest of the sector.

Market risk premium: Equity Risk Premium (Rm-Rf) which is the difference between the expected rate of return on the market portfolio and the risk-free rate, the market rate of return or Rm may be calculated based on 10 year annualized return on 90 days moving average of market return using BSE Sensex as the market return indicator.

While computing the asset beta, consideration of betas of all listed airports in developing and emerging country markets.

While selecting listed international airports from countries within developing and emerging markets, their semblance to Indian airports on the following factors may be considered:-

Economic profile

Operating environment

Opportunities and constraints

Regulatory environment and

Financial position

iv. The base rate RoE recommended by Regulators/Committees of other sectors like Central Electricity Regulatory Commission, State Electricity Regulatory commission, Tariff Authority of Major Ports (TAMP) and NHAI are in the range of 15.5% to 18% depending upon different parameters including the risks associated. Hence, airport sector which is prone to higher risks than all these sectors shall have a much higher RoE compared to these sectors."

14.12 BIAL, in its revised submissions i.e. MYTP 2013 had considered the Cost of Equity to be 24.4% in line with its earlier submissions. BIAL had supported the same with the report from KPMG as submitted by it in the earlier submissions.

b. Authority's examination of BIAL submission on cost of Equity

- 14.13 The Authority's examination and proposal on BIAL's submission relating to Cost of Equity detailed in CP 14 were as below:
- The Authority had, in its Consultation Paper No. 03/2009-10 dated 26th February 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. In addition, as stated in the Order No. 06/2010-11 as on 26th October 2010, the Authority had in the past noted that none of the private airports were listed companies and therefore the equity betas for these companies were not available and would have to be assessed through comparison with a comparator set that is listed. The Authority observed that the estimation of cost of equity (RoE) is a technical matter and required expert assessment and computation.
- 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, including Bengaluru International Airport. NIPFP is a centre for advanced applied research in public finance and public policy. NIPFP had given its analysis of the Cost of Equity of BIAL. Director, NIPFP has, vide DO letter dated 13th December 2011, forwarded the Report to the Authority for its review.
- 14.16 The salient features of the Report submitted by NIPFP in respect of cost of equity were detailed as under:
 - 14.16.1 Keeping in view the Authority's decision, the CAPM has been used for estimating the cost of equity.
 - 14.16.2 The Risk free rate (Rf) had been assessed as percentage (%) on the basis of arithmetic average of daily yields on 10-year GOI bonds over the period from January 01, 2001 to December 31, 2010. The average yield of 10 year GoI bonds during this time period was 7.35% and NIPFP had recommended considering this as the risk free rate. NIPFP stated that it had considered 10-years GoI bonds as they were the appropriate benchmarks for longer term horizon of investments as expected for airports.

- 14.16.3 The Equity risk premium (Rm Rf) had been assessed as percentage (%) taking into account the historical risk premium of 4.31% 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 2.4% for India (given the local currency sovereign rating of Ba1). Thus the equity risk premium estimated by NIPFP was 6.71%.
- 14.16.4 NIPFP considered a comparator set consisting of 27 listed airports, both from developed and developing regions. It then proceeded to calculate the equity beta for each of the airports. It also estimated the market capitalization as well as the book values of debt and equity. Its table indicated the results of these calculations. Finally it suggested as asset beta of 0.51 as the median value for the airports contained in the comparator set. Thereafter it considered the various risk mitigating measures especial to BIAL and suggested an asset beta of 0.4 as appropriate having regard to the totality of the circumstances and the risk profile of BIAL, considering that the risk factors effecting beta were proposed to be taken care of by truing up the traffic and using the user development fee as a revenue enhancing measure to give to the airport operator the required return on his equity.
- 14.16.5 NIPFP took reference to GVK Group acquiring 14% equity stake in BIAL from Siemens Project Ventures for Rs. 620 crores which valued the market value of equity for the Bengaluru International Airport at Rs. 4429 Cr and the debt levels were Rs. 1619 Cr. Thus the leverage came out to be 0.27 ((1619/1619+4429)
- 14.16.6 Considering the above stated asset beta of 0.4 and re-levering it, the equity beta came out to be 0.55 = 0.4/(1-0.27).
- 14.16.7 Considering all the above factors, the cost of equity for BIAL came out to be 11.04% $(7.35(R_f) + 6.71(R_m R_f) * 0.55(equity beta) = 11.04\%)$
- 14.17 Finally, NIPFP had given a range of Cost of Equity as 11.04% to 11.91% depending on the value of asset beta considered by it. 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.
- 14.18 The Airports as an Infrastructure Asset class has certain special characteristics. Airports have characteristics of Monopoly, it is a Public Utility handed over from Public Sector to Private Sector and it is also a Regulated entity. The Planning commission in its report "Private Participation in Infrastructure" dated January 2010 has also specifically brought these

aspects into focus stating that "...Since PPP projects typically involve transfer or lease of public assets, delegation of governmental Authority for recovery of user charges, operation and/or control of public utilities/ services in a monopolistic environment and sharing of risk and contingent liabilities by the Government, they should be regarded as public projects where accountability would continue to rest with Government. The PPP modality is only a device for getting private investment into public projects with the objective of enhancing public welfare. ...". Hence, while the Private Airport Operator would need to be fairly rewarded for his investments (for continued interest of Private Sector in Airports), its expectations of return would need to take into account the characteristics of the Airports. Accordingly, the Authority had considered the points made by BIAL in respect of cost of equity (CoE) including the report of KPMG in support of the cost of equity. These were analysed as under:

- 14.19 **Risk Free Rate:** KPMG had indicated the risk free rate at 8.6% as on 31st March, 2012. The Authority noted that the 10 year bond yield as of 23rd May, 2013 (as per Bloomberg) was 7.17%. NIPFP had taken the risk free rate at 7.35%. The Authority did not find any reason to change the rate of 7.35% assumed by NIPFP for the purposes of calculated of beta as per CAPM model.
- Market Risk Premium: KPMG had calculated market risk premium at 8.73, based on market return of 10 year annualized return on 90 days moving average of market return. NIPFP, however, had adopted a different methodology based on the MRP of USA and adding a certain risk premium for India. NIPFP had computed MRP at 6.71%. Calculation of MRP is an important element because it gets amplified by beta (should the beta have a value more than 1). The Authority, thus, did not find any reason to change the methodology adopted by NIPFP.
- 14.21 **Beta**: The KPMG had considered a comparator set of listed international operators in the emerging markets as a reference point for consideration of beta of BIAL, as BIAL was not a listed entity. In its comments on the comparator set in airports like Mumbai, Delhi as well as Consultation Paper of Hyderabad, the Authority had stated that taking only the developing or emerging markets as reference points, unnecessarily, restricted the comparator set and there was no *a priori* reason to do so. KPMG had taken a comparator set consisting of 8 airports of only 3 countries of Thailand, China and Mexico. The Authority did not consider this to be representative set for BIAL.
- 14.22 That apart, in the cost of equity calculations made by M/s Jacob in connection with

RGI Airport, Hyderabad, the comparator set chosen by M/s Jacob consisted of 11 airports of which 9 were from developed economies and 2 from developing economies (Mexico). It would, thus, be seen that Hyderabad airport was thought to be comparative to other airports from developed economies.

- 14.23 Furthermore, The Commerce Commission New Zealand in its Input Methodologies (Airport Services) Reasons paper December 2010, had, inter alia, calculated the leverage as well as asset beta of airports comparable to New Zealand airports. It had taken a sample of 25 overseas airports that comprised both developed and developing countries. The Authority, therefore, did not find any reason to compare Bengaluru International Airport only from the developing economies and not also from the developed ones and the Authority had given the details in Consultation Paper No 9/2013-14 dated 21st May 2013 in respect of tariff determination of RGI Airport, Hyderabad.
- 14.24 ACI had given its comments on the Consultation Paper No 22/ 2012-13 in respect of Mumbai airport giving example of Greece that, according to ACI, had promised 15% return on equity. The Authority had pointed out that ACI considers Greece to be comparable to Mumbai airport in so far as the return on equity issue is concerned, and that Greece falls into the category of "advanced economy" as per IMF classification (October 2012). It had further pointed out the IMF classification also includes, as advanced economies, countries in Europe, USA, New Zealand, etc. and that the return on equity in some of these countries has been estimated at 6.5% to 7.5% by the regulatory or competition authorities.
- The Authority was cognizant of the fact that cost of equity calculation in different countries need to take into account the characteristics of those countries, airports situated in those countries and other attendant circumstances. Merely taking only a restrictive category of developing or developed economies may not only be misleading but also inappropriate. The Authority also noted that in a separate assessment made by CRISIL for MIAL, the 5 year beta of Mexico airport was lower than some of the developed countries' airports. Taking all the factors into consideration, the Authority felt that a comparator set consisting of both developed and developing economies was more likely to yield a robust estimation of beta than taking only 3 countries from the emerging markets/economies. The Authority, therefore, considered the methodology and the comparator set adopted by NIPFP as more robust for calculation of beta for Bengaluru International Airport.
- 14.26 The Authority had already indicated its approach towards re-levering of asset beta

into equity beta in accordance with notional gearing of 60% or debt equity ratio of 1.5:1. It had also explained its reasoning in its orders of Delhi as well as Mumbai. It had pointed out that capital structure is the decision of the company. If the company felt that its operations are much riskier than the market, it should choose its capital structure accordingly and with lower gearing. The Authority had taken gearing at 60% (Debt: Equity ratio at 1.5:1) for the purposes of calculating Equity Beta. Hence, the Authority did not feel that a particular financial structure (with higher gearing) which is within the discretion of the Shareholders should impact adversely on the tariffs in regulatory determination through calculation of Equity Beta. The Authority, therefore, was not in agreement with KPMG's assessed equity beta of 2.21. The equity beta of 2.21 would imply that were BIAL be a listed company, its share price would go up by 121% if the market goes up by 10%.

- 14.27 Additionally, BIAL had made certain additional submissions stating inter alia that the risk profile of airports is not comparable with the other infrastructure assets and has given the following reasoning:
 - 14.27.1 Mix of aeronautical, non-aeronautical and real estate related revenues: The Authority's treatment for real estate was not so much based on the yearly revenues from the real estate as it is in terms of the market valuation, the operation of real estate that BIAL plans to develop. The timing of such development was also to be determined by BIAL. The Authority also noted that market valuation would normally include the possible cash flows from the assets and can be said to be a reasonably accurate proxy for future revenues. As far as the aeronautical and non-aeronautical revenues were concerned, the Authority has separately proposed to true up the same and, therefore, on this count, the riskiness of Bengaluru International Airport can be said to be much lower than what operates in "other capital intensive and long gestation infrastructural assets such as Power Generation, Power Distribution, Roads and Ports", as indicated by BIAL.
 - 14.27.2 **Cyclicity**: According to BIAL, "degree of severity and volatility in connection with flows is higher in the case of airports than other infrastructural assets" Here again, the Authority had deliberated on this aspect which is why it is separately proposing to true up the passenger volumes as well as non-aeronautical income. The reason of cyclicity engendering enhancement of risk in the case of airport is, therefore, eliminated. Hence with the proposal of truing up the risk and return profile of

Bengaluru International Airport, is expected to become far more favourable than other infrastructural asset class.

14.28 **Unique risks according to BIAL**: BIAL had given what according to it were additional unique risks that the Indian Airport Operators were exposed to. BIAL stated that:

"The Indian airport operators are exposed to certain additional unique risks on account of nascent stage of the regulatory framework, capital constraints, financial risks, traffic risk, operators are relatively new, political uncertainties etc.

Considering the unique risks in the airport sector compared to other sectors, we would request the Authority to consider the following factors, otherwise, the airport sector will be perceived as less attractive for investment, which will not be in the long term interest of the sector"

- 14.29 The Authority had given its careful consideration to these unique risk factors (reproduced in Para 14.28 above) and addressed them in seriatim in paragraph below. The Authority inferred that when BIAL was referring to the risk factor that "operators are relatively new" it was perhaps referring to the Private Airport Operators and not to Indian Airport Operators in general. For example, AAI cannot be termed as a "relatively new operator". Secondly, the other Private shareholders like Unique Zurich, a Shareholder in BIAL or Fraport, a Shareholder in DIAL or Airport Company of South Africa Global Limited (ACSA), a shareholder in MIAL or for that matter Malaysian Airport Bhd. a Shareholder in HIAL may not share this perception of "unique risk factor" of "relatively new operators". Thirdly, according to the Planning Commission, one of the justifications of the PPP modality was the expectation that the private promoter partner will bring in superior managerial expertise resulting in lowering of costs and improving efficiencies in a competitive environment. If the relative newness of the private airport operator was contributing to risk, this expectation of the Planning Commission would appear to have been belied. The Authority noted that many of the risk factors cannot be called systematic risks that alone are factored in the calculation of Beta. Any risk factor that is specific to an Airport was thus diversifiable (for the Shareholders) and hence do not enter into the calculation of Beta. Since the risk assessment needs to be made with reference to a specific airport and BIAL had given the above unique risk factors, the Authority was analysing the same specifically with respect to BIAL.
 - 14.29.1 **Nascent stage of the regulatory framework**: As far as the regulatory framework is concerned, the Authority believed that its Airport Order as well as Airport

Guidelines give a transparent and coherent framework for economic regulation of airports. The Authority also noted, however, that BIAL, along with other Private Airport Operators do not appear to have found this framework agreeable and hence had gone in appeal against this framework.

- 14.29.2 AERAAT had disposed-off the appeals of BIAL. In its Order dated 15th February 2013 the Tribunal had stated that:
 - "5. when the matters came for disposal on merits it was found that in spite of the guidelines the directions issued pursuance thereto yet there would be no impediment for the AERA to consider all the relevant issues and then to finalise the order regarding the determination of tariff of airports."....
 - "6. If this is so, there would not be any question of proceeding with the hearing of these appeals at this stage since in spite of the impugned orders it will be open for the appellants to canvass all the contentions which they want to raise in these appeals and convince AERA about their merits.
 - 7. It has so happened that in spite of elapse of substantial time period the tariff has still not been determined which causes prejudice to both the concerned parties as well as the stakeholders.
 - 8. In that view, we would dispose-off these appeals with the direction to the AERA to complete this exercise of determination of tariff and while doing so, the AERA would give opportunities to all the stakeholders to raise all the plea and contentions and consider the same. The impugned orders herein would not come in the way of that exercise. We would, however, request AERA to complete the determination exercise as expeditiously as possible. We have taken this view as we are of the firm opinion that it would not be proper to entertain the appeals on different stages of determination of tariff and to give the finality to the questions of final determination of tariff......"
- 14.29.3 The Authority in compliance with the Order of AERAAT had, in the Consultation Paper, analysed the submissions made by BIAL. The Authority therefore was unable to appreciate the argument that its Orders mentioned above constitute any risk on account of nascent stage of regulatory framework.
- 14.29.4 **Capital Constraints:** As regards the capital constraints the Authority noted that the GoK had advanced an interest free loan of Rs. 335.5 crores of which repayment commences after 10th year of airport operation. Contribution of GoI and AAI in Equity was 13% each, namely Rs. 50 crores each. Hence, the Equity brought in by the initial

Private Promoters at Rs. 284.6 Crores was considerably less than both (a) the loan by GoK and (b) much lesser than the Public funds constituting the loan by GoK and Equity by GoK and AAI (Refer Para 4.89 above for further discussion on this point). The Authority inferred that the capital constraint indicated by BIAL was probably on account of the shareholders Agreement which inter alia prescribed a cap of Rs. 50 crore that can be brought in by AAI and other covenants in the SHA. This was an issue purely pertaining to the SHA and therefore, an arrangement between different shareholders. The Authority noted that the GoK has leased 4008 acres of land to BIAL at what appears to the Authority at attractive and lower lease rentals. BIAL, under Clause 4.2 of the Land Lease Agreement can commercially exploit the land in excess of airport requirements. This in view of the Authority was an important Capital Risk mitigating factor. However, BIAL had not taken recourse to this source of Capital funding and had not submitted any concrete proposal for the same, even during the currently on-going expansion phase.

- 14.29.5 The Authority also noted, however, that if the company and therefore, its shareholders do come to the conclusion that the covenants of the Shareholders' Agreement do constitute a "unique risk", the remedy should not be to expose the passengers to such a risk. The Authority would expect BIAL and its Shareholders to address this issue within the framework of various agreements and accordingly develop financing plan. At any rate a particular financing arrangement or limitation thereof was specific to the company and could not be considered as unique risk for the purposes of calculation of Beta in that the investors can diversify such a risk.
- 14.29.6 **Financing Risk:** As regards financing risk, if the Airport Operator was attributing larger financing risk to higher Debt Equity Ratio, this was really a matter for the Shareholders and the Company to consider because Capital Structure is a business decision of the company. Generally, higher Debt Equity Ratio is associated with lower risk (relatively stable cash flows). If as indicated by BIAL and supported by KPMG, BIAL considered itself exposed to much higher business risk, its Capital Structure should reflect this concern appropriately and should have had a capital structure with lower gearing or higher equity. The Authority had come across an article "Regulatory Risk, Cost of Capital and Investment Decisions in the Telecommunications Industry: International Comparisons" by Anastassios Gentzoglanis of University of Sherbrooke (Canada) according to which "UK regulators have expressed their opinion on what constitutes an optimal capital structure for regulated firms. The following table

indicates the UK regulators' judgment on optimal capital structure for various regulated industries".

Table 53: Optimal debt Ratios in Various Regulatory Settings

Regulatory agency	Optimal debt ratio
Water companies (Ofwat, 1999)	45%-55%
Rail track (ORR, 1999)	50%
Public electricity suppliers (Ofgem, 1999)	50%
National Grid Company (Ofgem, 2000)	60%-70%
Transco (Ofgem, 2001)	62.50%
Mobile phone operators (Oftel, 2001)	10%-30%

Source: De Fraja, G., and C. Stones, (2003), "Risk and Capital Structure in the Regulated Firm" WP, University of York. Fraja et al calls the optimal debt ratio as "leverage assumptions".

- 14.29.7 If BIAL regarded Bengaluru International Airport as risky as it has submitted to be, then its capital structure should appropriately reflect this risk assessment and therefore have a much lower debt ratio. The Authority observed that this was not so. The Concession agreement provides that the UDF can be levied towards "the provision of passenger amenities, services and facilities and the UDF will be used for development, management, maintenance and operation". Hence, UDF is also a revenue enhancing measure to ensure that the Airport Operator receives fair rate of return (including Equity) that may be determined by the Authority. Secondly, the Authority had proposed truing up mechanism with respect to the passenger traffic, non-aeronautical revenue and Operating and Maintenance Expenditure. In view of the Authority, such truing up was in fact a "unique" element much less constituting a risk and is in fact, elimination of risk.
- 14.29.8 **Traffic Risk**: In normal course, in regulatory regimes the traffic risk was borne by the operator. The passengers were, therefore insulated from this risk. With the Authority's proposal of truing up, passenger traffic as well as non-aero revenue, the traffic risk was effectively transferred from the airport operator (entrepreneur) to the passengers. Implicitly, what this meant was that the regulatory approach had insulated the Airport Operator (and not the passengers) from the traffic risk. The Authority therefore did not feel that there was any traffic risk faced by BIAL.
- 14.29.9 **Operators are relatively new**: BIAL had also indicated a risk factor, viz. operators are relatively new. The Authority presumes that BIAL's reference to "Operators" was to the Operator of Bengaluru International Airport and not to Operators in plurality. The Authority noted that while selecting the initial promoters of BIAL, appropriate

due diligence was carried out by the GoK and only thereafter the consortium led by M/s Siemens GmBH and consisting of Unique Zurich and L&T were awarded the concession. The initial promoters commenced the Operations on 24th May 2008. These initial promoters would thus have been regarded as experienced in development and management of Airports. Thereafter, in the second half of 2009 the GVK Group acquired 12% stake in BIAL from Unique and 17% from L&T. Later, it acquired 14% stake in BIAL from Siemens GmBH in August 2011 and thus took Management Control of the Company. The Authority noted that the submission containing these risk factors were made on behalf of the company. It would appear therefore that the management of the company passed from the hands of experienced operators to relatively new Operator and thus allegedly adding (according to BIAL) a "unique" risk factor.

- 14.29.10 Despite the likely internal assessment of BIAL, the Authority was not persuaded to agree with the same. It noted that BIAL's Board has one senior representative from AAI, one senior representative from the MoCA, representatives from GoK including the Chief Secretary of Karnataka as its Chairman. Apart from GVK, AAI which has vast experience of managing all the airports in the country before the privatization through PPP mode of the four metro airports, has a shareholding in BIAL. The Authority was aware that GVK has separate business verticals in infrastructural areas of Power Generation, Highways as well as Airports. The Authority had also noted that according to GVK's website it is "One of India's largest private sector airport operators managing 2 of the 3 busiest airports and handling 44 mppa through India's first brownfield and greenfield airports under PPP model- CSIA, Mumbai and Bengaluru International Airport, Bangalore respectively and 2 more in Indonesia". The Authority, therefore, inferred that M/s GVK Group as the largest shareholder in BIAL, has full confidence in its expertise in running and expanding, if necessary, the Bengaluru International airport. The Authority also noted the airport was undergoing substantial expansion to meet the future needs under GVK leadership. Further, the Authority noted that BIAL has an agreement with Unique Zurich, for Operation, Maintenance and Support of the Airport with a performance fee which is based on the profits of the Airport Operations. The Authority was, therefore, unable to accept BIAL's unusual argument that the operators were relatively new and that this constitutes a "unique" risk.
- 14.29.11 **Political Uncertainty**: BIAL had also referred to the issue of political uncertainty as a risk factor. The Authority was unable to appreciate that there would be political

uncertainty of the type that may contribute to enhancing the risk profile of Bengaluru International Airport. Apart from that, the Authority also noted that, BIAL had on its Board, senior representatives from the GoI, AAI and GoK and the Chief Secretary, Karnataka is the Chairman of the Board. With this constitution of the Board, the Authority did not feel that BIAL was exposed to any political uncertainty that may constitute a "unique" risk.

14.30 **Systematic and Specific Risks**: The Authority had also noted the distinction between a risk that was "systematic" (also called the "market risk") and the one that was specific for the project in question. The Australian Competition and Consumer Commission (ACCC) had an occasion to address this issue in its determination of price cap for Adelaide Airport. According to the ACCC, on Systematic and Specific Risk:

"It is worth re-iterating that the purpose of an asset or equity beta is to capture the systematic risk of a company, and not its total risk. Many of the arguments raised in the submissions related to aspects of non-systematic or specific risk. An understanding of the distinction between specific and systematic risk is critical to understanding the role of the CAPM and why the asset beta is supposed to reflect only the systematic component of the risk.

Systematic risk is the risk associated with general movements in the market. In particular, it is the co-variance of a company's returns as against the movements in the market as a whole. As such, the systematic risk of a firm is also called non-diversifiable risk, as it is the element of the risk associated with the particular firm that cannot be eliminated through diversification.

Specific risk, in contrast, is the risk associated with investing in a particular company, and does not necessarily characterise other companies. Investors are thus able to avoid this risk by investing elsewhere. Specific risk should be taken into account in projected cash flows.

In advising the Commission on this issue, Professor Kevin Davis remarked that:

The specific risk of an asset or project should be reflected in the expected cash flow projections, not incorporated in to cost of capital estimates in an ad hoc, and ultimately distorting fashion.

Turning to the submissions, many of them raised the issue of construction risks of the hitherto unconstructed building. These risks are a good example of specific risks, in that they can be avoided by diversifying. The Commission does not deny that these

risks are present, but considers that they are not relevant for the purposes of asset beta."

- 14.31 Similarly, According to "Fundamentals of Corporate Finance" by Stephen Ross, Randolf Westerfield and Jordan, (8th Edition), McGraw Hill), page 413, uncertainties about general economic conditions (such as GDP, interest rates or inflation) were examples of systematic risks (non-diversifiable). The Authority had proposed to true up the traffic, non-aeronautical revenue, interest rates, and inflation. Hence the elements of systematic risks had been addressed and the systematic risk was practically eliminated or mitigated. Other examples of "unique risk" as given by BIAL, though devoid of merit were at any rate examples of specific risks (diversifiable) and were not to enter the beta calculations.
- Accordingly as discussed in detail in the tariff determination orders in respect of Delhi and Mumbai airports (Chapter 26 of Order No. 03/2012-13 dated 20th April 2012 and Chapter 13 of Order No. 32/2012-13 dated 15th January 2013), the Authority proposed to consider the following to estimate the cost of equity in respect of BIAL.
 - 14.32.1 Determination of Asset beta of the airport based on the appropriately chosen comparator set.
 - 14.32.2 The asset beta of the airport to be re-levered using the notional Debt Equity ratio of 1.5 (equivalent to gearing of 60%).
 - 14.32.3 To calculate equity beta according to CAPM framework.
 - 14.32.4 WACC calculation to be made based on the book values of Debt and Equity.
- 14.33 The Authority noted that the cost of equity as calculated by the NIPFP report was 11.04% (considering an asset beta of 0.4) after considering the market value of BIAL equity. The Authority also noted that even if the Authority considered an asset beta of 0.51, i.e. the Authority did not consider the reduction of asset beta to 0.4 on account of mitigation of risk factors by the Authority, and followed the calculation of NIPFP, the cost of equity came to be 12.02%. Further, if the Authority assumed a normative debt equity ratio of 1.5:1 and not the NIPFP assumption of 1:3.73, then the cost of equity worked out to be 15.91%. The Authority therefore observed that its methodology and estimation of cost of equity appear to be sufficiently robust. Rounding it to 16% thus appeared to the Authority as an appropriate fair estimate of the cost of equity for BIAL.
- 14.34 **Risk Mitigating Measures relevant to Bengaluru International Airport**: Return on equity was based on the risk profile of a particular project or airport. The Authority had

carefully considered the factors impacting the riskiness of BIAL as also the de-risking measures proposed to be adopted in respect of BIAL. The Authority noted that in addition to the many de-risking measures contained in this Consultation Paper and presented below (that are not available for airports in the comparator set), land for monetization (made available by the State Government) can also be considered as an important specific measure aimed at reducing the risk associated with raising capital for the project. The various risk mitigating measures that were put in place by the GoI and GoK and what the Authority had proposed in this Consultation Paper for Stakeholders' consultation include:

14.35 Risk mitigating measures put in place by GoI:

- 14.35.1 Closure of commercial and civil operations at the existing HAL Airport guaranteeing traffic at the airport. Apart from guaranteeing traffic at the new Airport, BIAL was not expected to compensate to AAI / Gol for the loss of revenue from the closure of existing profitable HAL Airport. Unlike in case of DIAL and MIAL that contribute 46% and 39% respectively as Revenue Share to AAI (and this not being a cost pass through), BIAL pays a fee (Revenue share) of only 4% to GoI which is a cost pass through and its payment is deferred for the first 10 years of operation. After the commencement of operations of the Bengaluru International Airport (May 2008), AAI has been deprived of the year on year surplus, a loss that was not required to be compensated by BIAL. This could be deemed as support provided by AAI/ GoI to BIAL in Public Interest (Refer to Para 4.89 above for further discussion on the relative contributions of Private Promoters as well as that of the State entities).
- The Govt. of India had stipulated that no new or existing airport shall be permitted by Gol to be developed as, improved or upgraded into an international airport within an aerial distance of 150 kms of the airport before the 25th anniversary of the Airport Opening Date. Similar stipulation had also been made for domestic airport. These stipulations had mitigated the threat of competition for BIAL. It had also, therefore, given it a kind of monopoly within an aerial distance of 150 kms. The Authority has noted the observations of Prof Forsyth in "Airport Policy in Australia and New Zealand: Privatization, Light-Handed Regulation, and performance", in Aviation Infrastructure Performance Ed Clifford Winston and Ginés de Rus 2008. According to Prof Forsyth, "To have countervailing power, a buyer must have a feasible alternative source of supply to which it can credibly threaten to shift its business.....If an airline wishes to fly in and out of Sydney, it must use the Sydney airport—there is no viable alternative airport within 150 kilometres. The Australian Productivity Commission considered that

- the major airports possessed significant market power". Hence a distance of 150 kms was considered adequate for lack of countervailing power by the airlines and thus mitigating risk of competition. This measure had been taken by the GoI to assure BIAL of traffic both in terms of passengers and cargo. On the part of the Authority, it had also been proposed to true up passenger traffic so that the risk to the airport on this account would get completely mitigated.
- 14.35.3 Concession fee (to be paid by BIAL to GoI) being a nominal rate of 4% and that too deferred was to be payable only from 10th year onwards and was also treated as a cost pass through.
- 14.35.4 GoI had expressly provided that User Development Fee can be charged both for revenue as well as capital requirements. This, in fact, substantially mitigated the risk to which the airport is exposed. GoI had actually used this measure and granted appropriate UDF for domestic and international passengers. Operation of UDF ensured that BIAL would be able to get fair rate of return since UDF is a revenue enhancing measure and can be considered a kind of "top up" of the revenue which enabled the airport operator to get a fair rate of return.
- 14.36 **Risk mitigating measures put in place by GoK:** GoK had agreed to provide financial support to improve the viability of the Project and enhance the bankability of the Initial Phase and had also agreed to have KSIIDC provide the site on lease to BIAL.
 - 14.36.1 The GoK sanctioned substantial financial aid of Rs. 350 crores and disbursed Rs. 335.5 Crores as interest free loan. This needs to be viewed against the amount of equity of Rs. 384.6 crores wherein AAI and GoK put together a share of Rs. 100 crores. Hence, the private equity at BIAL airport is of the order of Rs. 284.6 crores. The basic purpose of GoK infusing of financial assistance into the project was to mitigate the financing risk during the construction of the project. At the same time, the debt burden had also been brought down by the interest free loan.
 - 14.36.2 Support from the State Government in infrastructure in terms of road access, power supply and water supply.
 - 14.36.3 Airport land made available at concessional rental The GoK, through KSIIDC, has leased land of around 4008 acres after acquiring the same from private cultivators. Hence this was another factor which mitigates the risk in terms of ready availability of land on concessional rental terms. The land lease deed provided for its exploitation to "improve the commercial viability of the Airport Project". The Land Lease Deed also provided that one of the purposes of land use is that it is "conducive or incidental to

implementation of the Project". The Project is defined to mean "the design, financing, (emphasis added) construction, completion, commissioning, maintenance, operation, management and development of the Airport". Hence, clearly the land was to be used also for any future capital needs for expansion, as and when they arise (apart from improving the commercial viability of the Airport Project). In fact the Authority's aeronautical tariff determination proposed to make the airport feasible in itself, even without taking the revenues from the commercial exploitation of the excess land.

14.37 Risk mitigating measures proposed by the Authority for Stakeholders Consultation:

- 14.37.1 Truing-up of traffic (This transfers the risk of economic downturn from Airport Operator to the passengers).
- 14.37.2 Truing-up of non-aeronautical revenue.
- 14.37.3 Review of cost of debt on reasonable evidence, if provided by BIAL.
- 14.37.4 Truing up of capital expenditure upon review.
- 14.37.5 Truing-up of Operating Expenditure (upon review; Clause 8.9 of the Concession Agreement regarding "manage and operate the Airport in a competitive, efficient and economic manner as a commercial undertaking") and also submissions of BIAL in Para 18.4 below.
- 14.37.6 Truing up the gearing for computing WACC based on actual numbers (changes in WACC on account of changed Debt: Equity ratio and Cost of Debt after review).
- 14.37.7 Determination of UDF at a level that assures the airport operator a fair rate of return (which includes return on equity consistent with the risk profile).
- 14.38 **Competition and the Cost of Capital:** The Authority had also noted a report by Oxera prepared for Gatwick Airport, regarding the interplay between Cost of Capital and Competition. The report states that:

"The impact of competition on the cost of capital has been extensively researched. A variety of measures of competition and market power have been used, with studies concluding that there is a negative relationship between the level of monopoly power and beta. For example:

A higher degree of monopoly power in the product market will unambiguously lower the systematic risk of a firm, ceteris paribus. Based on the CAPM, the firm with a higher market power in its product market can raise capital at a lower cost (by means of a lower required rate of return). Other research has reached similar conclusions. The relationship runs in reverse, such that, as the number of actively competing firms in an industry increases, the systematic risk of the firms increases. This suggests that, regardless of the precise nature of the competitive dynamics following the break-up of BAA, these dynamics will have increased the systematic risk exposure of the London airports as a group."

14.39 Another element of competition and systematic risk was indicated by Oxera in its latest (Jan 31, 2013) report. It said that:

"The market clearing revenue yield would be expected to respond to systematic demand shocks. Where competitive forces are relatively weak and the price-cost mark-up is relatively high, the percentage change in revenue per passenger will be relatively low for any given size of demand shock. In contrast, a more competitive environment and a lower price-cost mark-up entail a relatively large change in revenue per passenger for an equivalent size of demand shock. This is the mechanism through which, in an unregulated market, a higher degree of competition translates into higher asset betas for all companies operating in a particular market.

In the context of regulated airports, the increased exposure to systematic risk that results from more competition is manifested in an increased probability that the airports will not be able to price up to the aeronautical yield cap. For Heathrow, Gatwick and Stansted, achieving a sufficiently large markup over marginal cost—by pricing to the yield cap—is essential for the recovery of fixed and sunk costs. The impact of competition therefore is to increase the expected volatility of return on assets, and to increase the sensitivity of return on assets to economic shocks."

The Authority noted that the airport of Bangalore had not shown any indication that it would be **not** be able to charge price up to the aeronautical yield cap. It had been able to charge the UDF as was given to it by the Government. BIAL had further proposed, in its submissions to the Authority that the domestic UDF under Single Till to be 339% of the existing rates and the International UDF to be 179% of the existing rates (w.e.f 1st May 2013). In Dual Till, these percentages are 748% and 179% respectively (Refer Table 103). The Authority assumed that BIAL's analysis must have taken into account that market can bear its proposed UDF. Secondly, the truing up mechanisms for Traffic, Non-Aeronautical Revenues, Operating Expenditure and Cost of Debt as had been proposed by the Authority had all but eliminated the sensitivity of return on assets to economic shocks. This should be expected to put a strong downward pressure on the riskiness of Bengaluru International Airport and

consequently, its asset beta. With the various risk mitigating measures undertaken by the GoI, GoK and proposed by the Authority, the asset beta of 0.51 for Bengaluru International Airport, was in the opinion of the Authority both reasonable and also had generous allowance for the uncertainties associated in estimating the different elements that go into its calculation.

- 14.41 **Risk Mitigants:** There are several regulatory tools for mitigating risk. Risk mitigants may not reduce the overall level of risk. Rather, they might allocate them somewhere else. Where these tools allocate risk to or away from the providers of capital, this may have an impact on the appropriate level of reward that is necessary for the provider of capital.
- 14.42 The Authority noted that with the proposed risk mitigating measures like truing up of traffic, Non-Aeronautical Revenue, operating and maintenance expenditure and interest rates (subject to review), the risk had been effectively transferred from the airport operator and the providers of capital to the passengers. This should reflect in downward pressure on the asset beta of the Bengaluru International Airport.
- 14.43 Considering all the risk elements that according to BIAL allegedly enhance the risk of Bengaluru International Airport, it would appear that, taking into account the measures put in place by GoI and GoK and if the Authority's proposals of truing up various parameters were accepted, subject to Stakeholders' consultation, these risks would get effectively almost mitigated / eliminated. Hence none of these risks, in such a case, would be relevant for BIAL. In light of the above and considering that in the current control period, the Authority had proposed to give some allowance for the uncertainties in estimation of different parameters, the Authority proposed to consider the Cost of Equity at 16%. The Authority felt that the rate proposed is reasonable for the current control period and provides for sufficiently generous allowance for any uncertainty in estimation of various parameters.
- 14.44 Based on the material before it and its analysis, the Authority proposed:
 - 14.44.1 To calculate asset beta for Bengaluru International Airport based on the comparable airports as per the report by NIPFP and to consider asset beta for Bengaluru International Airport at 0.51 as an upper bound since this did not discount for the various risk mitigating measures.
 - 14.44.2 To re-lever the asset beta of BIAL at the Notional Debt-Equity Ratio of 1.5:1. (Gearing of 60%).
 - 14.44.3 To calculate equity beta according to CAPM framework.

- 14.44.4 To consider Return on Equity (post tax Cost of Equity) as 16% for the WACC calculationboth under Single Till and Dual Till.
- 14.45 Further in authority's examination and proposal of MYTP 2013 submission the Authority noted that BIAL has considered cost of Equity at 24.4% as it had considered in its earlier submissions. The Authority also notes that BIAL has submitted the same report of KPMG submitted by it for the purpose of substantiating its estimate and that no new grounds have been adduced.
- 14.46 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. As indicated by NIPFP in Section 6 of BETA computation, NIPFP had calculated Beta for companies indicated in Table 1 on their own. As far as the overall selection of these companies is concerned, NIPFP had also given its reasoning for their inclusion in the comparator set. NIPFP had also indicated that after adjusting for the risk mitigating factors, the asset beta should be around 0.55. The Authority did not find any reason not to accept NIPFP's estimates.
- 14.47 The Authority had considered the asset beta of 0.51 for BIAL in CP 14. Even after considering the revised Asset Beta of 0.55 along with NIPFP's estimates of other CAPM parameters, 16% return on equity was reasonable and accordingly, the Authority proposed to adopt the same for calculation of WACC.
- 14.48 The Authority, hence proposed to consider the Cost of Equity at 16% in line with the proposal made in CP 14.
- 14.49 Based on the material before it and its analysis, the Authority proposed:
 - 14.49.1 To consider Return on Equity (post tax Cost of Equity) as 16% for the WACC calculationboth under Single Till and Shared Revenue Till.

c. Stakeholder Comments on Issues pertaining to Cost of Equity

- Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14. Stakeholders have also commented on the Authority's proposal to consider the cost of equity in respect of Kempegowda International Airport, Bengaluru at 16%. These comments are presented below:
- 14.51 On the issue of Cost of Equity, IATA stated that:

"IATA is of the view that the risk to the airport operator is relatively low considering that any revenue shortfall against the aggregate revenue requirement in a given control period can be fully clawed back in the next control period. Unlike any business in a competitive environment, the airport is practically assured of getting its fair rate of return over the long term. The asset beta of 0.4 suggested by NIPFP is more appropriate in reflecting this mitigated risk.

IATA believes that NIPFP's range of Cost of Equity of 11.04% to 11.91% is an acceptable estimate for BIAL. IATA therefore disagrees with AERA's proposal to significantly raise the Cost of Equity to 16%. An average of NIPFP's range (11.5%) should be used instead".

14.52 APAO has stated as below:

"In determining the CoE, the Authority needs to pay regard to the outcome it wishes to incentivize, in particular, the availability of investment in a fast growing aviation sector. The losses to consumers from delay in capacity being brought on stream due to lack of investment, and resulting higher fares charged by airlines, are likely to outweigh shorter term benefits from keeping the cost of equity too low.

Against this background, it is crucial that the CoE provides an assurance to current – and prospective - investors that returns on their investment are commensurate with the risks they have borne. The absence of adequate returns risks disincentivizing investment as investors pursue more remunerative opportunities both in India and more widely. The importance of this dimension is underlined by the potential for (and lack of success so far in attracting) FDI to Indian airports. The regulator's judgment needs to take full account of this need to attract investment into the sector. This is not so much an issue of balancing investor interests against those of passengers but more of balancing the short term interests of passengers in low prices against their longer term interests in enhanced capacity and connectivity in a situation where high rates of growth means that the longer term is actually not that far into the future. It is also submitted that as against the returns to equity investors in the power sector which are allowed on the equity infused, in the airports sector such return is allowed on the Net RAB. Since the RAB depreciates over the concession period, this means that the effective returns are lower for the operator. The CoE allowed by the regulator therefore needs to compensate the operator to make up for the lower returns by allowing a suitably higher CoE.

Determination of the Cost of Equity

Determining the cost of equity for regulatory purposes entails using available data, including but not restricted to historic data, to make judgments about the forward looking cost of equity. The best approach to this will likely vary according to the different components of CAPM. In some cases, greater weight may be placed on historic data, in others more weight on current data. In the case of the risk free rate, it appears to APAO that too much weight has been placed on historic data. The nominal risk free rate may be thought of as comprising two components

The underlying real rate of return

An inflation rate

The NIPFP approach rests on the historic performance of the overall nominal rate as represented by the return on Government debt. However, such unadjusted historic debt rates will be most relevant to measuring future risk free rates when future conditions are anticipated to be very similar to those in the past. This is unlikely to be the case given the significant fluctuations in rates of inflation in India during the past decade. The table showing the Wholesale Price Index (WPI) inflation for the years 2006 through 2012 is given below:

Year	WPI inflation %
2006	4.50%
2007	6.90%
2008	5.20%
2009	9.40%
2010	4.80%
2011	12.50%
2012	12.80%

This effectively means that the returns which an operator would make would be substantially/totally wiped out on account of inflation. In effect, the real risk free rate would be negative.

Against this background, the Authority might be better advised to use historic data to determine the underlying real interest rate, but to pay more attention to more recent inflation performance in determining the inflation rate to be incorporated into the nominal figure. To do otherwise risks setting a risk free rate below (potentially significantly so) that which should obtain going forward.

Betas

It is apparent from the National Institute of Public Finance and Policy (NIPFP) report relied upon by the Authority, that there are significant variations in airport betas. This therefore necessitates focusing on those comparators which are likely to be more realistic and attaching less weight to outlying observations that cannot be adequately explained.

In APAO's view, instead of considering a simple average of an arbitrary list, appropriate weightage should have been assigned to each of the comparators based on the degree of their comparability. It may be worthwhile to note that NIPFP itself has commented on the difficulty in determining the comparator set as stated below: "Since the private airport business in general, and these new mega-airports (like DIAL) 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....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".

(Source: Page 15 of the 'Cost of Equity for Private Airports in India-Comments on DIAL's response to AERA Consultation Paper No.32, and the report by SBI Caps' issued by the NIPFP Research Team on April 19, 2012)

The NIPFP has acknowledged in a way that the comparator set used may not be the best or adequate for determination of beta. However, it has not explored any alternative comparator set (such as the one proposed by BIAL) and instead sought to hastily conclude that taking a bottom-up approach or using a different sample of comparator companies is not feasible.

The Cost of Equity estimates computed by various leading consulting firms are given below:

Sr No	Name of Consultant	Cost of Equity
1	Crisil Infrastructure Advisory	18.16-20.44%
2	KPMG India Private Limited*	20-25%
3	SBI Capital Markets Limited	18.5%-20.5%
4	Jacobs Consultancy	24%

Assignment commissioned by APAO

Further, KPMG India Private Limited was also appointed by BIAL to estimate the fair rate of return and it has estimated the cost of equity for the first control period to be in the range of 23.5%-27.9%.

As can be seen, the Cost of Equity estimates determined by NIPFP (12.02%) and the Authority (16%) are much lower than those arrived by the various consulting firms.

APAO stands by the comparator set used by BIAL and urges the Authority to consider the same for determining the beta in case of BIAL.

Given India's state of economic development, airports in emerging markets should be an important reference point. This is because their betas are likely to be impacted by broadly similar factors, such as significantly higher rates of economic growth and income elasticity of demand than in more mature markets, both of which would tend to increase the susceptibility of airport revenue and profitability to economic fluctuation. APAO therefore wishes to state the 'sense check' argument that the betas for Indian airports cannot be lower than those of airports in mature markets and should tend to be higher. One argument used by NIPFP against focusing on emerging market betas is that this might give too great a weight to Chinese airports. While in principle this might be an issue, the practical fact is that no group of airport betas is precisely comparable and it seems likely that one that gives greater weight to emerging markets is likely to be more comparable than one which attaches significant weight to airports in developed countries with more mature aviation sectors. While the NIPFP approach appears to be more balanced by including a wider range of different airports, in practice, it is not. This is because inclusion of that wider range is likely to bias the results in a way that is at variance with economic common sense. It is also at variance with the observations from markets such as Thailand, Mexico and Malaysia as well as China. It thus produces a result which tends to convey that airports are judged less risky than many other forms of utility.

Also, the upper bound of the beta considered by the Authority for Kolkata and Chennai Airports in the Orders for tariff determination for the first control period 2011-2016 for these airports is 0.61. Both the Kolkata and the Chennai airports are owned and operated by the Government. The risk element attributable to these airports may well be lower compared to privatized airports. Therefore, it is inconceivable that the asset beta for both airports is higher than that proposed by the Authority for BIA (0.51) where the risk borne by the private sector operator would be significant not least given that it is a greenfield project.

The Authority seems to have sought to overplay the role of the mitigants such as the User Development Fee (UDF) to cover shortfall in revenues, granting monopoly for a certain area etc. This is evident from NIPFP's rather weak conclusion on the subject of beta which is reproduced below:

"We accept the argument that it is possible that typically the macro-economic shocks would be likely to be strongly transmitted to the airport sector in a period of high traffic growth, but it is not clear to what extent this can be expected to happen in India's airports, given the mitigants in place and the revenue sources. It is possible that the beta estimates we have arrived should be sufficient to cover for such risks" (Source: Page 17 of the 'Cost of Equity for Private Airports in India-Comments on

(Source: Page 17 of the 'Cost of Equity for Private Airports in India-Comments on DIAL's response to AERA Consultation Paper No.32, and the report by SBI Caps' issued by the NIPFP Research Team on April 19, 2012)

In APAO's view, this is an insufficiently firm conclusion on which to base a regulatory judgment on cost of equity. The choice of the beta should give more than a 'possibility' that risks are covered. A regulator needs to be assured that on the balance of evidence the beta is, in an inevitably uncertain world, the right number. NIPFP's conclusion does not give that assurance. This point is underscored by consideration of the individual mitigants on which it purports to rely.

APAO's view is that the UDF was granted cover the shortfall of revenues during the process of tariff determination. Given the quantum of investment, this was the very least investors would expect.

The grant of monopoly to an airport seeks to insulate it against competition by not allowing an airport to be set up within a specified radius (e.g.150 kms) for a specified period (e.g.25 years) from the date of the opening of the airport. This is thought to reduce the beta relative to comparators which do not have this grant. However, a casual inspection of the list of airports provided by NIPFP suggests that most have defacto as much of a 'monopoly' as BIA. In such circumstances, the grant of a monopoly is not a distinguishing factor reducing the risk of the airport relative to realistic comparators. The mention in the NIPFP report of the London market is inaccurate because, while the three airports are now in separate ownership, the betas referred to in the reports were based on a period when BAA indeed held a monopoly.

In view of the above discussions, APAO wishes to submit that the beta estimate relied upon by the Authority is flawed and that the beta of 0.78 originally proposed by BIAL be considered in determining its CoE. Equity Risk Premium

The NIPFP paper relies on the work of Professor Damodaran in its derivation of the equity risk premium.

In evaluating risk premia for individual countries, Professor Damodaran advocates the adoption of an approach which is based on using the equity risk premium for a well-established mature economy market (for example the United States) and adjusting for relative country risk. While Professor Damodaran mentions other methodologies, his preferred approach used the following formula:

Country Equity Risk Premium = Country default spread X standard deviation equity/standard deviation bond.

In practice, however, NIPFP's estimate of 6.71% does not follow the preferred Damodaran methodology. It instead uses a lower value for the mature market risk premium based on one assessment of US historic figures and adds a default spread of 2.4% which is not factored up by relative volatility (as specified in Damodaran's preferred methodology). The resulting estimates are nearly two percentage points lower than the result of 8.6% endorsed by Damodaran himself.

In comparison, the equity risk premium proposed by BIAL of 8.73% is difference between the expected rate of return on the market portfolio (17.33%) and the risk free rate (8.60%). The expected rate of return has been calculated based on the ten year annualized return on the 90 days moving average of market return using the BSE Sensex as the market return indicator.

Based on the above discussion, APAO requests the Authority to reconsider the risk-premium to the originally proposed equity risk premium of 8.73%.

Re-levering and Delevering

NIPFP is calculating the CoE for BIAL on the basis of the market value of the GVK transaction (approx. Rupees 44 billions) and not the book value. APAO believes that this is not an accurate approach for the following reasons:

The transaction involving GVK's acquisition of equity from L&T and Unique Zurich was carried out by a private party and based on the need of the buyer to acquire a stake in the entity. This has little bearing on the CoE

The market value could theoretically change if a future transaction happens at a lower valuation and it is unclear whether the AERA will then increase the CoE to reflect the lowered market value and debt/equity levels at that point

AERA's proposed approach leads to a CoE of 9.33% at BIAL

The analyst seems to have estimated a probable regulatory outcome to determine the market value leading to circularity in the approach adopted

Estimates of market value of equity by analysts can have a wide range, and are unlikely to serve as a reliable basis for tariff estimation

It is pertinent to note that the Detailed Project Report (DPR) that was signed and approved at the time of financial closure did not envisage the promoters infusing additional equity in the project after the initial investment, and future operations and expansion were required to be funded through internal accruals, return on investment/equity and additional debt funding (if required).

Equity infusion in PPP projects

In Paragraph13.28.4 of the Consultation Paper, the Authority has stated that "the Equity brought in by the initial Private Promoters at Rs. 284.6 Crores is considerably less than both (a) the loan by GoK and (b) much lesser than the Public funds constituting the loan by GoK and Equity by GoK and AAI....The Authority infers that the capital constraint indicated by BIAL is probably on account of the shareholders Agreement which inter alia prescribes a cap of Rs. 50 crore that can be brought in by AAI and other covenants in the SHA. This is an issue purely pertaining to the SHA and therefore, an arrangement between different shareholders...BIAL, under Clause 4.2 of the Land Lease Agreement can commercially exploit the land in excess of airport requirements. This in view of the Authority is an important Capital Risk mitigating factor..."

The Authority thus seems to be suggesting that BIAL could overcome its capital constraints through additional equity infusion by the operator and the other shareholders.

Private investors typically have higher gearing and dilute their equity over time in long-term development projects including across infrastructure sectors. This is particularly the case on long-term concession projects where the concession has a definitive term limit. This is because they are only liable to get 'face value' of the investment at the end of the term rather than the 'market value'. This is very different from privately held entities (e.g. Wipro, Infosys, Tata etc.) where the investors get market value at the end of their term. Investors in BIAL will therefore only get face value at the end of the concession period unless they exit before the end of the concession period (such as L&T or Unique Zurich). Table 1 given below outlines the

debt/equity levels of a few of the privately owned airports/operators across the world as per their 2011 Annual Report:

Table 1:

Airports with majority private ownership	Debt/equity	Debt/equity (Long term Liabilities only)
(Total liabilities)		
BAA Group	5.28	4.96
Brisbane	3.12	2.91
Mumbai	2.70	2.13
Brussels	1.91	1.61
Copenhagen	1.64	1.49
Delhi	3.71	2.91
London-Gatwick	3.74	3.45
London-Heathrow	5.87	5.60
Melbourne	3.32	3.23
Perth	5.16	4.80
Sydney	- 8.01	- 7.76
Median	3.32	2.91
Equity	30.11%	34.37%
Debt	69.89%	65.63%

The median value of the debt/equity ratio at major privately held airports is 3.32/2.91 demonstrating the inherent nature of higher gearing for such assets. In addition, the current shareholding of BIAL as defined by the Shareholders Agreement (SHA) outlines a 26% shareholding by public sector entities (KSIIDC and AAI). If this limit needs to be maintained, an equivalent amount of equity will need to be infused by the two public sector entities. However, the Government of Karnataka has already indicated its refusal to infuse any further capital in BIAL.

The original investment of approximately Rs. 3.25 billion was invested by the promoters / investors in 2004. The nominal value of this investment after eight years at the end of 2012 is approximately Rs. 5.95 billion assuming inflation and current interest rates. It is our view therefore that AERA reconsiders the figure of the original investment with a more realistic figure taking inflation and interest rates into account. The original DPR submitted to the Government at the time of financial closure (March 2005) did not envisage additional tranches of equity infusion. Instead, it was assumed that the airport would be 'self-financing' based on an appropriate

return on the investment and that internal accruals from revenues envisaged under a 'dual-till' regime would fund future investment.

The Authority has also suggested that the land in excess of airport requirements could be commercially exploited in order to mitigate the capital risk. It however needs to consider that such commercial exploitation of land to begin with would necessitate deployment of funds which are inadequate owing to capital constraints.

Further, future investment at BIA through the next control period is likely to include a new runway and a new terminal to meet demand through the period from 2021-26 as outlined in the 2010-11 Master Plan. An additional amount of Rs.10.5 billion would be required for the expansion. Based on the CoE & Single Till methodology proposed by the Authority, we have worked out an example below so as to check whether such an approach of Authority will work in a given Greenfield Airport similar to BIAL structure. It can be observed that sufficient funds will not be available to cover the costs of expansion and meet working capital requirements and financial covenants (DSCR & DSRA - emergency reserves) as outlined in an example in Table 2 given on the next page. The assumptions made for the purposes of this example are given below:

Assumptions	
Return on equity	16.00%
Cost of state support	0.00%
Cost of debt	10.00%
Debt repayment period	10
Equity (Rs. Crores)	375
State support (Rs.Crores)	350
Debt (Rs. Crores)	1,125
Total (Rs. Crores)	1,850
Opening RAB (Rs. Crores)	1,850
Equity funded	20.00%
WACC	9.32%
Depreciation rate	4.50%

Table 2: Rs. Crores Year	1	2	3	4	5	6	7	8	9	10
RAB	1,850	1,808	1,725	1,642	1,559	1,475	1,392	1,309	1,226	1,142
Depreciation	42	83	83	83	83	83	83	83	83	83
Net RAB	1,808	1,725	1,642	1,559	1,475	1,392	1,309	1,226	1,142	1,059

Table 2: Rs. Crores	1	2	3	4	5	6	7	8	9	10
Year										
Average RAB	1,829	1,767	1,684	1,600	1,517	1,434	1,351	1,267	1,184	1,101
Return on RAB	171	165	157	149	141	134	126	118	110	103
OpEx (pass through)	-	-	-	-	-	ı	•	-	ı	-
Interest cost	(107)	(96)	(84)	(73)	(62)	(51)	(39)	(28)	(17)	(6)
Depreciation	42	83	83	83	83	83	83	83	83	83
Gross allowable revenue	105	152	156	159	163	166	170	173	177	180
4 % Revenue share (pass through)	-	-	-	-	-	-	-	-	-	-
Net allowable revenue (A)	105	152	156	159	163	166	170	173	177	180
Opening debt	1,125	1,013	900	788	675	563	450	338	225	113
Debt service	219	208	197	186	174	163	152	141	129	118
Interest	107	96	84	73	62	51	39	28	17	6
Principal payment	113	113	113	113	113	113	113	113	113	113
Closing debt	1,013	900	788	675	563	450	338	225	113	-
DSCR assumption	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4
Revenues required to cover debt service (Debt service X1.4) (B)	307	291	276	260	244	228	213	197	181	165
Shortfall (A-B)	(202)	(139)	(120)	(101)	(81)	(62)	(43)	(24)	(4)	15

APAO wishes to submit that the capital expenditure (or CapEx) related investment and funding is not covered by the AERA Act and should the Authority's proposed approach be followed, it would negatively impact returns which would lead to a significant shortfall in funds and adversely affect BIAL's expansion plans as shown in the example above"

14.53 Zurich airport stated as below

"The cost of equity is determined in practice using the Capital Asset Pricing Model (CAPM). This model is also used in the current regulatory proposal. However, with the cost of equity proposed at 16.00%, the risks of the equity shareholders are not covered. Particularly in the case of BIAL, the financial model that was created for BIAL, by the consortium of bidders -of which Frughafen Zurich AG (FZAG) was a part of - was made on the understanding that aeronautical and non-aeronautical revenues would be treated separately and the various financing agreements entered into by BIAL, have also been executed on the premise that BIAL project generate 21.66% IRR. The sharp reduction in the equity cost rate to the proposed 16.00% does

not make sense from an economic perspective. The reduction is primarily due to the large reduction of the Beta (Asset Beta) to 0.51. According to our experience, this value is too low and does not reflect the risk of an airport operator in any way. Therefore, the cost of equity and in particular the Beta, has to be determined again in a risk-based manner."

14.54 AAI has stated as under:

"BIAL has stated that cost of equity should be determined taking into account the various risks involved. AAI feels that there are various methods and policies to determine the cost of capital. AERA has to take a decision this matter.

It is felt that the cost of equity should be more or less same for all the airports due to the fact that at all places there is generally only one Airport and economic scenario and factors affecting the Aviation Industry is almost similar at all places. There is no additional risk involved at Bangalore rather it will have positive impact to reduce risk with the closure of existing commercial airport in the city.

It is not specified whether any internal accrual has been utilized for construction of the project"

14.55 Further subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 22. The comments are presented below:

14.56 IATA stated as under

"IATA is of the view that the risk to the airport operator is relatively low considering that any revenue shortfall against the aggregate revenue requirement in a given control period can be fully claimed back in the subsequent control period. Unlike any business in a competitive environment, the airport is practically assured of getting its fair rate of return over the long term. The asset beta of 0.4 suggested by NIPFP is more appropriate in reflecting this mitigated risk.

IATA believes that NIPFP's range of Cost of Equity of 11.04% to 11.91% is an acceptable estimate for BIAL. IATA therefore disagrees with AERA's proposal to significantly raise the Cost of Equity to 16%. An average of NIPFP's range (11.5%) should be used instead."

14.57 BPAC has commented on Cost of equity as follows:

- "a. We have the following concerns with regards to the Computation of cost of capital:
- 1. While the Equity risk premium could be computed in many ways, we would like to suggest that the computation methodology used should be forward looking, for the benefit of passengers.
- 2. Is the rate obtained from the Indian term structure of interest rate and ratified by SBI?
- 3. Cost of Debt could be brought lower if GoK or GOI can give counter guarantee.
- 4. Cost of Debt should be accurately reflected in the financial projection in each control period.
- 5. Cost of capital must transparently reflect the interest cost deducted from the income statement in the business plan.
- 6. Cost of equity must reflect forward looking equity risk premium and not historical risk premium.
- 7. Beta Calculation seems right but it must be levered for the changing debt ratio each year of the project life and average gearing must be avoided."
- 14.58 On Cost of Equity, Lufthansa Airlines has stated that:

"The Authority has proposed to consider the Cost of Equity at 16%. Whereas we believe that NIPFP's range of Cost of equity of 11.04% to 11.91% is an acceptable estimate for BIAL since the risk to the airport operator is relatively low considering that revenue shortfall against the aggregate revenue requirement in a given control period can be fully claimed back in the next control period. An average of NIPFP's range (11.5%) is reasonable."

d. BIAL's comments on Stakeholders comment on Issues pertaining to Cost of Equity

14.59 On IATA and Lufthansa Airlines' comment on Cost of equity, BIAL has stated that:

"BIAL submits that even at the cost of equity proposed by AERA there will be severe cash constraints for regular operations and for future expansion as well. Hence, BIAL submitted to AERA to consider higher cost of equity. BIAL reiterates its detailed submissions regarding cost of equity in response to CP 14 and CP 22."

e. BIAL's own comments on Issues pertaining to Cost of Equity

14.60 On the issue of Cost of Equity, BIAL has commented as follows:

"Ke as computed by NIPFP - Certain observations

Cost of Equity

Risk free return:

Airport project is kind of Infrastructure project where one can expect returns only after a long gestation period.

NIPFP has considered daily average of GOI bonds for arriving at the risk free rate which typically demonstrate that the returns are available on every day which is not the case with Infra Projects.

When Finance Ministry is using 10 year weighted average bond yield (8.60%) as benchmark for depicting the performance of government securities as it can be observed in "Public Debt Management" reports. NIPFP shouldn't have considered daily average while arriving at Risk Free rate of return.

Source: www.finmin.nic.in/reports/PDM_apr_june_2012.pdf

NIPFP report considers the 10 year bond yield over the period January 1, 2001 to December 31, 2010. NIPFP has selected older period which has the lowest 10 year bond yield, instead NIPFP may have to consider the latest period bond yield.

The KPMG report on cost of equity for BIAL also considers 10 year bond yield as risk free rate return as on 31st March, 2012 which is 8.60% alike Public Debt Management reports.

Risk Premium:

As stated in Clause 2.2 of by NIPFP report, Volatility in Indian Market is high as compared to west which shows the risk factor is high in Indian investment as compared to west.

The NIPFP report assumes default spread of 2.41% as Indian Market Risk Premium to compute Cost of Equity based on local currency sovereign rating of Ba1. The outlook of international rating agency currently are

S&P - BBB-

Fitch - BBB-

DBRS - BBB (low)

Moody's - Baa3

Dagong - BBB+

Moreover, the author Mar. Damodaran himself suggests Melded approach are most realistic approach for the immediate future (page 55). The extracts are mentioned below:

"We believe that the larger country risk premiums that emerge from the last approach are the most realistic for the immediate future, but that country risk premiums will decline over time. Just as companies mature and become less risky over time, countries can mature and become less risky as well.

One way to adjust country risk premiums over time is to begin with the premium that emerges from the melded approach and to adjust this premium down towards either the country bond default spread or the country premium estimated from equity standard deviations. Thus, the equity risk premium will converge to the country bond default spread as we look at longer term expected returns"

As defined in Mr. Aswath Damodaran's report

Equity Risk Premium = Base Premium for Mature Equity Market + Country Risk Premium.

The country's risk premium of India as per Melded approach has been computed at 13.35%. (Page 93 of the report)

NIPFP ought to have considered the Equity risk premium of 13.23% in case of Indian investment instead of adding 2.4% of the default spread as the default spread does not factor the market volatility.

Accordingly as stated above, the risk premium as computed by NIPFP needs to be relooked into and NIPFP when it has depended on Mr. Aswath Damodaran approach, the equity risk premium for Indian Market ought to have been considered @ 13.23%. Monopoly of Bangalore Airport:

The understanding as given by the Authority that Bangalore Airport has monopoly existence because of non-competition within 150 Kilometres radius is not correct as explained below:

Bangalore Airport has monopoly only with respect to O & D traffic i.e. origin and destination traffic.

It still faces stiff competition in the International Airlines Market and Hub Market with neighbouring airports like Hyderabad and Chennai.

With an improved road and rail connectivity between Bangalore to Hyderabad and Bangalore to Chennai, competition with respect to Cargo business.

150 Kilometres radius is applicable only for first 25 years of Concession period.

Accordingly the statement that Bangalore Airport has monopoly is only correct to the extent of O & D traffic.

Re-leveraging the Asset Beta:

NIPFP has re-leveraged the Asset beta from 0.51 to 0.40 only by considering UDF which is part and parcel of way of obtaining returns without any concrete basis / calculation.

Accordingly re-leveraged beta as determined by NIPFP needs to be relooked into BIAL.

Computation of Equity Beta:

For the purpose of computing Equity Beta, NIPFP has used the transaction that has been executed between GVK and Siemens.

Based on the above the equity beta has been computed as computed below:

Market Value of Equity : Rs.4429 Crores

Total Debt : Rs.1619 Crores

Level of leverage: 1619 / (1619+4429): 0.27

Equity beta : 0.4 / (1-0.27) = 0.55

NIPFP ought to have considered points as mentioned below which substantially impact Equity Beta Calculations:

This transaction has been executed between GVK and Siemens to which BIAL is not a party. When BIAL is not a party to it, Equity Beta ought to have calculated considering books value of equity instead of Market capitalization as computed.

Sale of 14% for Rs.620 Crore doesn't mean 100% will fetch Rs.4429 Crores.

The Market capitalization which has been done by some third party used for investment doesn't reflect the complete market capitalization of the Company.

NIPFP report substantiates its selection of comparable airports for determination of asset beta with survey reports of ACI. The ACI report is being prepared for completely different purposes and accordingly the same should not be used for deciding that Indian airports can be compared with developed countries airports. The ACI rankings are a measure of service quality of airports and not riskiness of airport asset. Contrarily, the stringent quality standards specified in Concession agreement calls for additional cape / open to maintain the quality standards thus increasing riskiness of the airport asset.

Unlike developed countries, passenger growth has not been stabilized in the Indian Market, as trended recently Indian aviation industry has registered de-growth due to

economic down trend in the country. This situation is unlike the developed markets where the passenger traffic has been stabilized.

As a result of large population in India, the traffic volume of BIAL may be equivalent to some other airports in developed countries. However, traffic volatility and underlying factors of traffic growth (such as per capita income, GDP growth rate, and income and price elasticity) in these developed countries are different from those in India, which is an emerging market. Thus, riskiness of airport assets in India is higher than those in developed markets. Accordingly for the purpose of Comparison and computing of Equity beta, NIPFP ought to have considered only developing markets instead of considering developed and developing markets.

As explained above, assumptions used by KPMG in case of BIAL and Jacobs in case of HIAL are appropriate and assumptions as computed by NIPFP requires to be revisited.

Also referred by the NIPFP the Equity Beta as computed by Jacobs in case of HIAL is 0.78 is same as computed by KPMG in case of BIAL

Hence the Beta as computed by the NIPFP i.e. 0.55 needs to be relooked into and instead should have used 0.78 as computed by the KPMG in case of BIAL or Jacobs in case of HIAL

Considering BIAL is risk free:

Smooth functioning of Airport doesn't mean that BIAL has not faced any risks or facing any risks.

BIAL has faced many risks before and during the construction stage such as:

Connectivity from NH 7 to Airport, which finally has to be built in by the BIAL itself.

Courts giving permission for opening of Airport 72 hours prior to Opening date.

As stated above, BIAL has its own risks which Authority / NIPFP ought to have considered in determination of Tariff.

Internal Rate of Return as considered at the Financial Closure and arriving at the Viability Gap Funding:

The Authority ought to have considered that as per the Financial closure for initial phase has computed @ 21.66%

Further, the Authority should have considered that while arriving at the viability gap funding, GOK has used an IRR of 21.66%.

Considering the Project is under BOOT, as IRR has been determined @ 21.66% for a longer period of 30 years, hence the Authority ought to have considered and allowed Cost of Equity of 24.4% as computed by the Company.

Submission:

As detailed above, various assumptions and computation used by NIPFP in determination of Cost of Equity is not appropriate in case of BIAL and Authority should consider the KPMG report as submitted by the Company and allow Cost of Equity of 24.4% as determined and claimed."

14.61 BIAL has also stated that:

"Although the CP states that the Authority has taken into account the interests of users and the airport, however, the effective rate of return for investors of BIAL translates to 9.33% which leaves little or no incentive for private investments into the BIA. BIAL submits that it is not getting a fair rate of return for investment that is commensurate with the risks of BIAL."

f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to Cost of Equity

- 14.62 The Authority has carefully reviewed the comments received from various stakeholders on Cost of Equity. While APAO and BIAL have provided reasons why the Cost of Equity cannot be 16% citing different approaches to the components of cost of equity computation taken by NIPFP, IRR for the project considered during the financial close of the Project, inadequate returns etc., Zurich Airport has also stated in lines of BIAL and APAO that IRR for the project ought to be considered.
- 14.63 Lufthansa Airlines and IATA have stated that the cost of equity computed by NIPFP is reasonable and need not even be 16%.
- 14.64 AAI has given its inputs that he Airport in Bangalore is not risky and BPAC has provided inputs on different methodologies for computation.
- 14.65 The Authority notes that the Authority has provided detailed analysis on each component of cost of equity an analysis of risks presented by BIAL in CP 14 which has been reproduced above (Refer Para 14.13 above to Para 14.43 above).
- 14.66 The Authority notes with respect to IATA and Lufthansa Airlines' comment that the Cost of Equity proposed by NIPFP is lower than even the cost of debt and hence the cost of equity has been proposed by the Authority considering some allowances.

- 14.67 The Authority notes that APAO has taken an example to explain how the rate of return on equity does not suffice the Airport to fulfil its DSCR requirement. In the example provided by APAO the Authority noted that:
 - 14.67.1 WACC has been estimated as a constant number by APAO which is not the case. WACC is computed annually based on the actual Debt and Equity ratios.
 - 14.67.2 Depreciation rate considered by APAO (at 4.5%) for the purpose of calculation is not in line with the actual scenario of BIAL. The actual trend of depreciation on the gross block in case of BIAL over the period 2009-10 to 2013-14 is approximately 7%. The Authority has also noted BIAL's request for revision in depreciation rates effective from 2014-15 in line with Companies Act, 2013.
 - 14.67.3 Loan repayment has been considered from the first year for a period of 10 years. The Authority understands that in actual scenario, for Phase 1 of the Project in BIAL there was a moratorium of over 2 Years.
- 14.68 The Authority has given the above comments only to bring out some of the inconsistencies in the assumptions made by APAO in its illustration. The Authority notes that at any rate, the cost of equity is dependent on the risk profile of the Airport and with various risk mitigation measures put in place by the Central Government, State Government and the Authority (Refer Para 14.41 above), 16% return on equity is considered reasonable.
- 14.69 The Authority also notes that APAO had concluded that BIAL is a monopoly whereas BIAL has stated that the Authority's view that BIAL was a monopoly was incorrect.
- The Authority notes that BPAC has provided its comments on the cost of equity computation stating that a government guarantee would reduce the cost of debt and the cost of equity must reflect forward looking equity risk premium and that beta calculation must be levered for the changing debt ratio every year of the project life. As far as the cost of debt is concerned, the Authority has commented on the same with respect to Government Guarantee (Refer Para 13.48 above). The Authority notes that BPAC has not indicated what it regards as the fair rate of return on equity based on methodology suggested by it. The Authority has followed the methodology of taking into consideration the comparator set of NIPFP and arriving at a fair rate of return on equity at 16%. NIPFP is a specialised expert agency and the Authority does not find any need to review its decision of 16% as a Fair Rate of return.
- 14.71 The Authority notes that BIAL has made a comparison with the road and rail network to analyse its competition in Cargo segment to highlight that according to BIAL, it is

not a monopoly for cargo segment. Analysis of market power is not within the ambit of the Authority. The Authority notes that as far as the airport services are concerned, BIAL's observation that Chennai and Hyderabad offer competition, in Authority's view, is misplaced.

- 14.72 The Authority notes that BIAL has stated that the effective returns for investors translates to 9.33% which leaves no incentive. The Authority notes that BIAL has computed the same as Profit divided by Shareholders funds. The Authority notes that this method cannot be adopted to compare with the 16% Fair Rate of Return that the Authority proposed due to the following reasons:
 - 14.72.1 WACC is computed on the value of net assets invested and not on the Shareholder funds. While computing WACC, the Authority calculates Fair Rate of Return on Equity at 16% and arrives at WACC based on the relative percentages of Debt and Equity (including retained earnings, to the extent they are invested in Capital). As has been indicated in Para 15.17 below, in case of BIAL, retained earnings have been reckoned to have invested in the Capital expansion.
 - 14.72.2 Under the Regulatory framework return is Return on assets is not provided till the asset is commissioned and put to use. Return on amount invested for construction of asset is given once the asset is commissioned. Apart from that, WACC is not applied to the total capital employed which also includes elements like Working Capital as work in progress. On both these items the Authority provides for Interest costs. Hence, the comparison of return on capital employed, which is used to construct the asset till it is commissioned is incorrect.
 - 14.72.3 In case of BIAL, the Authority notes that the Aeronautical tariff that the Airport Operator ought to have earned in 2011-12 and 2012-13, according to Authority's framework was lower than the amount earned by the Airport Operator earned by the Airport Operator actually, during the period 2011-12 and 2012-13. Hence computing a return on that equity plus shareholders funds, which is comprising of such higher funds earned, is incorrect.
- 14.73 The Authority notes that APAO has stated that the Authority has considered an upper bound beta of 0.61 for Kolkata and Chennai Airports. The Authority notes that in case of Chennai and Kolkata also, the Authority had considered the cost of equity at 16% and then arrived at the Weighted Average Cost of Capital. Having regard to "efficient financing" as one of the methodologies, the Authority had reduced the Weighted Average Cost of Capital to 14% in computing the return on RAB.

- APAO in its comments has, in Authority's view, erroneously inferred that NIPFP has arrived at an "insufficiently firm conclusion on which to base the regulatory judgment of cost of equity". In fact the quotation from NIPFP report given by APAO itself states that NIPFP has indicated the possibility that the beta estimates that they have arrived at should be sufficient to cover the risks indicated by them as responsible financial advisor to the Authority. Based on fragmented and partial reading of NIPFP report, APAO and BIAL have tried to surmise that the report of NIPFP is "flawed" or giving "insufficiently firm conclusions". The Authority finds no such warrant in the report of NIPFP in this regard. It is therefore unable to be persuaded to accept BIAL or APAO's arguments that the Authority has found NIPFP report as not fully acceptable to it nor, the statement of APAO that NIPFP had some doubts regarding its calculations of fair rate of return on equity. The Authority notes that NIPFP is considered as the Think Tank of the Finance Ministry and the Authority has no reason to deviate from the Cost of Equity estimates made by NIPFP.
- 14.75 The Authority notes that APAO has highlighted the issue of "The losses to consumers from delay in capacity being brought on stream due to lack of investment, and resulting higher fares charged by airlines, are likely to outweigh shorter term benefits from keeping the cost of equity too low". The Authority notes that the Planning Commission has clearly stated that the PPP mode of privatization is to bring in private sector participation in public projects so as to reduce costs and improve productivity. It would therefore be expected from the private sector partner to keep in view the necessary requirements of additional capacity. The fair rate of return on equity at 16% is considered to be reasonable specially having regard to the various risk mitigating measures available to BIAL, which have been presented in CP 14.
- 14.76 The Authority further notes that APAO has also referred to the NIPFP study. According to APAO's reading "It may be worthwhile to note that NIPFP itself has commented on the difficulty in determining the comparator set...". NIPFP has updated the working of the comparator set as was also considered by the Commerce Commission of New Zealand during its work on "Input Methodologies 2009". NIPFP has updated the comparator set of Commerce Commission of New Zealand and the Authority's cost of equity calculations in respect of Delhi and Mumbai airports as well as for Kolkata and Chennai are based on the revised comparator set and the asset beta calculation of NIPFP. NIPFP has concluded that the comparator set chosen by it is reasonable and robust. NIPFP is a specialized financial

institution and has calculated the fair rate of return on equity. The Authority finds no reason to review its conclusions as indicated in the Consultation Paper with respect to this issue.

- 14.77 Further, APAO has also referred to the Authority's tariff determination Order in respect of Chennai and Kolkata Airports, stating that "Both the Kolkata and the Chennai airports are owned and operated by the Government. The risk element attributable to these airports may well be lower compared to privatized airports." It would appear that APAO feels that publically owned airports are less risky than privatized airports. As indicated above one of the important reasons of privatization through PPP mode is to lower costs and improve productivity. If APAO's conclusions are accepted it would appear to indicate that the factum of privatization is introducing higher riskiness and thereby increasing UDF. The Authority is unable to appreciate this line of reasoning. That apart, the Authority has already put in place various risk mitigating factors that have substantially reduced the risk in BIAL.
- 14.78 Further, the Authority also notes that APAO has also alluded to "the risk borne by the private sector operator would be significant not least given that it is a Greenfield project". The Authority is estimating the risk in the current Control Period from 2011 to 2016 during which BIAL has been fully functional airport. The project specific characteristics are specific to the project and therefore are not in the nature of "systematic risks" that alone is captured by calculation of Beta. Hence such project specific issues need to be addressed specifically focused on such unique project requirements (if any). These have been adequately addressed in case of BIAL. The Authority also notes that having regard to the specific characteristics of Greenfield nature of the project, both the GoK and MoCA have advanced substantial concessions and support to the project. The Authority therefore considers that project specific requirements have been fully addressed by such support and that its inclusion in calculation of beta would not be appropriate.
- 14.79 The Authority has examined the comments made by various stakeholders and, on balance, the Authority decides to consider the cost of equity in respect of BIAL at 16%.

Decision No. 10. Cost of Equity

The Authority decides to consider Return on Equity (post tax Cost of Equity) as 16%
 for the WACC calculation – both under Single Till and 40% Shared Revenue Till.

15 Weighted Average Cost of Capital (WACC)

a. BIAL Submission on Weighted Average Cost of Capital (WACC)

15.1 BIAL in its MYTP 2012 submission had computed the Weighted Average cost of capital as under considering cost of equity at 24.4% and cost of debt at 11%. WACC computed by BIAL as a part of MYTP 2012 submission is as given below:

Table 54: Computation of Fair Rate of Return submitted by	v RIAI under Single Till – MYTP 2012
rable 34. Computation of rail Nate of Neturn Submitted by	y DIAL UNGER SINGLE TILL - WITTE ZOIZ

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16	
Closing balance of Debt	1,461.67	2,154.97	2,015.24	2,153.83	3,311.25	
Closing balance of Equity	686.90	867.19	1,075.56	1,264.47	1,547.87	
Gearing Ratio	68.03%	71.31%	65.20%	63.01%	68.15%	
Cost of Equity	24.40%	24.40%	24.40%	24.40%	24.40%	
Weighted average gearing	67.10%					
Weighted average cost of debt	11.00%					
Fair Rate of Return	15.41%					

- Debt and equity considered for computing the weighted average gearing were as follows:
 - 15.2.1 Projected volume of debt, excluding working capital borrowing, at the end of each year in the control period had been considered. This included balances arising from the Term loans availed and proposed to be availed and the outstanding State Support loan yet to be repaid.
 - 15.2.2 Projected volume of Shareholders funds at the end of each year in the control period was considered. This included Share capital issued and paid up and the retained earnings projected at the end of each of the five years in the control period, based on the proposed return computed as per the Business Plan submitted.

15.3 BIAL had submitted as follows:

"For the purpose of computing debt to equity ratios, security deposits may be treated as quasi-equity and hence may be included under the head equity and Interest free loans and cost of debt may be treated as debt"

- 15.4 BIAL in its MYTP 2013 submission computed the Weighted Average Cost of Capital based on its computation of the Weighted average cost of debt and cost of equity as proposed by it.
- 15.5 According to BIAL's submissions in MYTP 2013, the WACC proposed by it under Single Till was 15.14% and under Shared Revenue Till was 16.87% based on BIAL's estimated

Return on Equity and Weighted Average Cost of Debt

b. Authority's examination of BIAL's submission on Weighted Average Cost of Capital

- 15.6 The Authority in CP 14, had duly considered and analysed BIAL's submissions on cost of debt and cost of equity and then had examined the calculation of WACC submitted by BIAL. The Authority's examination of the issue is as follows:
- The Authority had carefully reviewed BIAL's submission on "Quasi Equity". The Authority had not found the term Quasi Equity defined in any economic literature. The term "Quasi equity" was primarily for banks and Financial Institutions for computation of the Debt Service Coverage Ratio etc. and possibly for computation of eligibility and not for the purposes of computing the Gearing. However the Debt equity ratio should be calculated as Total Long term Debt: Total Shareholder Funds and the gearing should also to be computed accordingly. Hence the Authority was not convinced of BIAL's submission on considering the Security Deposits as "Quasi Equity"
- The Authority had considered the issue of calculation of WACC. The Authority was 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 was informed that WACC is regarded as weighted average cost of the application of funds for fixed assets as are reflected in the balance sheet.
- Authority noted that the values of Debt and Equity considered for the 5 year control period was based on the projected Yield and hence did not match with the details as per the audited financial statements for the periods 2011-12 and 2012-13. The Authority proposed to consider the gearing of Debt and Equity based on the actual results for the period 2011-12 and 2012-13.
- 15.10 As stated earlier the Authority has proposed considering the Cost of Equity at 16%

In view of the above, and the earlier observations on Cost of Debt and Cost of

- Equity, the Authority proposed to rework the Fair Rate of return considering the following:
 - 15.11.1 Weighted average Cost of Debt at as per Para 13.26 above
 - 15.11.2 Cost of Equity at 16%

15.11

- 15.11.3 Gearing to be considered based on the audited Balance sheet for 2011-12 and 2012-13 and the proposed closing balance of Debt and Shareholders funds standing as per the Projections in the Balance sheet at the end of every year.
- 15.12 Based on the above approach and all proposals of the Authority, the Authority proposed to compute the Weighted Average Cost of Capital for BIAL under Single Till as under.

Table 55: Recomputed Fair Rate of Return under Single Till - CP 14

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16		
Closing balance of Debt	1461.55	2149.79	2464.75	2190.45	3257.40		
Closing balance of Equity	604.66	707.69	762.75	1271.80	1541.57		
Gearing Ratio	70.74%	75.23%	76.37%	63.27%	67.88%		
Cost of Equity	16.00%	16.00%	16.00%	16.00%	16.00%		
Weighted average gearing	70.21%						
Weighted average cost of debt	10.04%						
Fair Rate of Return	11.82%	11.82%					

- 15.13 It was noted that the workings of Fair Rate of Return computed by the Authority were under the assumption that additional fund requirements, if any, will be contributed by the Shareholders of the company as computed by the Model.
- 15.14 Based on the material before it and its analysis, the Authority proposed:
 - 15.14.1 To calculate WACC, for the purposes of calculating Average Revenue Requirement, based on the audited balance sheet items like debt, equity, Reserve & Surplus as well as any other means of finance.
 - 15.14.2 To calculate WACC as per Table 55 under Single Till (based on 16% cost of equity) for the purpose of determination of aeronautical tariffs during the current control period.
- 15.15 Further, Authority's analysis of BIAL's MYTP 2013 submissions on weighted average cost of capital in CP 22 was as under:
- Based on all the proposals of the Authority, the Authority proposed to compute the Weighted Average Cost of Capital for BIAL under Single Till and Shared Revenue Till considering average balance of equity and Debt of each year. The Authority had noted that the GoK has advanced an amount of Rs. 335 crores as Interest free loan to BIAL. This had been accounted for as Debt at zero interest cost. The Authority had also noted that BIAL has posted profits as seen from its Financial statements for the years 2011-12 and 2012-13. The Authority noted that BIAL has not paid any dividends for these two years. The Profit after tax is thus transferred to the Balance Sheet under Shareholders' funds (as additions to Reserves and Surplus). The Authority also noted that BIAL needs Capital for the expansion of the Airport

and the Capital needs are larger than the Profit after tax. Hence, the entire Profit after tax can be considered as having been deployed towards Capital expenditure of the Project. Hence, for the purposes of calculation of the Debt: Equity ratio the Authority proposed to consider the actual Debt: Equity ratio as reflected in the Balance sheet for the current control period. 15.17 It may be noted that Table 56 and Table 57 projected the closing balance of Equity for 2014-15 and 2015-16 at around Rs. 1000 Crore and Rs. 1360 Crore respectively (the exact numbers is different for Single Till and 40% Shared Revenue Till). This was higher than the closing balance of Equity for 2013-14. The higher closing balance of Equity for 2014-15 and 2015-16 was projected on the assumption (made in the model) of infusion of additional Equity by the Promoters based on the requirement of Capital Expenditure for expansion and the assumed Debt Equity ratio of 70:30. The Authority noted however that one of the Shareholder viz. GoK had in their letter dated 26th August 2013 stated that GoK is not inclined to infuse additional equity. Apart from this, in the Board Resolution of May 2013, BIAL had submitted to the Authority that its Board had resolved that none of the Shareholders would be able to infuse additional equity. 40% of Shared Revenue Till would make available some of the Non-Aeronautical Revenue in the hands of BIAL for the purposes of meeting the capital needs for expansion. The Authority had already indicated that BIAL should find appropriate additional resources (in the form of land monetisation, additional equity infusion etc.) to meet the needs of the Capital Expansion. Depending on the source of financing, the closing balance of Equity would undergo a change. The sources of additional means of finance that BIAL may mobilize for the project would have impact on the closing balance of equity and to that extent WACC calculations would undergo a change in as much as different means of finance for additional capital requirements would have different costs associated with them. For the purposes of this control period however, the Authority proposed to take into account the computations as made according to the model to project the closing Equity balance for 2014-15 and 2015-16. As per the exact nature and characteristics of such means of finance, the Authority proposed that revised WACC would be trued up for the current control period at the time of determination of Aeronautical tariffs for the next control period.

15.18 The recomputed Fair Rate of Return under Single Till and 40% Shared Revenue Till were as follows:

Table 56: Recomputed Fair Rate of Return under Single Till by the Authority – CP 22

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16	
Average balance of Debt	1540.39	1805.67	2081.92	2044.72	2629.26	
Average balance of Equity	522.65	656.18	746.14	1006.92	1364.44	
Gearing Ratio	74.67%	73.35%	73.62%	67.00%	65.84%	
Cost of Equity	16.00%	16.00%	16.00%	16.00%	16.00%	
Weighted average gearing	70.16%					
Weighted average cost of debt	9.89%					
Fair Rate of Return	11.71%					

Table 57: Recomputed Fair Rate of return under 40% Shared Revenue Till by the Authority - CP 22

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16	
Average balance of Debt	1540.39	1805.67	2081.92	2044.72	2630.49	
Average balance of Equity	522.65	656.18	746.14	1008.57	1366.02	
Gearing Ratio	74.67%	73.35%	73.62%	66.97%	65.82%	
Cost of Equity	16.00%	16.00%	16.00%	16.00%	16.00%	
Weighted average gearing	70.15%					
Weighted average cost of debt	9.89%					
Fair Rate of Return	11.71%					

- 15.19 Based on the material before it and its analysis, the Authority proposed
 - 15.19.1 To calculate WACC, for the purposes of calculating ARR, based on the audited balance sheet items like debt, equity, Reserve & Surplus as well as any other means of finance.
 - 15.19.2 To calculate WACC as per Table 56 under Single Till and as per Table 57 under 40% Shared Revenue Till (based on 16% cost of equity) for the purpose of determination of aeronautical tariffs during the current control period.
 - 15.19.3 To true up the WACC calculations based on the actual Debt: Equity ratios during the control period and changes to the Weighted Average cost of debt.

c. Stakeholder Comments on Issues pertaining to Weighted Average Cost of Capital (WACC)

Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14. Stakeholders have also commented on the Authority's proposal for determination of WACC in respect of Kempegowda International Airport, Bengaluru. These comments are presented below:

15.21 FIA on the issue of WACC stated that:

"Since BIAL has not finalised Real Estate Business Plan yet, interest free real estate deposits has not been factored for determination of FROR. In case, the interest free real estate deposits is factored, this would reduce overall FROR and would result in lower return on RAB to BIAL and lower aeronautical tariffs. Also, Authority has assumed the gearing ratio at 70% on the basis of hypothetical assumption that the Financial Close has been achieved despite the fact that BIAL's shareholders have expressed their inability to infuse additional equity and this gearing ratio might change significantly depending upon final source of funding. Hence, this approach of the Authority is not acceptable as the FROR determined in this approach is tentative. Therefore, Authority ought to have directed BIAL to firm up its Real Estate Business Plan and provided accurate sources of revenue to correctly identify and determine the Target Revenue and FROR"

15.22 On the issue of Weighted Average Cost of Capital, AAI stated as under:

"WACC needs to be determined after taking into account the amount of debt utilized by BIAL, if any for non-airport activity.

The amount of internal accrual (which has the same nature of equity) needs to be determined and decided whether to reduce it from the equity involved in the Airport.

The Government of Karnataka has sanctioned interest free loan to BIAL for the development of the Airport. It is felt that AERA should examine this aspect and give a proper treatment after considering all the relevant aspects"

15.23 IATA has stated on the issue of WACC that:

"Based on Cost of Equity of 11.5%, weighted average cost of debt of 10.04% and weighted average gearing of 70.21%, the re-computed WACC would be 10.47%."

15.24 Zurich Airport on the issue of WACC stated as under

"The Weighted Average Cost of Capital (WACC) approach is based on the fundamental idea that investors (shareholders and lenders) expect an adequate return in the form of a fair market return on capital. The adequacy is not a purely subjective size, but depends on the risk involved in capital investment.

Determining the accurate WACC is one of the major challenges in the context of regulation, Multiplied with the RAB basically results in the profit (before interest) that the airport operator is allowed to achieve at a maximum in a certain Till. The WACC equals to the cost of equity and cost of debt weighted by the capital structure.

The cost of debt can either be determined by a credit-dependent surcharge (spread) on a risk-free interest rate or by the effective interests paid (in %). The second approach seems reasonable in the case of Bengaluru International Airport.

The cost of equity is determined in practice using the Capital Asset Pricing Model (CAPM). This model is also used in the current regulatory proposal. However, with the cost of equity proposed at 16.00%, the risks of the equity shareholders are not covered. Particularly in the case of BIAL, the financial model that was created for BIAL, by the consortium of bidders - of which Frughafen Zurich AG (FZAG) was a part of - was made on the understanding that aeronautical and non-aeronautical revenues would be treated separately and the various financing agreements entered into by BIAL, have also been executed on the premise that BIAL project generate 21.66% IRR. The sharp reduction in the equity cost rate to the proposed 16.00% does not make sense from an economic perspective. The reduction is primarily due to the large reduction of the Beta (Asset Beta) to 0.51. According to our experience, this value is too low and does not reflect the risk of an airport operator in any way. Therefore, the cost of equity and in particular the Beta, has to be determined again in a risk-based manner."

15.25 Further subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 22. Stakeholders have also commented on the Authority's proposal for determination of WACC in respect of Kempegowda International Airport, Bengaluru. These comments are presented below:

15.26 FIA on the matter of WACC stated as under:

"As the Real Estate Business Plan is not firmed up, interest free real estate deposits have not been factored which would have impacted determination of FROR. Also, Authority without its own independent exercise of determination has assumed the gearing ratio at 70% only on the basis of BIAL's submission that the Financial Close has been achieved. This approach of the Authority is not acceptable as the FROR determined in this approach remains tentative. The entire exercise cannot be undertaken on 'tentative' basis."

15.27 IATA on the issue of WACC stated as under:

"Based on Cost of Equity of 11.5%, weighted average cost of debt of 9.89% and weighted average gearing of 70.16%, the re-computed WACC under single till should be 10.37%."

d. BIAL's response to Stakeholder Comments on Issues pertaining to Weighted Average Cost of Capital

Subsequent to the receipt of comments from the Stakeholders on the Consultation Paper No 14/2013-14 dated 26.06.2013, the Authority forwarded these comments to BIAL seeking its response to these comments. The Authority noted that BIAL has not provided any specific responses.

e. BIAL's own comments on Issues pertaining to Weighted Average Cost of Capital

15.29 On the issue of WACC, BIAL stated as under in response to CP 14 and CP 22.

"The Authority is requested to change WACC based on the various submissions being made in support of change in Cost of Equity and Cost of Debt"

f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to Weighted Average Cost of Capital

- 15.30 The Authority has carefully analysed the comments made by various stakeholders with reference to WACC for Kempegowda International Airport), Bengaluru.
- 15.31 The Authority noted that FIA has commented that as the Real Estate Business Plan is not firmed up, interest free real estate deposits have not been factored which would have impacted determination of FRoR. The Authority has already stated in CP 22 that the Authority is cognizant that the actual means of finance could be different from the estimates considered for computation of Fair Rate of Return. The Authority had accordingly proposed in CP 14 and CP 22 that the Weighted Average Cost of Capital for the control period will be trued up at the beginning of the next control period.
- 15.32 The Authority has noted that IATA has computed the WACC considering the Cost of Equity proposed by IATA in line with NIPFP's estimation. The Authority has responded to the same in Para 14.66 above on Cost of Equity and hence is not repeating the same here.
- 15.33 The Authority noted that AAI has commented that "the amount of internal accrual (which has the same nature of equity) needs to be determined and decided whether to reduce it from the equity involved in the Airport". The Authority has already noted its analysis on considering Retained earnings as part of Equity in CP 22 repeated in Para 15.16 above.

- 15.34 The Authority has received details of unaudited results from BIAL for 2013-14. The Authority has reviewed the actual debt and gearing ratios as of March 2014. The Authority decides to consider the actual debt and equity balances as of March 2014 for the purpose of computing the gearing for 2013-14.
- 15.35 Accordingly, the recomputed WACC under Single till and 40% Shared Revenue Till considering actuals for 2013-14 is as given below:

Table 58: Fair Rate of Return computed under Single Till by the Authority – For MYTO

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Average balance of Debt	1540.39	1805.67	2197.21	2187.90	2594.63
Average balance of Equity	522.65	656.31	725.83	957.8876	1345.957
Gearing Ratio	74.67%	73.34%	75.17%	69.55%	65.84%
Cost of Equity	16.00%	16.00%	16.00%	16.00%	16.00%
Weighted average gearing	71.04%				71.04%
Weighted average cost of debt	9.73%				
Fair Rate of Return					11.54%

Table 59: Fair Rate of return computed under 40% Shared Revenue Till by the Authority - For MYTO

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16	
Average balance of Debt	1540.39	1805.67	2197.205	2187.895	2595.462	
Average balance of Equity	522.65	656.31	725.83	959.0087	1370.82	
Gearing Ratio	74.67%	73.34%	75.17%	69.53%	65.44%	
Cost of Equity	16.00%	16.00%	16.00%	16.00%	16.00%	
Weighted average gearing					70.92%	
Weighted average cost of debt	9.73%					
Fair Rate of Return					11.55%	

Decision No. 11. Weighted Average Cost of Capital

a. The Authority decides:

- To calculate WACC, for the purposes of calculating ARR, based on the audited balance sheet items like debt, equity, Reserve & Surplus as well as any other means of finance (Refer Para 15.16 above)
- ii. To calculate WACC as per Table 58 under Single Till and as per Table 59 under 40% Shared Revenue Till (based on 16% cost of equity) for the purpose of determination of aeronautical tariffs during the current control period.
- iii. To true up the WACC calculations based on the actual Debt: Equity ratios during the control period and changes to the Weighted Average cost of debt.

16 Taxation

a. BIAL Submission on Taxation

- BIAL in its MYTP 2012 submitted that they were entitled to a tax holiday under Section 80 IA of Income Tax Act for 10 years in the period of first 15 years of operations. During this period, they were required to pay the Minimum Alternate Tax on the Book Profits of the company. BIAL had submitted that they propose to avail this tax holiday from the Financial Year 2012-13 for a period of 10 years. During the 5 years of the control period, BIAL proposed that they will be paying only the Minimum Alternate tax (MAT) as applicable. Rate of MAT has been considered at 20% for the control period by the company.
- Accordingly the MAT payments proposed to be included as part of the Aggregate Revenue Requirement, as submitted by BIAL in MYTP 2012 under Singe Till were as detailed below.

Table 60: Details of Tax payments proposed, submitted by BIAL - Single Till - MYTP 2012 - Rs. Crores

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Tax payments	60.65	45.07	52.09	47.23	70.85

16.3 Further, BIAL had submitted as follows:

"36. Taxation

Authority's Approach: In clause 6.17 of Direction No.5, the Authority has proposed not to consider increase in tax on corporate income or change in statutory operating cost relating to input products or services procured by the airport operator.

Observations: Non-consideration of change in taxes on corporate income or taxes in relation to input products or services is unfair. The airport operator cannot be forced to bear the brunt of additional taxes. There appears to be rationale missing in allowing for recovery of certain taxes, while not allowing for recovery in respect of other forms of taxation. Unlike what is stated in the affidavit of the Authority filed in Appeal No.7, there is no scope for the airport operator to reduce such losses. To illustrate, there is no means by which the airport operator can reduce exposure to an increase in fuel prices or account for it even before its occurrence.

Submissions: The Authority is requested to consider error correction with respect to any direct or indirect increase in taxes either on the airport operator or through increase in taxes for inputs and services, within the same control period."

16.4 BIAL in its MYTP 2013 submission had stated that BIAL had considered the tax

reimbursement estimation in line with the original submissions made by it.

b. Authority's examination of BIAL's submission on Taxation

- 16.5 Authority's examination of BIAL's submission on Taxation and the proposals detailed by Authority in CP 14 were as under:
- Authority had carefully reviewed BIAL's submission on Taxation as proposed in the guidelines and proposed to True up Taxation costs for this control period based on the actuals incurred during the Control period as an adjustment at the beginning of the next Control Period.
- As per Clause 5.5.1 of Direction 5, Taxation represents payments made by the Airport Operator in respect of Corporate Tax on Income from Assets / amenities/ facilities/ services taken into consideration for determining of Aggregate Revenue Requirement. The Authority shall review forecast for corporate tax calculation with a view to ascertain the appropriateness of allocation and calculations thereof. Also, it was clarified that any interest payments, penalty, fines and other such penal levies associated with corporate tax, shall not be taken into account for calculation of Taxation. The Authority noted that the MAT is the tax payment that the company has to pay every year, based on the book profits. Company had computed the MAT on the Projected Profit & Loss statement for the 5 years from 2011-12 to 2015-16.
- The Authority noted that the payment projected, for the year 2011-12 and 2012-13 (Rs. 60.7 crores and Rs. 45 crores respectively) was higher as compared to the actual MAT payment for 2011-12 and 2012-13 (Rs. 36 Crores and Rs. 21 crores respectively) as seen from the Financial Statements of the company. This was mainly on account of the Revenue from Aeronautical services being considered differently (based on the Projected Yield) as compared to the actual Aeronautical Revenue collected by the company.
- The MAT computed and projected was proposed to be allowed as expenditure, on the basis of payment. The credit if any availed by the company in setting off the future tax payments projected, was proposed to be adjusted in the respective tax payment of the future years.
- 16.10 The Authority proposed to true up the taxes actually paid by BIAL. If some of the building blocks (notably operation and maintenance expenditure, etc.) were not trued-up, the Authority was cognizant of the circumstance that BIAL may pay higher or lower actual tax on

this account. However, the Authority proposed to still take the actual tax paid for the purposes of determination of aeronautical tariff.

16.11 The revised taxation numbers and resultant taxes considering other adjustments to Yield, as were been elaborated in different building blocks were as given below:

Table 61: Revised tax numbers considered for reimbursement - CP 14 - Single Till - Rs. Crores

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Tax payments	32.05	24.52	23.05	3.63	28.72

- 16.12 Based on the material before it and its analysis, the Authority had proposed:
 - 16.12.1 To consider estimated taxes computed as per the Business model for the period 2011-12 to 2015-16 based on the revenues arrived at based on the Yield computed, as detailed in Table 61. To note actual tax paid / payable is according to MAT on account of 80 IA benefit availed by BIAL as per the Concession Agreement terms.
 - 16.12.2 To true up the difference between the actual corporate tax paid and that used by the Authority for determination of tariff for the current control period. The Authority proposed that this truing up will be done in the next control period commencing 01.04.2016.
- 16.13 Authority's examination of BIAL's submission on Taxation and the proposals placed by Authority in CP 22 were as under:
- 16.14 The Authority noted that BIAL, in its Aeronautical P&L had considered the revenue from Aviation Concessions as part of the Aeronautical revenues by BIAL and accordingly computed the tax on the profits, as was done in its earlier submission. The Authority proposed to correct the same.
- The Authority also noted from the financial statements of BIAL for the 2 years 2011-12 and 2012-13 that BIAL had not recognised the 20% MAT paid by it as cost and had adjusted the same as credit entitlement. The Authority proposed to consider tax cost to be added (as a building block) to ARR for 2011-12 and 2012-13 as per the amount of taxation expense reflected by BIAL in its audited Income statement for the year 2011-12 and 2012-13. As far as the subsequent years of the current control period viz. 2013-14, 2014-15 and 2015-16 were concerned, the Authority proposed to consider the tax cost to be added to ARR as derived from the Financial model submitted by BIAL noting that this was computed at 20% MAT on profits without adjusting the credit entitlement. The Authority expected that BIAL's income statements for the period 2013-14 to 2015-16 will reflects these amounts as taxation

expenses. To the extent that there is a variation, the Authority would take the taxation expenses as reflected in the Income statement for the periods 2013-14 to 2015-16 and true up the same at the time of determination of Aeronautical Tariffs at the beginning of the next control period.

The revised taxation numbers based on the above and the corrections made to the Single / Shared Revenue Till model and the resultant taxes considering other adjustments to Yield, as were elaborated in different building blocks were as given below:

Table 62: Revised tax expense considered for calculation of ARR - Single Till - CP 22 - Rs. Crore

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Tax payments	0.00	4.19	17.83	3.93	21.81

Table 63: Revised tax expenses considered for calculation of ARR - CP 22 - 40% Shared Revenue Till- Rs. Crore

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Tax payments	0.00	0.10	0.00	0.00	11.50

- 16.17 Based on the material before it and its analysis, the Authority had proposed:
 - 16.17.1 To consider the actual tax expenses as reflected in the audited Income statement for the year 2011-12 and 2012-13 for computation of ARR.
 - 16.17.2 To note actual tax paid / payable is according to MAT on account of 80 IA benefit availed by BIAL as per the Concession Agreement terms and for the purposes of Projections, to consider estimated taxes computed as per the Business model for the period 2013-14 to 2015-16 as detailed in Table 62 and Table 63.
 - 16.17.3 To true up the difference between the actual corporate tax expenses reflected by BIAL in its audited Income statement and that used by the Authority for determination of tariff for the current control period. The Authority proposes that this truing up will be done in the next control period commencing 01.04.2016

c. Stakeholder Comments on Issues pertaining to Taxation

Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14. Stakeholders have also commented on the Authority's proposal on issues pertaining to Taxation in respect of Kempegowda International Airport Bengaluru. These comments are presented below:

16.19 AAI on the issues pertaining to Taxation stated as under:

"The claim of BIAL for tax rebate under 80IA needs to be determined. It is possible that revenue from all sources especially non aeronautical may not qualify for investment allowance rebate."

16.20 BPAC has stated on Taxation that:

"a. BIAL must enjoy the tax holiday and maximum marginal rate of tax and not effective rate to be considered."

d. BIAL's response to Stakeholder Comments on Issues pertaining to Taxation

Subsequent to the receipt of comments from the Stakeholders on CP 14 and CP 22, the Authority forwarded these comments to BIAL seeking its response to these comments. BIAL had not given any specific comments on the issue.

e. BIAL's own comments on Issues pertaining to Taxation

16.22 On the issue of taxation, BIAL stated that

"We request the Authority to reimburse actual taxes paid rather than tax expenses reflected in the audited Income Statement and we request that tax treatment proposed in C.P. No.14/2013-14 - proposal no. 10 be retained.

This is because, tax liability (Minimum Alternate Tax, MAT) is a current tax outlay against which the company is eligible for set off (tax credit) of a portion at a future date based on future tax position and contingent on positive treatment by tax authorities. Moreover, tax credits are also subject to a validity of 10 years beyond which it will lapse in tax books.

Direct Tax regime is currently undergoing a major re-writing of laws in the form of Direct Tax Code which also brings in an element of contingency of future tax position.

Under these circumstances, we suggest that entire current tax outlays be allowed as expense and future set off of tax credits can be treated as refunds in such future years

as and when the company becomes eligible & treats as such in financial and tax books.

Thus, BIAL submits that the tax treatment proposed by Authority in Addendum may lead to cash flow problems and further submit that reimbursement of actual expenses will be more in line with business requirements.

BIAL submits that the audited financial statements include the financial statements, notes to accounts and as well auditor's qualifications / observations, if any. BIAL has

not provided for any deferred tax liability due to pending uncertainties even though it is required to be provided under applicable accounting and taxation guidelines. If BIAL would go ahead with providing for deferred taxation liability, there will be a charge to P&L Statement even though the outgo of cash may not be imminent. If deferred taxes liability to the extent of Rs. 70 Crores is attributed by BIAL in its accounts, the Authority is requested to clarify whether the same will be considered for tariff determination and the benefit that will be provided to BIAL.

While seeking admissibility of Deferred Tax liability as Allowable expense in the regulatory books & uncertainties around it, we may include the following request:

Request for accelerated depreciation in the regulatory books based on economic useful life of assets instead of lower depreciation rates currently adopted in books based on minimum rates (Sch XIV) provided in the current Companies Act and the concession period.

We may also mention that proposal in New Companies Bill is also recommending higher depreciation rates based on useful life rather than the existing prescribed minimum rates. The resultant increase in book depreciation would have a considerable impact on deferred tax position as well"

f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to Taxation

- 16.23 The Authority has carefully reviewed the comments from Stakeholders and BIAL on the matter of taxation.
- The Authority noted that AAI has commented that some income could not be exempt under Section 80IA. The Authority notes that this is for BIAL to take note of and the Authority had also noted that tax cost paid will be trued up for the control period during the determination of Aeronautical tariff at the being of the next control period.
- The Authority has noted BPAC's comment that "BIAL must enjoy the tax holiday and maximum marginal rate of tax and not effective rate to be considered". The Authority infers that what BPAC probably means is that BIAL should minimise its tax burden consistent with the extant tax laws. The Authority's principle on consideration of taxation has been well laid down in the Airport Order and Airport guidelines. The Authority had also commented on the reason for considering actual tax cost in its analysis on cost of tax as detailed in Para 16.27 below.

- 16.26 The Authority's analysis on request of BIAL for accelerated depreciation is detailed in the analysis on Regulatory Asset Base in Para 10.73 above.
- The Authority has deliberated on the request of BIAL to consider the actual MAT cost as a payment. The Authority noted that there has been cash outflow on account of tax paid by BIAL during the years 2011-12 to 2013-14. In these years, the profit before tax has been positive. The Authority, in line with its general principle, decides that payment of tax on actual would be taken as a building block for the purposes of calculation of Aggregate Revenue Requirement (ARR) due to the airport operator. The Authority has also decided that if the actual payments made to the taxation authority include elements like penalty, etc., such payments would not be admissible in computation of the Aggregate Revenue Requirement.
- 16.28 The Authority has noted BIAL's query whether deferred tax liability would be considered by the Authority for Tariff determination. The Authority notes that deferred tax liability is an entry recorded in the Financial Statements and does not result in any actual tax cost to be paid by BIAL and hence cannot be considered for Tariff determination.
- In CP 22, the Authority had reckoned the tax as reflected in the Income statement. In the Income statement for 2011-12, the net tax expenses was reflected as zero (after taking the MAT credit). According to the framework of building blocks of ARR, the tax as actually paid by the company is regarded as a building block. However, the tax as reflected in the Income statement impacts the Profit after tax and consequently the retained earnings, which if higher than the Capital Expenditure is reckoned towards WACC.
- 16.30 The Authority further noted from the unaudited Financial statements of BIAL submitted for the year 2013-14 and the additional information provided by BIAL, BIAL has written off the MAT credit availed in the previous period till 2011-12 in the current year 2013-14 thereby reducing the retained earnings in 2013-14 in the Income statements to reflect the tax paid.
- The Authority hence decided to consider the actual tax payment (as MAT) in the respective years (commencing 2011-12 to 2013-14). Accordingly, the tax costs paid by the company for the period 2011-12 to 2013-14 is to be reckoned for the purpose of determination of Aeronautical tariffs. Also, the estimated MAT computed at 20% as per the Business Model for the period 2014-15 and 2015-16 will be reckoned for determination of Aeronautical Tariffs during the current control period. This estimate will be trued up based on the actual tax paid during 2014-15 and 2015-16 at the time of determination of

Aeronautical tariffs in the next control period.

16.32 Tax costs which the Authority considers as reimbursement is as detailed below:

Table 64: Tax expense considered for calculation of ARR - Single Till - Rs. Crore - For MYTO

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Tax payments	36.06	21.37	32.04	0.07	24.21

Table 65: Tax expenses considered for calculation of ARR - 40% Shared Revenue Till- Rs. Crore - For MYTO

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Tax payments	15.89	0.53	6.28	0.00	9.98

Decision No. 12. Taxation

a. The Authority decides

- To note the actual tax paid / payable is according to MAT on account of Section 80
 IA benefit under Income Tax Act availed by BIAL.
- ii. To consider the actual tax (MAT) paid in each year for the years 2011-12 to 2013-14 and the estimated tax liability for the remaining years 2014-15 and 2015-16 for the purpose of determination of Aeronautical Tariffs.
- iii. To consider MAT cost as per Table 64 and Table 65 under Single Till and 40% Shared Revenue Till for the purpose of determination of Aeronautical Tariffs for the current control period.
- iv. To true up the difference between the actual corporate tax (MAT) paid and that used by the Authority for determination of tariff for the current Control Period at the time of determination of tariff for the next Control Period.

17 Working capital and Interest thereon

a. BIAL' Submission on Working Capital and Interest thereon

- 17.1 In its Multi Year Tariff Proposal 2012, BIAL had submitted that a Working Capital Facility is proposed to be taken as per terms given hereunder:
 - 17.1.1 Working capital facility considered from 2013-14
 - 17.1.2 Interest considered at 14% of the Working capital balance proposed
- 17.2 Accordingly the Working Capital loan balance proposed during the control period and the amount of Interest considered for claim in MYTP 2012 was as given below:

Table 66: Working Capital Interest claim submitted by BIAL - Single Till - MYTP 2012 - Rs. Crores

Particulars	2013-14	2014-15	2015-16
Working Capital Facility balance	56.47	71.75	82.67
Interest considered as part of ARR	7.91	10.04	11.61

17.3 BIAL had additionally submitted as follows:

"23. Working Capital Loans:

Authority's Approach: In clauses 6.7 and 7.11 of Order No.13, clauses 5.1.4(d) read with 5.4.3 of Direction No.5, the Authority has proposed that the airport operator should submit to the Authority the proposed levels of working capital requirements and should demonstrate that the working capital loans are not excessive. The Authority has also proposed that it shall review and assess the levels of projected working capital requirements and shall consider cost of working capital loans as appropriate.

Observations: Working capital loans/short term loans are availed to meet immediate financing requirements. As a general rule, borrowers do not avail working capital loans unless the same is absolutely necessary in view of the high rate of interest. Even lenders do not easily grant working capital loans without detailed scrutiny. Standard application forms used by banks / financial institutions for grant of working capital loans indicate the wide array of factors that banks / financial institutions consider while granting working capital loans. Banks / financial institutions undertake a scrutiny of the business necessity prior to granting working capital loans. Thus, the conditions and processes generally adopted for sanctioning of working capital loans demonstrate self-regulation.

- 17.4. Submissions: The Authority need not enquire into the appropriateness of working capital loans availed. Such enquiry would impede entrepreneurial freedom and enterprise, apart to being not necessary, because of a self-regulated market. So long as working capital loans have been obtained by the airport operator in a competitive manner, inter alia by calling for quotations from multiple banks / financial institutions, the Authority need not review or seek justifications with respect to working capital loans. For services other than regulated services, there should be no regulation whatsoever including with respect to obtaining short term / working capital loans."
- 17.4 BIAL had, in its revised submission i.e. MYTP 2013 considered the Working Capital requirements based on the same assumptions as proposed by it earlier in the MYTP 2012 submissions.

b. Authority's Examination of BIAL Submissions on Working Capital and Interest thereon

- 17.5 The Authority's examination of BIAL's Submissions on Working Capital and Interest thereon and the proposal made by Authority in CP 14 were as under:
- 17.6 Authority had carefully considered the submissions made by BIAL on working capital loans.
- 17.7 The Authority noted that Clause 5.4.3 of Direction 5 under Operation and Maintenance Expenditure details the direction for claim of Working Capital Interest as follows:

"The Authority shall consider interest on short term loans, generally raised towards working capital with a maturity of less than one year, as operation and maintenance expenditure to address the working capital requirement. The Airport Operator shall submit to the Authority the proposed levels of working capital requirements and shall demonstrate that the proposed working capital loans are not excessive in relation to such levels of working capital. The Authority shall not consider any allowance provided for allocations for bad debts in the working capital. The Authority shall review and assess the levels of projected working capital requirements and shall consider cost of working capital loans as deemed appropriate. However, such loans would not be considered in the calculation of the cost of debt."

17.8 The Authority had carefully reviewed the submission made by BIAL on Working Capital Loans that "the Authority need not enquire into the appropriateness of working capital

loans availed." Authority's reply to this is similar to the reply on Cost of Debt and refinancing as BIAL has submitted similar suggestions on Authority not needing to delve on the Working Capital Requirements and process of obtaining the loan.

- The Authority noted that BIAL currently did not have a Working Capital Facility. Pursuant to a query raised by the Authority, BIAL had submitted that the Interest on Working capital facility was based on the earlier sanction obtained by it. The Authority noted that the sanction letter indicates an interest of Bank PLR minus 1% and the current SBI PLR was around 14.5%.
- 17.10 While there may be requirement to avail a working capital facility, as proposed by BIAL, as the facility has not been available by BIAL as yet, the details of the same and the actual quantum of loan that may be availed by BIAL were not clear. Hence the Authority had noted that this expenditure, while may be allowed based on the projections made by BIAL, will require truing up based on the actual facility availed, Interest rate on the loan and the actual cost paid.
- 17.11 Considering the other changes to Business Plan, as elaborated in the other Building blocks, the reworked Working Capital Facility balance and interest on the same was recomputed as follows:

Table 67: Revised working Capital interest computed by the Authority - Single Till – CP 14 - Rs. Crore

Particulars	2013-14	2014-15	2015-16
Working Capital Facility balance	51.83	66.22	76.59
Interest considered as part of ARR	7.26	9.27	10.75

- 17.12 Based on the material before it and its analysis, the Authority had proposed in the CP 14:
 - 17.12.1 To true up this Working Capital Interest Expenditure based on the actual costs incurred by BIAL during the control period, at the beginning of the next control period.
- 17.13 Further Authority's examination of BIAL's Submissions on Working Capital and Interest thereon and the proposal made by Authority in CP 22 were as under:
- 17.14 The Authority noted that BIAL had an amount of Rs. 421.37 Crore as Cash and Cash equivalents as of 31st March 2013. The Authority also noted that the difference between Current Assets and Current Liabilities (Working Capital) is Rs. 127.73 Crore as of March 2013. Closing balance of cash was projected at approx. Rs. 10 Crore as of March 2016 as per the Model, the Authority noted that this cash was proposed to be used for funding the Capital

expansion in the years 2013-14 to 2015-16. The Authority noted that BIAL has projected Working Capital Loan requirements from the year 2013-14 till 2015-16 as per Table 68 (under Single Till) which was derived from the model submitted by BIAL. Similar table had been computed for 40% Shared Revenue Till (Table 69). The Authority therefore proposed to include these requirements for Working Capital for the purposes of payment of interest on the same as a revenue expenditure which impacts ARR. As had been the policy of the Authority, the actual interest paid by BIAL on Working Capital would alone be taken into account at the time of truing up during the next control period.

17.15 Considering the other changes to Business Plan, as elaborated in the other Building blocks, the reworked Working Capital Facility balance and interest on the same was recomputed as follows:

Table 68: Revised working Capital interest computed by the Authority - Single Till - CP 22 - Rs. Crore

Particulars	2013-14	2014-15	2015-16
Working Capital Facility balance	50.04	64.55	74.96
Interest considered as part of ARR	7.01	9.04	10.52

Table 69: Revised working capital interest computed by the Authority - 40% Shared Revenue Till - CP 22 - Rs. Crore

Particulars	2013-14	2014-15	2015-16
Working Capital Facility balance	50.04	65.39	75.97
Interest considered as part of ARR	6.31	8.26	9.63

- 17.16 Based on the material before it and its analysis, the Authority had proposed in the Consultation Paper No 22/2013-14 dated 21.01.2013:
 - 17.16.1 To consider the working capital interest cost computed as given in Table 68 and Table 69 under Single Till and 40% Shared Revenue Till.
 - 17.16.2 To true up this Working Capital Interest Expenditure based on the actual costs incurred by BIAL during the control period, at the beginning of the next control period.

c. Stakeholder Comments on Issues pertaining to Working Capital and Interest thereon

17.17 Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14. Stakeholders have also commented on working capital and interest thereon to be considered in respect of Kempegowda International Airport (Earlier Bengaluru International Airport), Bengaluru. These comments are presented below:

- 17.18 FIA on the issue of Working Capital and Interest thereon stated that Authority has considered working capital loan and interest thereon aggregating to Rs 27 Cr without assessing the level of working capital requirements of BIAL. Besides FIA has stated that the acceptance of working capital requirements of BIAL by the Authority is contrary to AERA guideline (Clause 5.4.3) which requires Authority to make its own assessment.
- 17.19 Further subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 22. Stakeholders have also commented on working capital and interest thereon to be considered in respect of Kempegowda International Airport, Bengaluru. These comments are presented below
- 17.20 On the issue of Working Capital and Interest thereon, FIA stated that

"BIAL has submitted that working capital facility to be availed from FY 2013-14 at the interest rate of 14%. As per Clause 5.4.3 of the AERA Guidelines 'the Authority shall review and assess the levels of projected working capital requirements and shall consider cost of working capital loans as deemed appropriate'. Authority noted in the CP No.14/2013-14 that working capital loan has been sanctioned to BIAL at interest rate of Bank PLR minus 1% (i.e. 13.5% as SBI PLR is 14.5%) but the facility has not been availed yet. Authority also stated in Paragraph No. 16.8 of CP No.14/2013-14:

"... while there may be requirement to avail a working capital facility, as proposed by BIAL, as the facility has not been available by BIAL as yet, the details of the same and the actual quantum of loan that may be availed by BIAL is not clear. Hence this expenditure, while may be allowed based on the projections made by BIAL, will require truing up based on the actual facility availed, Interest rate on the loan and the actual cost paid."

Also, as per Paragraph No. 12.4 of CP No.22/2013-14, the Authority has proposed to include the working capital requirements as submitted by BIAL in the model for the purposes of payment of interest on the same as a revenue expenditure and the actual interest paid by BIAL on Working Capital would alone be taken into account at the time of truing up during the next control period.

It is evident that in absence of the details and quantum of the working capital loan (still to be provided by BIAL) the Authority has not been able to assess the level of working capital requirements and has considered working capital interest of Rs. 27

crores and Rs. 24 crores for Single till and Shared Till respectively on basis of the projections made by BIAL (as per tables below), however, this approach of the Authority is not in line with AERA Guidelines. As per clause 5.4.3 of the AERA Guidelines, the Authority shall review and assess the levels of projected working capital requirements and shall consider cost of working capital loans as deemed appropriate.

As per table below, the rate of interest on the facility in Single Till is higher by 1 per cent as compared to Shared Till. The rationale of the same has not been provided by the Authority in the CP No.22/2013-14.

Authority's acceptance of BIAL's projection of the working capital requirements is contrary to the AERA Guidelines (Clause 5.4.3), which requires the Authority to make its own assessment. It is submitted that the Authority should not consider the working capital interest of Rs. 27 crores merely on the basis of BIAL's projections without assessing the working capital requirements in the garb of truing up of the same during the next control period"

d. BIAL's response to Stakeholder Comments on Issues pertaining to Working Capital and Interest thereon

- Subsequent to the receipt of comments from the Stakeholders on CP 14 and CP 22, the Authority forwarded these comments to BIAL seeking its response to these comments. BIAL has provided responses to the Stakeholders' comments, which are presented below:
- 17.22 On FIA's comment on Working Capital Interest, BIAL has stated as follows:

"Any variation in the total fund requirement and interest is proposed to be trued up in the next control period. BIAL has adequately demonstrated the requirement of working capital as part of tariff determination exercise and that interest of the same is to be considered as part of operating and maintenance expenditure. BIAL further submits that there is difference in interest amount mainly due to fact that Shared Till considers only working capital cost related to aeronautical services, whereas Single Till considers working cost related to both aeronautical services and non-aeronautical services. AERA has noted this requirement of BIAL and has proceeded to allow working capital interest in CP 14 and CP 22."

e. BIAL's own comments on Issues pertaining to Working Capital and Interest thereon

17.23 On the issue of Working Capital and Interest thereon, BIAL stated as under as a response to proposals placed in CP 14 as under:

"BIAL submits that working capital requirements tend to be immediate and time is generally of essence. Banks, even while approving working capital loans, consider RBI norms and therefore, the process is self-regulated. BIAL submits that, so long as working capital loans have been obtained by it in a competitive manner, inter alia by calling for quotations from multiple banks / financial institutions, the same need not be reviewed."

f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to Working Capital and Interest thereon

- 17.24 The Authority has carefully noted FIA and BIAL's comments on Working Capital Loan.
- 17.25 Regarding FIA's comment that the Authority has to independently assess the working capital loan, the Authority had already stated in CP 14 and CP 22 that the need and quantum of working capital loan would need to be assessed by the bankers. The Authority had also noted that in view of large Capital Expenditure proposed, the cash balance projected at the end of the control period is low. The Authority had also noted that the working capital interest considered will be trued up based on the actual cost incurred by BIAL on this account.
- 17.26 On FIA's comment that the rate of Working Capital interest considered is higher in case of Single Till, the Authority notes that actually a portion of interest has been attributed to Non-Aero, under 40% Shared Revenue Till and hence only 90% of the working capital interest has been considered towards Aeronautical charges.
- 17.27 The Authority had requested BIAL to submit the unaudited Financial Statements for the year 2013-14 from which the Authority noted that working capital facility was not availed in 2013-14 as earlier projected by BIAL. The Authority proposes to accordingly not consider Working Capital interest for 2013-14 in its computations of ARR.
- 17.28 Hence, the revised Working Capital Interest cost decided to be considered by the Authority is as follows:

Table 70: Working Capital Interest decided to be considered by the Authority - Single Till - For MYTO - Rs. Crores

Particulars	2014-15	2015-16
Working Capital Facility balance	72.37	79.75
Interest considered as part of ARR	10.13	11.20

Table 71: Working Capital Interest decided to be considered by the Authority – 40% Shared Revenue Till - For MYTO - Rs. Crores

Particulars	2014-15	2015-16
Working Capital Facility balance	65.82	72.64
Interest considered as part of ARR	9.21	10.20

Decision No. 13. Working Capital and Interest thereon

a. The Authority decides

- To consider the working capital interest cost computed as given in Table 70 under Single Till and as given in Table 71 under 40% Shared Revenue Till.
- ii. To true up this Working Capital Interest Expenditure based on the actual costs incurred by BIAL during the control period, at the beginning of the next control period.

18 Operation and Maintenance Expenditure

a. BIAL's submission on Operation and Maintenance Expenditure

- 18.1 BIAL had in its submission dated 17th May 2013 provided the details of cost breakup between Aeronautical and Non-Aeronautical Expenditure. These were as given below.
- 18.2 Operating and Maintenance expenditure submitted by BIAL is segregated into:
 - 18.2.1 Staff costs
 - 18.2.2 Operating and Maintenance Expenditure
 - 18.2.3 Concession Fees
 - 18.2.4 Lease Rent
 - 18.2.5 Utilities consumption expenditure
 - 18.2.6 Insurance
 - 18.2.7 Marketing and Advertising and
 - 18.2.8 General Administrative Overheads.
- 18.3 BIAL had submitted details and basis for each of the above proposed expenditure in their submission. A summary of costs proposed by BIAL for the control period is detailed below:

Table 72: Summary of Operating and Maintenance Expenditure submitted by BIAL - Single Till - MYTP 2012 - Rs. Crores

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Personnel Expenses	79.48	92.49	117.10	144.68	174.48
Operation & Maintenance	38.67	49.31	49.22	82.90	91.12
Concession Fee	25.03	27.73	36.03	45.31	47.88
Lease Rent	6.35	6.35	6.35	6.35	11.78
Utilities	21.61	22.99	31.36	40.35	42.23
Insurance	3.69	4.00	4.84	4.96	5.07
Marketing and Advertising	4.57	5.38	5.91	6.58	7.32
Waivers and Bad Debts	1.22	27.97	9.11	10.56	12.08
OMSA Fee	6.64	11.33	14.61	17.46	17.73
General Administration costs					
Consultancy and Legal	11.20	14.30	15.73	17.30	19.03
Travel Costs	4.10	4.30	4.73	5.20	5.72
Office Costs	7.30	8.20	9.02	9.92	10.91
Total Cost	209.85	274.33	304.00	391.59	445.37

^{18.4} BIAL had additionally submitted as follows:

[&]quot;31. Operations and Maintenance Expenditure

Authority's Approach: In clauses 11.1 to 11.17 of Order No.13 and clause 5.4 of Direction No.5, the Authority has proposed detailed guidelines with respect to operations and maintenance expenditure. The Authority proposes to undertake a prudency check with respect to underlying factors impacting variance over the last few years; and assess efficiency improvement. The Authority has also largely restricted the scope of uncontrollable costs. The Authority has proposed that, uncontrollable costs be restricted to, "other mandated operating costs" and "statutory operating costs". The Authority requires all other uncontrollable costs to be reflected by the airport operator with supporting evidence and forecasts as a part of the building blocks approach.

Observations: BIAL would like to bring to fore certain business realities with respect to operations and maintenance expenditure. Firstly, there are a large number of uncertainties with respect to day-to-day expenditure, which cannot be forecast by the airport operator. To illustrate, change in expenses due to fuel price hike, exchange rate fluctuations, are not only beyond the control of the airport operator, but also cannot be estimated/predicted in advance. Let alone the airport operator, even Governments world over cannot predict the rate of inflation accurately. In such a situation, to expect the airport operator to predict and forecast such macroeconomic changes and/or the impact of such macroeconomic changes on the operations and maintenance expenditure of the airport operator is not only unfair and onerous but a near impossibility.

Additionally, by not providing for exchange rate fluctuations, the enterprise and entrepreneurial ability of the airport operator in raising overseas debts is largely restricted. It is common knowledge that overseas borrowings tend to be at more competitive rates of interest, but are accompanied by risks relating to exchange rate fluctuations. The airport operator's freedom to make a reasoned commercial decision in this regard is greatly restricted because the Authority provides little or no compensation for exchange rate fluctuations. This approach is also unfair to the airport operator because, if no loss is incurred by the airport operator on account of exchange rate fluctuations, and the airport operator ends up with a profit, such profits will be ploughed back and thus, the airport operator receives no particular benefit or incentive for its efforts. Whereas, if the airport operator incurs a loss, the airport operator will be forced to bear the burden of such a loss. This is not only an

unfair regime, but also restricts and impinges upon the airport operator's freedom of enterprise.

Expenses incurred towards operations and maintenance expenditure are clearly accounted for and audited. It is the audited accounts which are submitted to the Authority. Moreover, in the case of BIAL, state parties, i.e. Airports Authority of India and State of Karnataka have appointed nominee directors and the expenses incurred are therefore, approved by state parties. An entrepreneur requires flexibility and freedom of enterprise in order to conduct its business effectively. Having to post facto justify every such expense to the Authority would largely restrict this freedom of enterprise. Such continuous and intense regulatory scrutiny would completely compromise entrepreneurial freedom and increase the cost of regulation manifold.

Submissions: The Authority to consider reimbursing the audited operations and maintenance expenditure in full. The Authority can call for explanations / justifications only when expenses prima facie appear to be overly excessive. In summation, the Authority can consider requiring justifications, prudency check and review of efficiency enhancement measures only as an exception and not as a rule.

The Authority can set a benchmark, preferably in line with the interest rates offered by any nationalized bank in India. The airport operator needs to be allowed to keep the benefits or suffer losses, as the case may be, in case of any deviation from the bench mark. This approach would be fair to the users as well as the airport operator.

32. Bad debts

Authority's Approach: In clause 11.7 and 17.5.8 of Order No.13 and clause 5.4.3 of Direction No.5, the Authority has proposed that any allowance for working capital should be net of allocation for bad debts.

Observations: Bad debts are a business reality. No business can function without facing bad debts. The Authority has not proposed any mechanism for reimbursement of bad debts to the airport operator. Effectively, the airport operator will be forced to pay out of the ARR towards bad debts. This is extremely unfair on the airport operator because certain bad debts are completely beyond the control of the airport operator. To illustrate, there are significant outstandings from Kingfisher Airlines Limited and Air India Limited. Under the proposed regulations, for no fault of BIAL, BIAL would be forced to bear the burden of this bad debt.

Submissions: The Authority should make provisions to reimburse bad debts to the airport operator. If and when a bad debt is recovered, the provision for bad debts can be reversed. The provisions in relation to bad debts should not be applicable to services other than regulated services.

- 18.5 As part of the revised submission i.e. MYTP 2013, BIAL had considered the same estimates as that was submitted as part of MYTP 2012 except that BIAL had:
 - 18.5.1 Trued up the projections for 2012-13 based on actuals incurred
 - 18.5.2 Revised the staff welfare cost as a % of the payroll costs in line with the Authority's proposed change.
 - 18.5.3 Revised the estimate for Other O&M costs from Rs. 2.25 Crore to Rs. 3.93 Crore for the year 2013-14.

b. Authority's Examination of BIAL Submissions on Operation and Maintenance Expenses

- 18.6 The Authority's examination of BIAL's MYTP 2012 submission and the Authority's proposal thereon were as listed below
- 18.7 Direction No. 5 states that:

"Operation and Maintenance Expenditure shall include all expenditure incurred by the Airport Operator(s) including expenditure incurred on statutory operating costs and other mandated operating costs ..."

The assessment of operation and maintenance expenditure by the Authority shall include a review of the forecast of such expenditure as submitted by the Airport Operator based on the following principles: (a) 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. For avoidance of doubt, the operation and maintenance expenditure to be assessed will be limited to only those expenditure that relate to assets and services taken into consideration for determination of Aggregate Revenue Requirement".

18.8 **Requirement for truing up**: The Authority had carefully considered the submission made by BIAL on truing up of Operating Expenditure in Para 18.4 above. The Authority proposed to consider truing up of Operating Expenditure (except the following – Bad Debt, Foreign Exchange Fluctuations where palpable efforts have to be taken to recover bad debts

and manage the foreign exchange costs), as proposed by BIAL.

- The Authority was conscious of the fact that the issue of only efficient operating and maintenance costs is salient in a price cap determination. However, this being the first control period and the Price Cap regime is in the evolution stage, there may not be ready comparisons available to benchmark the costs. Also, costs estimated by BIAL (especially in case of Personnel, Operations and Maintenance, Insurance etc.) for the first control period were also dependent on the asset costs finally being incurred and capitalized.
- 18.10 These were subject to the requirements of the Clause 8.9.1 Concession Agreement as reproduced below and if necessary requiring commissioning a study for the same.

"BIAL shall, in accordance with Good Industry Practice and Applicable Law and as contemplated by the terms of this agreement:

- 8.9.1 Manage and operate the Airport in a competitive, efficient and economic manner as a commercial undertaking"
- 18.11 The Authority noted however that it meant that the risk associated with Operations and Maintenance expenditure were also completely eliminated and should therefore appropriately reflect in the Fair Rate of Return on Equity.
- 18.12 Authority's examination on other individual items of the Operating Costs reviewed by the Authority were given below:
- 18.13 **Bad Debts**: The Authority had carefully reviewed BIAL's submission on Bad Debts. With respect to Bad debts, the Authority, in providing responses to stakeholder comments in Order 13 that "Bad debts should be considered for effecting error correction" had already stated that:

"The Authority believes that Bad Debts in case of Airport Operators would pertain to inefficiencies in collection/ follow-up for payments from Institutional users like airlines Accordingly, the Authority is not persuaded to accept the submission in this regard."

- 18.14 In Authority's view managing the risk of Bad Debts was within the Business Activity to be undertaken by the Airport Operator and palpable efforts are required to be taken to minimize and recover these. Hence, the Authority did not propose to allow for any Bad Debts based on any estimates made by BIAL.
- 18.15 However, the Authority also noted that BIAL, in its financial statements of 2012-13 carried a charge on account of Bad Debts actually written off to the tune of Rs. 47.51

crores, which was on account of what can be called one-off event viz. dues from Kingfisher becoming unrecoverable. While the Authority proposed to not consider the Bad debts on an estimate basis, the Authority proposed to consider Bad Debts actually written off, as part of Operating expenses to be considered as part of ARR.

- 18.16 **Personnel Costs**: As per the audited certificate provided by BIAL, as on 2011-12 the total head count was 791 and the total staff cost was Rs. 72.86 Crores (2010-11: Rs.65.65 Crores). The headcount in 2011-12 included about 66 staff of the project team whose salary of Rs. 10 Crores was capitalized. As against this BIAL had projected a head count 734 during 2011-12 and 835 during 2012-13 and has thereafter projected the head count to increase by 10% for next three years in the control period for an average annual increase of 1.4 Million passengers during the control period. In addition, BIAL had projected additional head count of 49 in the year 2014-15 on account of expansion of Terminal 1. As per current plans, Terminal 1 Expansion, is expected to be completed by 2013-14. Accordingly, the head count was planned to increase only in 2014-15.
- 18.17 BIAL had estimated the staff cost considering the existing salary levels of employees in different grades on Cost-to-Company basis. It had projected an annual increase of 10% on existing levels on a year on year basis during the control period. In addition, BIAL had also considered the following additional costs:
 - 18.17.1 Staff Variable pay and Incentives @ 24% of the Salary cost. The Authority noted that the trend of actual variable pay as part of the Fixed Cost, based on additional data submitted by BIAL was around 22% to 23% in the past 2 years, whereas the same was considered at 24% in the proposal
 - 18.17.2 Staff welfare, transportation, training and other costs @ 11% of Salary costs for 2011-12, 2012-13 and 17% of salary cost for the rest of the control period. Staff welfare and other costs were proposed to be retained at the 11% rates as specified for 2011-12 and 2012-13 by the Authority for its computations.
- 18.18 Estimated increase in cost in 2014-15 and 2015-16 was due to additional capacities proposed to be added due to Terminal expansion, which was made as an estimated projection which could not be currently validated.
- 18.19 Also the Authority noted that the trend of actual staff welfare and other costs incurred was around 8% as could be seen from the additional submission made by BIAL whereas the same was been considered at 11% for 2011-12 and 2012-13 and increasing to

17% for the balance period in the control period.

- 18.20 BIAL had considered proposed cost on Personnel for 2011-12 and 2012-13 at higher than the cost actually incurred as seen from the audited Financial Statements, which the Authority proposed to correct.
- 18.21 Based on the changed highlighted above, the reworked Personnel costs, proposed to be considered were as given below for the control period.

Table 73: Revised Personnel cost proposed to be considered by Authority – CP 14

Danki autom	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Head count	735	836	922	1017	1121
Cost Rs. Crores	74.68	86.33	112.12	138.52	167.05

- 18.22 The Authority noted that the actual headcount and costs projected may undergo a change in view of the changes in cost of hiring new employees, actual headcount increase that happen during the control period. Hence these costs needed to be trued up at the end of the next control period.
- 18.23 **Operation expenditure**: BIAL had considered proposed cost on Operation and Maintenance for Phase 2 at higher than the rates of O&M expenditure proposed by BIAL. The past trend of costs incurred did not justify a higher % of operation cost being attributed to Phase 2 assets, especially in the initial years after capitalization when the wear and tear was expected to be at the lowest. Also the warranty costs proposed depended on the actual value of capital expenditure incurred and the actual date of commissioning of the assets.
- 18.24 The Authority also noted that the costs proposed for 2011-12 and 2012-13 were different from the actual costs incurred, which was proposed to be corrected to be in line with the actual O&M costs
- 18.25 In view of the same, the Authority proposes to:
 - 18.25.1 True up the projections for 2011-12 and 2012-13 based on the actual results
 - 18.25.2 Consider the same % of O&M expenditure for assets capitalized in Phase 2 as in Phase 1
- 18.26 Accordingly the re-computed O&M expenditure proposed to be considered was as given below:

Table 74: Recomputed O&M Expenditure	aronosed to be considered by the Authorit	v - Single Till - CP 14 - Rs Crores
Table 74. Necomputed Odivi Expenditure i	Ji Oboseu to be considered by the Authorn	.v - Jiligie I III - Cr 14 - 1/3, Ci 01 e3

	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
O&M Cost – Infra	22.13	24.34	26.78	50.90	55.99
O&M Cost – ICT	11.12	12.23	13.46	18.08	19.89
Parking Operator Fee / Trolley Management Charges	3.92	4.21	4.77	5.49	6.29
Other O&M Cost	1.49	8.63	2.25	2.48	2.72
TOTAL	38.67	49.42	47.25	76.95	84.89

- 18.27 The Authority noted that the actual O&M cost incurred may be different due to changes in the value and date of capitalization of assets. Hence while this cost was proposed to be allowed, this needs to be trued up based on actual results.
- 18.28 **Concession Fee**: The Authority noted that Concession fee payable was directly dependent on the revenues earned / proposed to be earned during a year which is dependent on the various building blocks defining the Aggregate Revenue Requirement and any changes in other building blocks impacts the computation of Concession Fee payable. Hence concession fee computed based on projected revenues may vary from actual concession fee paid during the period.
- 18.29 The recomputed concession fee, based on other changes to the Building Blocks, as detailed in the respective sections, were as given below:

Table 75: Recomputed Concession fee, as determined by the Authority - Single Till - CP 14 - Rs. Crores

	Year 1	Year 2	Year 3	Year 4	Year 5
Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Concession Fee on Aviation charges – Based on ARR computed	13.81	15.94	22.00	29.16	30.45
Concession Fee on Aero Concessions	1.39	1.33	1.26	1.30	1.31
Concession Fee on Non Aeronautical Revenues	5.73	6.48	6.30	7.59	8.53
Total Concession Fee	20.94	23.75	29.56	38.05	40.29

18.30 The Authority noted that this amount will further change, based on any changes to other Building Blocks in actual scenario that may get trued up, hence this cost which is a result of those changes also have to be trued up at actuals, which was proposed to be done at the end of the control period.

- 18.31 **Insurance Cost**: Authority noted that while the Insurance premium was projected based on the proposed asset values, the actual insurance cost incurred may be different due to changes in the value and date of capitalization of assets. Hence while the projected cost was proposed to be allowed, this needed to be trued up based on actual results.
- 18.32 **OMSA Fees**: The Authority noted that the actual trend of Performance fee in the previous year as submitted by BIAL was 1.29%. Hence the Authority proposed to cap the Performance fee at 1.29% in line with the earlier trend.
- 18.33 The recomputed OMSA fee projections, based on the above and the changes to the Building Blocks, as detailed in the respective sections, was as given below:

Table 76: Recomputed OMSA Fee - Single Till - CP 14 - Rs. Crores

Projected OMSA Fee	2011-12	2012-13	2013-14	2014-15	2015-16
Fixed Fee	2.03	3.29	3.11	3.18	3.31
Performance Fee	3.78	4.04	5.95	7.47	7.50
TOTAL	5.81	7.34	9.06	10.66	10.81

18.34 To summarise the above, the revised Operating Expenditure proposed to be considered by the Authority for the purpose of CP 14 were as given below:

Table 77: Recomputed Operating and Maintenance Expenditure - Single Till- CP 14 - Rs. Crore

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Personnel Expenses	74.68	86.33	112.12	138.52	167.05
Operation & Maintenance	38.79	50.20	47.25	76.95	84.89
Concession Fee	20.94	23.75	29.56	38.05	40.29
Lease Rent	6.35	6.35	6.35	6.35	11.78
Utilities	21.90	22.85	29.84	40.35	42.23
Insurance	2.85	2.50	4.89	4.98	5.09
Marketing and Advertising	5.67	4.86	6.01	6.71	7.48
Waivers and Bad Debts		47.51			
OMSA Fee	5.81	7.34	9.06	10.66	10.81
General Administration costs					
Consultancy and Legal	11.15	10.71	15.73	17.30	19.03
Travel Costs	4.10	4.30	4.73	5.20	5.72
Office Costs	7.30	8.20	9.02	9.92	10.91
Total Costs	199.53	274.90	274.55	355.00	405.29

18.35 The Authority also noted that BIAL had currently given space for construction of Hotel to a consortium of EIH Limited and L&T and this contract was under Arbitration and that the Costs that may be incurred towards negotiating and handling this contract, along with

cost of arbitration, legal fee etc. may be included in the Operating and Maintenance expenditure. The Authority had requested for details of these costs incurred from BIAL, which the Authority proposed to consider appropriately and reduce from the Operating Expenditure at the time of final Order, or in the alternative at the time of next control period.

- 18.36 Based on the material before it and its analysis, the Authority had proposed in the CP 14:
 - 18.36.1 To consider the revised Operating and Maintenance Expenditure as proposed by Authority detailed in Table 77 for the purpose of determination of Aeronautical Tariffs under Single Till.
 - 18.36.2 To consider including Rs. 47.51 crores of actual Bad debts write offs during 2012-13 as part of the Operating and Maintenance Expenditure.
 - 18.36.3 To accept the proposal of BIAL to true up this O&M Expenditure based on the actual costs incurred by BIAL during the control period, at the beginning of the next control period.
 - 18.36.4 To seek information from BIAL on Operating expenditure incurred on Non-Airport Activity included in their actual expenditure for 2011-12 and 2012-13 and the projections and to adjust the same at the time of the Order or if these details are unavailable by that time, at the time of tariff determination for the next control period
- 18.37 Further the Authority's examination of BIAL's MYTP 2013 submissions and Authority's analysis listed in CP 22 for stakeholder's consultation were listed below:
- 18.38 The Authority noted that BIAL had carried out few modifications to the Operating and Maintenance Expenditure estimate as compared to the earlier MYTP 2012 submissions.
- The Authority also noted that other changes proposed by it in the Consultation CP 14 listed in Para 18.17.2, 18.25.2 and 18.32 above were not effected by BIAL. The Authority proposed to carry out these changes made by the Authority in its Consultation CP 14 also in the revised submissions made by BIAL and disallow the additional changes made by BIAL as detailed in Para 18.5.3 above.
- 18.40 The Authority also noted that the Supplementary charges' recovery was shown as Utility income under Non-Aeronautical Revenue which the Authority proposed to adjust from the Operating expenditure of Utility costs.
- 18.41 Accordingly, the recomputed Operating and Maintenance expenditure proposed to be considered by the Authority was as detailed below

Table 78: Recomputed Operating and Maintenance Expenditure considered in CP 22- Single Till- Rs. Crore

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Personnel Expenses	74.68	86.33	112.12	138.52	167.05
Operation & Maintenance	38.67	49.91	47.89	76.90	84.88
Concession Fee	25.42	25.12	25.45	36.78	40.04
Lease Rent	6.35	6.35	6.35	6.35	11.78
Utilities	16.09	17.48	24.31	34.83	36.69
Insurance	2.93	2.47	4.69	4.91	5.01
Marketing and Advertising	4.57	5.45	6.01	6.71	7.48
Waivers and Bad Debts		47.51			
OMSA Fee	7.84	6.64	8.34	10.40	10.78
General Administration costs					
Consultancy and Legal	11.23	11.37	15.73	17.30	19.03
Travel Costs	4.06	3.80	4.73	5.20	5.72
Office Costs	7.27	8.04	9.02	9.92	10.91
Total Costs	199.10	270.46	264.63	347.82	399.36

Table 79: Recomputed Operating and Maintenance Cost proposed to be considered in CP 22 – 40% Shared Revenue Till – Rs. Crore

Pai	rticulars	2011-12	2012-13	2013-14	2014-15	2015-16
Personnel Expenses		67.21	77.70	100.90	124.67	150.35
Ор	eration & Maintenance	35.19	45.35	43.58	68.48	75.58
Co	ncession Fee	20.17	19.18	19.32	30.05	32.15
Lea	ase Rent	6.35	6.35	6.35	6.35	11.78
Uti	lities	16.09	17.48	24.31	34.83	36.69
Ins	urance	2.67	2.24	4.26	4.46	4.56
Ma	rketing and Advertising	4.25	5.09	5.63	6.29	7.03
Wa	nivers and Bad Debts		47.51			
O۱	1SA Fee	7.84	6.64	7.23	9.13	9.36
Ge	neral Administration costs					
	Consultancy and Legal	10.11	10.23	14.16	15.57	17.13
	Travel Costs	3.65	3.42	4.26	4.68	5.15
	Office Costs	6.54	7.24	8.12	8.93	9.82
Tot	tal Costs	180.07	248.43	238.11	313.44	359.60

18.42 The Authority also noted that BIAL had currently given space for construction of Hotel to a consortium of EIH Limited and L&T and this contract was under Arbitration and that

costs that may be incurred towards negotiating and handling this contract, along with cost of arbitration, legal fee etc. which were generally not a part of Airport Activity may be included in the Operating and Maintenance expenditure. The Authority had requested for details of these costs incurred from BIAL, which the Authority proposed to consider appropriately and reduce from the Operating Expenditure at the time of final Order, or if the details were not available till the time of final order, give effect to the same at the time of Aeronautical Tariff determination for the next control period

- 18.43 Based on the material before it and its analysis, the Authority had proposed in the CP 22:
 - 18.43.1 To note that utility charges recovered from concessionaires were reflected by BIAL as part of Non-Aeronautical Revenue. This was proposed to be reduced from the Utility expenditure considered as part of the Operating and Maintenance Expenditure. Hence, to show the Operating and Maintenance expenditure under Aeronautical stream net of the Utility charges recovered from the concessionaires.
 - 18.43.2 To consider the revised Operating and Maintenance Expenditure as proposed by Authority detailed in Table 78 and Table 79 for the purpose of determination of Aeronautical Tariffs under Single Till and Shared Revenue Till respectively.
 - 18.43.3 To consider including Rs. 47.51 Crore of actual Bad debts write offs during 2012-13 as part of the Operating and Maintenance Expenditure.
 - 18.43.4 To seek information from BIAL on Operating expenditure incurred on Non-Airport Activity included in their actual expenditure for 2011-12 and 2012-13 and the projections and to adjust the same at the time of the Order or if these details are unavailable by that time, at the time of tariff determination for the next control period.
 - 18.43.5 To accept the proposal of BIAL to true up this O&M Expenditure based on the actual costs incurred by BIAL during the control period, at the beginning of the next control period.

c. Stakeholder Comments on Issues pertaining to Operation and Maintenance Expenditure

Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14. Stakeholders have also commented on operating expenses to be considered in respect of Kempegowda International Airport, Bengaluru. These comments are presented

below:

18.45 On the issue of Operating Expenses, IATA stated that:

"IATA believes that the approved operating and maintenance expenditure for the control period must be sufficiently tight to challenge the airport to achieve greater cost efficiency. It is therefore important for the Authority to have carried out a more extensive scrutiny of the proposed future O&M expenditure to ensure that BIAL's proposal is realistic. The proposed increases in personnel expenses (three straight years of 20+ % increases from 2013-14 to 2015-16) and operation and maintenance expenses (63% increase in 2014-15) do not augur confidence that reasonable levels of projected expenditure have been set.

Truing up of O&M Expenditure based on actual costs incurred by BIAL during the control period is meaningless as there is absolutely no incentive for the airport to try to contain its expenditure. IATA proposes that the Authority should cap the expenditure at the approved level and only do truing up if the actual expenditure is lower than the approved levels.

IATA agrees fully with the Authority in not allowing bad debts to be considered as operating expense. There are no exceptions. The airport operator, like any business, must diligently manage its credit risks as part of its business activity. In the example of airlines, if a travel agent defaults and fails to pay the airlines for tickets sold, the airlines bear the loss even if it is a one-off event. Therefore, IATA strongly objects to the proposal to admit the bad debt of Rs47.51 crores due from Kingfisher to the airport on account of it being a one-off event. It is clearly wrong to make other airlines pay for the failures of their competitor"

- 18.46 FIA on the issue of Operating Expenses stated that the Authority ought to evaluate Operating Expenses in detail by evaluating commercial and financial details of each expense.
- 18.47 FIA further stated that Authority should independently scrutinise the claims of BIAL with respect to Operating Expenditure.
- 18.48 AAI on the issue of Operating Expenses stated that

"Any operating expenses relating to the common asset used by the non-airport services and security is to be proportionately deleted."

18.49 Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical

tariff in its CP 22. Stakeholders have also commented on Operation and Maintenance expenses. These comments are presented below:

18.50 FIA on the issue of Operating Expenses stated that:

"54. As per Proposal No.12 (i) of CP No. 14/2013-14, the Authority has included BIAL's projection for FY 2011-12 and FY 2012-13 with actual operating expenditure as per audited financial statements and for remaining three years of control period, it has accepted BIAL's submissions. No change in the operating expenditure has been proposed by the Authority in the CP No.22/2013-14 except utilities wherein the cost is net off with the utilities revenue accordingly the cost is reduced to the extent of the revenue.

55. As per clause 5.4.2 of AERA Guidelines, while reviewing forecast of operating expenditure the Authority has to assess:

Baseline operation and maintenance expenditure based on review of actual expenditure indicated in last audited accounts and check for underlying factors impacting variance over the preceding year; and

(b) 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 maybe considered appropriate.

It seems that the Authority has not carried out any independent review in order to evaluate the efficient expenditure related to FY 2011-12 and FY 2012-13 and rather considered the BIAL's submissions in this regard.

- 56. Further, with regard to projected expenses from FY 2013-14 to FY 2015-16 in the CP No.14/2013-14, the Authority had accepted the basis for majority of the key expenses (like concession fees, general administration costs, etc.) as forecasted by BIAL and has made certain modifications with respect to some of the key operating expenses (i.e. personnel expenses and operation & maintenance expenses) without considering past trends, productivity improvements, cost drivers. The Authority has maintained its view with respect to the operating expenditure in the CP No.22/2013-14.
- 57. It is discernible that 19 % and 31% year on year increase has been proposed by the Authority in FY 2013-14 and FY2014-15 respectively due to terminal expansion. However no technical evaluation has been done to ascertain the impact of terminal expansion on operating expenses. It is pertinent to note that BIAL has included

additional headcount expense starting from FY 2012-13. The Authority should have evaluated the efficient utilization of current headcount in order to justify the additional need for the headcount.

- 58. Also, it has been noted that BIAL has incurred loss of approximately Rs 6.4 crores on disposal of assets and it is glaring that the Authority has considered the same as part of operating expenditure. It is submitted that the Authority should provide the rationale for including the said loss since the depreciation charge on such asset is already included in determining ARR.
- 59. It is noteworthy that Operating expenditure is one of the major components for determining ARR (approximately 53% of ARR in Single Till approach and 46% of ARR in case of Shared Till). Hence, the Authority should have evaluated these expenses in detail rather than broadly relying on projections and basis provided by BIAL. It is submitted that the approach of the Authority for reviewing the operating expenditure is not in line with provision of the AERA Guidelines and in order to assess efficient operating expenditure, the Authority should conduct independent study Issue of Truing up of Operating Expenditure: As per Proposal No.12 (iii) of the CP No.14/2013-14 and as per Truing up for Proposal No.11 (a) (i) of CP No.22/2013-14, the Authority has considered the proposal of BIAL to true up operating expenditure based on the actual costs incurred by BIAL during the current control period, at the beginning of the next control period. In this regard, following points are noteworthy:
- (a) As per the AERA Guidelines, the Authority has to assess efficient operating and maintenance costs. It is submitted that Authority is cognizant of the fact that price cap determination would lead to the efficiency as BIAL would make efforts to contain the costs within prescribed price cap. However, the Authority in CP 14/2013-14 has proposed to accept BIAL's proposal to true up expenditure stating that "this being the first control period and the price cap regime is in the evolution stage, there may not be ready comparisons available to benchmark the costs". The same view has been maintained by the Authority in the CP No. 22/2013-14 and hence, there is no price capping in the operating expenditure which does not incentivize operators for efficient and prudent expenditure.
- (b) The Kempegowda International Airport, Bengaluru has already completed 5 years of operations. Hence, benchmarking the costs should not be difficult for the Authority. It is submitted that rather than truing up, price cap should be mandated by the Authority for each of the operating expenditures depending on the evaluation

of past trends, cost drivers, productivity movements, future expansions; otherwise the airport operator (BIAL in the present case) would not make palpable efforts to contain the costs. This would lead to additional burden on the passengers for the next control period.

61. Bad Debts: As per Proposal No. 11 (a)(iii) of the CP No.22/2013-14, the Authority had included the bad-debts of approximately Rs. 48 crores (dues from Kingfisher Airlines) written off by BIAL in FY 2012-13. These bad debts were also allowed by the Authority in CP 14/2013-14 considering it as one of event and also has proposed to consider the bad debts actually written off as part of operating expenditure subject to comments from Stakeholders. In absence of details, it is not clear as to what steps have been taken by BIAL to recover the amount of Rs. 48 crores from the Kingfisher Airlines. It is submitted that the Authority should ensure that bad debts have been actually written off as irrecoverable in the accounts of the BIAL. The Authority should not allow such losses to be recovered through operating expenditure as it will burden the consumers (airlines as well as the passengers). It is submitted that arguendo (without conceding) if such bad debts are to be considered, it should not be allowed to be recovered in remaining period of the present control period but should be recovered over 5 years period (one full control period)."

18.51 IATA has commented on Operating Expenditure as:

"IATA believes that the approved operating and maintenance expenditure for the control period must be sufficiently tight to challenge the airport to achieve greater cost efficiency. It is therefore important for the Authority to have carried out a more extensive scrutiny of the proposed future O&M expenditure to ensure that BIAL's proposal is realistic. Under the single till scenario, the proposed increases in personnel expenses (three straight years of 20+ % increases from 2013-14 to 2015-16) and operation and maintenance expenses (61% increase in 2014-15) do not augur confidence that reasonable levels of projected expenditure have been set.

IATA does not support AERA's proposal to accept BIAL's proposal to true up O&M expenditure based on actual costs because there is absolutely no incentive for the airport to try to contain its expenditure. IATA proposes that the Authority should cap the expenditure at the approved level and only do truing up if the actual expenditure is lower than the approved levels.

IATA does not support the inclusion of bad debts as part of O&M expenditure and strongly objects to the proposal to admit the bad debt of Rs. 47.51 crores due from

Kingfisher to the airport on account of it being a one-off event. It is clearly wrong to make airlines pay for the failure of their competitor and the airport's failure to manage its credit risks."

- 18.52 On the issue of Operating and Maintenance expenditure BPAC stated as under:
 - "a. Maintenance Capex over the life of the project must be monitored since it reduces cash flow over the project life if left unmonitored.
 - b. Break up for the maintenance capital expenditure must be obtained and it must corroborate with what's being presented in the business plan.
 - c. Maintenance cost need to be bench marked with reference to the service levels in offer and the similar capacity airports"

18.53 Sanjeev Dyamannavar has stated that:

"4. AERA acceptance of Bad Debts writing off as part of Operating and Maintenance expediture

AERA has accepted the bad debts of Rs 47.51 Crore which is due from the Kingfisher Airlines as part of Operating and Maintenance Expenditure for the year 2012-13. First off all any business has risk associated and also rewards. So passing complete risk of bad debts to passenger is not good business practice and why passengers should be burdened on such things. Also AERA should clearly define about this even in future UDF calculations and these should not be set as bad precedence for the Airport operators.

Also in case of Kingfisher Airlines recovery, BIAL has failed to initiate timely actions as soon as it was very clear that Airlines has gone bankrupt. Also why BIAL has not taken any guarantee for the UDF collection from the Airlines to encash in case of failure to pay the amount and this amount paid by the passengers as part of UDF and not received by the BIAL. In such case, BIAL should not be allowed to write off as bad debts.

18.54 Cathay Pacific has commented that:

"Cathay pacific does not agree with AERA's proposal to accept BIAL's proposal to true up Operating and Maintenance Expenditure based on actual costs because there is absolutely no incentive for the airport to try to contain its expenditure. We suggest that AERA should cap the expenditure at the approved level and only do truing up if the actual expenditure is lower than the approval levels.

We do not support to include bad debts as part of O&M expenditure and strongly objects to the proposal to admit the bad debt of Rs. 47.51 crores due from Kingfisher to the airport on account of it being a one-off event. It is clearly wrong to make other airlines pay for the failures of their competitor."

18.55 Lufthansa Airlines has stated that:

"AERA Act clearly provides for engaging professionals or its own staff by AERA. However AERA has relied on submissions of BIAL and has proposed to true up these expenses in the next control period. The proposed increase in the personnel expenses and other operating and maintenance expenses in the financial years 2013-14 and 2014-15 is too high. The inclusion of bad debts in Operating and maintenance expenses is not correct.

d. BIAL's comments on Stakeholders' comments on Operation and Maintenance Expenditure

Subsequent to the receipt of comments from the Stakeholders on the CP 14 and CP 22, the Authority forwarded these comments to BIAL seeking its response to these comments. BIAL has provided responses to the Stakeholders' comments, which are presented below:

18.57 On Sanjeev Dyamannavar, IATA, FIA, Lufthansa Airlines and Cathay Pacific comments on Bad Debts, BIAL has stated that:

"As submitted in response to CP No. 14 and CP No. 22 bad debts are to be provided for by the AERA. BIAL has filed a suit in respect of corporate guarantee issued by United Breweries (Holdings) limited for a sum of Rs. 14 crore only. The said corporate guarantee was issued by United Breweries (Holdings) limited guaranteeing debts to be paid by Kingfisher Airlines limited. BIAL has initiated legal proceedings against Kingfisher Airlines limited as well as the principal officers of Kingfisher Airlines limited. BIAL would support AERA' view that bad debts that are written off would be reimbursed."

18.58 On BPAC comment on Operating Expenditure, BIAL has stated that:

"The comments appear to be in the nature of suggestions and not in relation to the present consultation process. However all requisite details have been submitted to AERA as part of consultation process and the same are available in the public domain."

18.59 On FIA, IATA, Lufthansa Airlines and Cathay Pacific's comments, BIAL has stated that:

"BIAL submits that it is a developing airport and has expanded its capacity considerably during the control period. Hence, past expenses cannot be considered as the basis for estimating expenses in the coming years. However, BIAL has done bottom up projections while arriving at the cost estimates and detailed submissions have been made earlier in response to CP 14 and CP 22."

e. BIAL's own comments on Issues pertaining to Operation and Maintenance Expenditure

- 18.60 On the issue of operating expenditure, BIAL, in response to proposal placed by the Authority in CP 14 stated that:
 - "1. WRITE OFF OF BAD DEBTS: It is proposed in the CP that once bad debts are written off, the same will be reimbursed as a part of operations and maintenance expenditure. Authority has proposed to consider bad debts of Kingfisher Airlines Limited as a part of BIAL's operations and maintenance expenditure. BIAL welcomes the Authority's above approach towards bad debts of Kingfisher Airlines Limited that were written off by BIAL. BIAL submits that the proposal to allow reimbursements of bad debts that are written off is very crucial for the financial stability of an airport and BIAL submits its concurrence to the proposal contained in the CP in this regard. As submitted earlier, bad debts are a business reality and no business can function without facing bad debts. If bad debts are not reimbursed, effectively, the airport will be forced to pay out of its returns towards bad debts. Burgeoning debts of Kingfisher Airlines Limited are a case in point. BIAL further submits that BIA was developed as a public private partnership and BIAL's board consists of nominees of state promoters as well. BIAL submits that all necessary efforts will be made to recover bad debts and once bad debts are written off, as proposed by the Authority; the same be reimbursed as operations and maintenance expenditure.

Further, BIAL submits that, when bad debts that are written off are recovered at a subsequent stage, the same can be ploughed back into tariff computations.

2. PROVISIONING FOR BAD DEBTS: BIAL requests Authority to consider allowing provisioning for bad debts. It is common practice to make allowances/provisions for debts. BIAL submits that, when debts turn bad or become irrecoverable, the provisioning comes in handy to avert unanticipated contingencies. Needless to state that, should bad debts be actually recovered or written off, the provisioning will be

reversed. BIAL submits that provisioning will protect BIAL from cash flow problems arising out of debts becoming irrecoverable. BIAL further submits that, since bad debts actually written off are proposed to be allowed to be reimbursed, on similar logic, provisioning also be allowed. BIAL further submits that, either in the event of provisioning or in the case of debts being written off, action for recovery of the same will be initiated if the same is advisable and in the event of recovery, the same will be ploughed back and therefore, BIAL will not derive any unfair advantage from the same.

- 3. OMSA FEES: In paragraph 17.67.3, Authority has proposed to cap OMSA Fees at 1.29%. BIAL understands that, in terms of proposal 12.a (iii), all operations and expenditure will be trued up. In that light, since fluctuations in OMSA fees will be trued up, BIAL has no further submissions in this regard.
- 4. EXCHANGE RATE FLUCTUATIONS: BIAL submits that Authority has proposed to allow hedging costs for foreign exchange transactions at actuals. In that light, BIAL has no further submissions in this regard.
- 5. REVIEW OF OPERATIONS AND MAINTENANCE EXPENDITURE: So far as review of operations and maintenance expenditure is concerned, as submitted earlier, BIAL submits that Authority should call for explanations / justifications only when expenses prima facie appear to be overly excessive and not as a matter of routine. Expenses incurred towards operations and maintenance are clearly accounted for and audited. It is the audited accounts which are submitted to the Authority. An entrepreneur requires flexibility and freedom of enterprise in order to conduct its business effectively. Having to post facto justify every such expense to the Authority would largely restrict this freedom of enterprise. Such continuous and intense regulatory scrutiny would compromise entrepreneurial freedom and increase the cost of regulation manifold. BIAL's robust internal processes will ensure that operations and maintenance expenses incurred are reasonable and therefore, BIAL submits that a detailed review may not be conducted."

f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to Operation and Maintenance Expenditure

- 18.61 The Authority has carefully examined the comments made by various stakeholders in respect of Operation and Maintenance expenses to be considered for BIAL.
- 18.62 The Authority notes that FIA, Cathay Pacific, Lufthansa Airlines and IATA have

stated that there has to be sufficient analysis on Operating Expenditure, that Operating expenses cannot be trued up at actuals and that Bad debts written off should not be allowed. The Authority also noted Sanjeev Dyamannavar's comment that Bad Debts should not be considered.

18.63 The Authority has already detailed in CP 14 that in case of BIAL, the first control period is not yet completed, the Airport is undergoing major expansion during the control period and many costs are dependent on the actual nature and value of Capital Expenditure incurred. The Authority had hence, agreed to BIAL's request for truing up of Operating Expenditure.

On Bad Debts, the Authority has noted that BIAL had commented that even the provision for bad debts should be considered. The Authority has already detailed its analysis in Airport Order and in CP 14 in the framework where the Authority noted that in general Bad debts are not allowed, however, in exceptional cases (as in the case of Kingfisher) where the Bad debts were written off, the Authority had proposed to allow the same. The Authority has not allowed any provisioning of bad debts as an expense. The Authority has noted Sanjeev Dyamannavar's comment that "AERA has accepted the bad debts of Rs 47.51 Crore which is due from the Kingfisher Airlines as part of Operating and Maintenance Expenditure for the year 2012-13." The Authority notes that Rs. 47.51 crores due from Kingfisher Airlines has been written off by BIAL in its books of accounts. The Authority also noted that whenever such bad debts are recovered, the same will be recognised as Income and reckoned for determination of Aeronautical Tariffs in the relevant control period.

The Authority has noted AAI's comment that "Any operating expenses relating to the common asset used by the non-airport services and security is to be proportionately deleted." The Authority notes that normally, under Single Till, the Authority would consider all Airport Operations related costs (with exclusions for Bad Debts, Forex loss etc. as detailed earlier) to be added to the ARR. In case of any other Till such as Shared Revenue till, the costs are allocated between Aeronautical and Non-Aeronautical services which the Authority would accordingly consider for determination of Aeronautical Tariffs.

18.66 The Authority had also asked BIAL to submit the actual unaudited Financial Statements for March 2014. The Authority has received the same vide submission dated 5th May 2014. The Authority noted that the expenditure incurred by BIAL for 2013-14 is different from the Projections made by it. A comparative table is presented below:

Table 80: Operating and Management Expenditure - 2013-14 Projection vs Actuals - Rs. crore

Particul	ars	2013-14 Considered in CP 22	2013-14 Actual
Personr	nel Expenses	112.12	93.53
Operati	on & Maintenance	47.89	49.55
Concess	ion Fee	25.45	27.01
Lease R	ent	6.35	6.35
Utilities		24.31	19.39
Insuran	ce, Rates and Taxes	4.69	15.39
Marketing and Advertising		6.01	9.49
Waivers	and Bad Debts		
OMSA F	ee	8.34	9.99
General	Administration costs		
	Consultancy and Legal	15.73	9.96
	Travel Costs	4.73	7.09
	Office Costs	9.02	8.68
Total Co	osts	264.64	256.42

18.67 The Authority noted that the OMSA fee as a % of EBIDTA was actually 1.80% as against 1.29% considered by the Authority. The Authority decided to change the estimate for 2014-15 and 2015-16 accordingly.

18.68 Also, BIAL had submitted to the Authority that there has been demand for Property taxes from 2010-11, which BIAL is required to pay. The Authority was informed that this was paid by BIAL for the year 2013-14 (Depicted under Insurance, Rates and Taxes as above) and the balance cost for the period from 2010-11 till 2012-13 was to be paid in 2014-15.

18.69 Submission made by BIAL in this regard is as follows:

"Kindly note that a demand been raised by the local Panchayat authorities for payment of Panchayat taxes w.e.f 2010-11. In this regard we have requested the support to exempt the Property taxes for the period 2010-11 to 2012-13 (refer the PDF attachment 'Property tax BIAL letter'). In this regard please find enclosed herewith the communication of KSIIDC wherein our request for exemption not accepted.

In view of above explanation, kindly find below details of Property taxes for consideration into tariff determination:

SI			
No	Particulars	Amount (Rs)	Remarks

1	Property tax for 10-11	98,158,150	Demand raised by Panchayat authorites
2	Property tax for 11-12	107,081,618	Demand raised by Panchayat authorites
3	Property tax for 12-13	107,081,618	Demand raised by Panchayat authorites
4	Property tax for 13-14	107,081,618	Demand raised by Panchayat authorites
5	Property tax for 14-15	117,789,780	Estimated at 10% increase as per new 4 year cycle for slab rate fixation (previous slab fixed in FY 2010-11)
6	Property tax for 15-16	117,789,780	Estimated at 10% increase as per new 4 year cycle for slab rate fixation (previous slab fixed in FY 2010-11)

- 18.70 BIAL has also submitted that an estimated amount of Rs. 2.8 crores and Rs. 3.5 crores is estimated to be incurred on account of Corprate Social responsibility spend as required by the Companies Act 2013.
- 18.71 The Authority decides to consider the actual costs incurred by BIAL for 2013-14 in computing the ARR for the current control period and the cost payable for the period from 2011-12 (First year of the control period) in its computation of Operation and Maintenance Expenditure estimate to be reckoned for the purpose of computing ARR.
- 18.72 The Authority had also sought details from BIAL on the amount incurred for Arbitration etc. for the Hotel Project and included as part of actual / projected Operating and Maintenance Expenditure. BIAL has stated that a sum of around Rs. 1.98 Crore has been spent on the Hotel arbitration related costs as per the details given below. Accordingly the Authority decides to reduce this cost from the Operating and Maintenance expenditure and compute the ARR accordingly.
- 18.73 Recomputed Operating and Maintenance Expenditure is as given below:

Table 81: Operating and Maintenance Expenditure decided to be considered by the Authority - Single Till- Rs. Crore – For MYTO

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Personnel Expenses	74.68	86.33	93.53	138.52	167.05
Operation & Maintenance	38.67	49.91	49.55	78.52	89.99
Concession Fee	25.42	25.12	27.01	38.17	41.27
Lease Rent	6.35	6.35	6.35	6.35	11.78
Utilities (Net of recoveries)	16.09	17.48	19.39	34.83	36.69
Insurance, Rates and taxes	2.93	2.46	15.39	41.26	20.65
Marketing and Advertising	4.57	5.44	9.49	6.62	7.37
Bad Debts written off (Kingfisher)		47.51			
OMSA Fee	7.84	6.64	9.99	13.22	13.95
General Administration costs					

Particulars		2011-12	2012-13	2013-14	2014-15	2015-16
	Consultancy and Legal *	11.23	11.37 *	9.96 *	17.30	19.03
	Travel Costs	4.06	3.80	7.09	5.20	5.72
	Office Costs	7.27	8.04	8.68	9.92	10.91
Total Costs		199.10	270.45	256.42	389.92	424.41

^{*} Rs. 1.98 crores relating to Hotel Arbitration expenditure reduced from the Head – Consultancy and legal and the net amount is indicated.

Table 82: Recomputed Operating and Maintenance Expenditure – 40% Shared Revenue Till- Rs. Crore – For MYTO

Particulars		2011-12	2012-13	2013-14	2014-15	2015-16
Personnel Expenses		67.21	77.70	84.18	124.67	150.35
Operation & Maintena	nce	35.19	45.35	45.07	69.88	80.04
Concession Fee		20.17	19.18	20.57	31.74	33.30
Lease Rent		6.35	6.35	6.35	6.35	11.78
Utilities (Net of recoveries)		16.09	17.48	19.39	34.83	36.69
Insurance		2.67	2.24	14.96	40.78	20.16
Marketing and Advertising		4.25	5.09	9.11	6.21	6.92
Bad Debts written off (Kingfisher)		47.51			
OMSA Fee		7.84	6.64	9.99	11.51	11.87
General Administration	n costs					
Consultancy	and Legal	10.11	10.23 *	8.96 *	15.57	17.13
Travel Costs		3.65	3.42	6.38	4.68	5.15
Office Costs		6.54	7.24	7.81	8.93	9.82
Total Costs		180.07	248.42	232.76	355.14	383.21

^{*} Rs. 1.98 crores relating to Hotel Arbitration expenditure reduced from the Head – Consultancy and legal and the net amount is indicated.

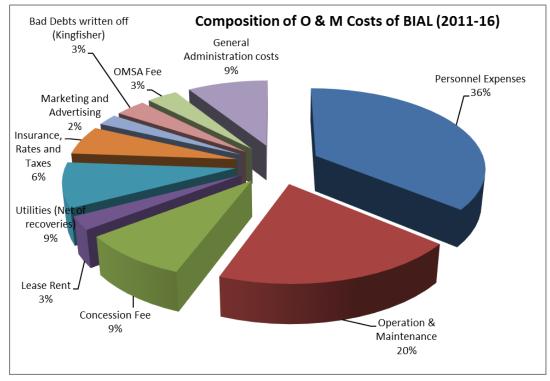


Figure 2: Components of Operation & Maintenance Expenditure - BIAL (2011 - 2016) Rs. Crore

18.74 It may be noted that the projected Operating and Maintenance expenditure under both Single Till and 40% Shared Revenue Till (Refer Table 81 and Table 82) for 2014-15 and 2015-16 are much higher than the preceding three years particularly in respect of items like Personnel Expenses, Operation & Maintenance, Utilities and Consultancy. During disucssions with BIAL it was indicated that the increase on these items is particularly on account of the operation of the expanded Terminal building (T1A). The Authority has therefore decided to take into account these levels of Operating Expenditure and true up the same at the end of the current control period.

Decision No. 14. Operation and Maintenance Expenditure

a. The Authority decides

- i. To note that utility charges recovered from concessionaires were reflected by BIAL as part of Non-Aeronautical Revenue. Utility charges recovered from concessionaires is decided to be reduced from the Utility expenditure considered as part of the Operation and Maintenance Expenditure and accordingly net Utility expenditure is considered for computation of ARR.
- ii. To include Rs. 47.51 Crore of actual Bad debts written off during 2012-13 as part of the Operation and Maintenance Expenditure. (Refer Para 18.15 above)

- iii. To reduce an amount of Rs. 1.98 Crore (Refer Para 18.72 above) incurred towards
 Hotel Arbitration from the Operation and Maintenance Expenditure and compute
 the ARR accordingly.
- iv. To consider the Operation and Maintenance Expenditure as computed by the Authority detailed in Table 81 and Table 82 for the purpose of determination of Aeronautical Tariffs under Single Till and 40% Shared Revenue Till respectively.
- v. To accept the proposal of BIAL to true up this Operation and Maintenance Expenditure based on the actual costs incurred by BIAL during the control period, during the determination of Aeronautical Tariffs for the next control period.

19 Analysis of Service Providers of CGF as Agents of BIAL

a. BIAL's submission on CGF Service providers being agents of BIAL and Authority's analysis in CP 14

- 19.1 BIAL's submission on CGF Service providers being agents of BIAL and Authority's analysis detailed in CP 14 is as under:
- As indicated in Para 2.7 above, BIAL in its affidavit before AERAAT had stated that the service providers giving CGF services (these services are defined as Aeronautical Services under AERA Act) were merely the agents of BIAL. The Authority in its counter affidavit before AERAAT had stated that the Authority considers the CGF service providers as third party concessionaires (ISPs and not agents of BIAL). When this appeal was heard before AERAAT on 3rd May 2013, Shri Datar, Senior Advocate sought to withdraw the appeal. AERAAT in its Order dated 3rd May 2013 amended vide its Order dated 10th May 2013, allowed the appellant to withdraw the appeal. In its order, it also permitted the appellant, inter alia, "…an opportunity to raise all the questions raised herein in his appeal for filing which, he seeks an opportunity. We allow the withdrawal with the liberty sought for by him".
- 19.3 BIAL had, in its Appeal no 12/2011 referred to in Para 19.2 above, raised the question of the nature of the CGF Service Providers averring that they are its agents.
- The Authority based upon the contentions made by M/s BIAL in its appeal affidavit before AERAAT had analysed the aeronautical tariff determination taking the Cargo, Ground Handling and Fuel Supply (CGF) service providers as agents of BIAL and not Independent Service Providers (ISPs). While examining the various submissions made by BIAL, the Authority had noticed the amounts BIAL had received from service providers like Cargo and Fuel Supply (that are defined as Aeronautical services in AERA Act) that it had treated as Non Aeronautical Revenue. The Authority noted that if as claimed by BIAL before AERAAT, the Service providers are its agents, all the revenues arising out of these services would need to be reckoned as obtained by BIAL in the course of providing Aeronautical services of Cargo and Fuel supply (through agents). However, in case of Ground Handling service (which also is defined as an aeronautical service in the AERA Act) the Authority noted that BIAL had not projected any revenue share from the Ground handling service provider.
- 19.5 The Authority vide its letter dated 20th March 2013 made a specific query to BIAL: "Further, attention is drawn to your response vide e-mail dated 26.02.2013 indicating that

BIAL is getting only rental from ground handling activities thus tantamounting to mean that the Ground Handling service providers at Bangalore International Airport, i.e. M/s Air India SATS and M/s Globe Ground India are not your agents. Kindly confirm the same". BIAL replied vide email dated 3rd June 2013 that "Please note that we are receiving only rentals from Ground Handling Service Providers and kindly refer concessionaire agreement copy provided, as part of MYTP submission, for further needful review at your end". The Authority took note of the submissions by the Ground Handling Service providers regarding their total revenues.

- The Authority noted that upon a specific query as stated in Para 19.5 above, BIAL's reply dated 3rd June 2013 skirted the issue, was ambiguous and also omitted what was specifically averred by it in its judicial proceedings before the AERAAT. BIAL's reply thus was not in consonance with its stand regarding the status of the CGF Service Providers as taken by it before AERAAT (that the CGF Service Providers are agents of BIAL).
- 19.7 Accordingly, the Authority had analysed the implication of treating Service Providers of CGF as Agents of BIAL in Table 129 of CP 14, reproduced below for reference.

Table 83: Table 129 of Consultation Paper 14/2013-14 – Recomputed total amount to be recovered through Aeronautical tariffs after adjusting Revenues accruing to BIAL considering CGF Service providers as Agents

Particulars (Rs. Crore)		Single Till		Dual Till
Aggregate Revenue requirement as computed		2,817.41		3,198.28
Computation of Revenues from CGF				
Total Revenue of CGF Agents for the control period	1,768.85		1,768.85	
Revenue considered as part of the ARR (Fuel Farm and Cargo Service)	380.97		231.38	
Additional Revenues (from CGF)	1,387.88		1,537.47	
Tax on additional revenue at 20% (MAT)	(277.58)		(307.49)	
Balance amount with Operator	1,110.30		1,229.98	
Hence amount available towards ARR		(1,110.30)		(1,229.98)
Recomputed Aggregate Revenue requirement to be met through other Aeronautical tariff (LPH, UDF, FTC)		1,707.11		1,968.31

- 19.8 In the computations given above, details of Operating Expenses incurred by the Agents were not considered as no details relating to the same were provided by BIAL.
- 19.9 Accordingly the Authority had presented calculations based on two alternate proposals: (a) considering the CGF service providers as Agents of BIAL and (b) considering CGF Service providers as Independent Service Providers for Stakeholders' consultation in its CP 14. The impact on the Airport Charges (notably on UDF) were also presented which is reproduced below.

Table 84: Table 51 of Consultation Paper 14/2013-14: Summary of Recomputed UDF (Domestic) based on Authority's proposals, considering CGF Service providers as agents of BIAL

Type of Passenger	Existing	Recomputed UDF Rates under Single & Dual Till as per Authority*					
	UDF	201	3-14	2014-15		2015-16	
	Rates	Single	Dual	Single	Dual	Single	Dual
Domestic (Rs.)	231.4	0.0	126.70	40.56	104.93	106.56	178.41
International (Rs.)	952.3	0.0	506.80	162.23	419.70	426.26	713.63
* Proposed UDF levy is w.e.f. 01st October, 2013. The Authority would round off the above numbers to the nearest rupee.							
Landing, Parking Rates are as per the existing rates							
* Under Single Till In the first year UDF will be Zero and the LPH Charges will be reduced by 14.59%							

b. BIAL's submission and Authority's Examination of Service Providers of CGF as Agents of BIAL in CP 22

- 19.10 Submissions made by BIAL in this matter in response to CP 14 was as under.
- 19.11 BIAL has vide letter dated 6th September 2013, responded on this matter as follows:

"Ref: Consultation Paper (CP) No. 14/2013-14 dated 26th June 2013 and Proposal No. 18 – regarding alternate analysis of UDF considering CGF service provider as Agents of BIAL (And not as ISPs)

Kindly note that BIAL has contended before Airport Economic Regulatory Authority Appellate Tribunal (AERAAT) that Cargo, Ground handling & fuel (CGF) service providers are Agents. It is clarified that as per the provisions of Concession Agreement between Government of India and BIAL, BIAL is given freedom to enter into Service Providers Right Holders (SPRH) agreements with respect to services such as Cargo, Ground handling &Fuel farm services.

As per SPRH agreements, the services can be rendered by independent entities who are selected through a transparent bidding process and the framework within which such services to be rendered is determined. As long as the service providers render the services within the framework of SPRH agreement, such service provider has freedom to operate its business and carry out the provisioning of services independently. Hence they are not agents as understood under legal parlance. After careful perusal of SPRH agreement provisions, BIAL submits that CGF services are currently provided by concessionaires of BIAL, who are not its agents and should be treated as Concessionaires of BIAL. Kindly consider the above submission need fully at your end"

- 19.12 The Authority had analysed the relevant clauses in the SPRH agreements (relating to Cargo, ground Handling and Fuel Supply). Relevant clause from Cargo SPRH agreement is reproduced below:
 - "3.2.3 The SPRH agrees and confirms that in exercising the Service Provider Rights and observing and performing its obligations and liabilities hereunder it will be acting as an independent contractor for its own account and will not be acting as or deemed in any respect to be agent or partner of BIAL" (emphasis added)
- 19.13 The Authority also noted that similar clauses have been incorporated in the agreements for Ground Handling and Fuel Farm services as below:
 - "2.2.2 The SPRH agrees and confirms that in exercising the Service Provider Rights and observing and performing its obligations and liabilities hereunder it will be acting as an independent contractor for its own account **and will not be acting as or deemed** in any respect to be agent or partner of BIAL" (emphasis added) Into plane fuelling agreement
 - "2.1.4 The SPRH agrees and confirms that in exercising the Service Provider Rights and observing and performing its obligations and liabilities hereunder it will be acting as an independent contractor for its own account **and will not be acting as or deemed** in any respect to be agent or partner of BIAL" (emphasis added) Ground handling agreement
- 19.14 The Authority regarded the above clauses in the SPRH Agreements as having sufficient clarity regarding the nature of the relationship between providers of CGF services and BIAL in that the CGF Service Providers are not agents of BIAL. The Authority had also further noted the response of M/s Menzies Bobba (Cargo Service Provider at BIAL) as follows:
 - "...We (MABB) contend that we are Independent third-party Cargo providers by virtue of Service Provider Right Holder Agreement (SPRH) entered into with the Airport Operator through Global Tender. We would like to further clarify that we are not Agents of the Airport Operator. Also we are independent company formed under Indian Companies Act, 1956. We are consistent in our position and would like the same to be considered in entirety, where applicable in the Consultation Paper 14/2013-14..."
- 19.15 Hence, the Authority was unable to appreciate, how and why, despite the clear position in the SPRH Agreements that the CGF Service providers are not BIAL's agents, BIAL

had taken a stand in its appeal before Hon'ble AERAAT that the CGF service providers were agents of BIAL. It appeared that upon closer reading of its own agreements, BIAL had now come to the conclusion that the CGF Service providers were not its agents. The Authority also noted that BIAL in its letter has stated that "As long as the service providers render the services within the framework of SPRH agreement, such service provider has freedom to operate its business and carry out the provisioning of services independently. Hence they are not agents as understood under legal parlance". The Authority on reading the relevant clauses of the SPRH agreements felt that apart from the "legal parlance" CGF concessionaires cannot be regarded as agents of BIAL even in a financial sense in as much as BIAL does not appear to have made any payments in terms of reimbursement of costs etc. to the CGF Service providers for the services provided by them. The Authority, therefore, proposed to consider the CGF Service providers as Independent Service Providers (ISPs) and treat them as such. Accordingly, the Authority proposed to only consider the revenue shares received by BIAL from these ISPs as Aeronautical Revenue in the hands of BIAL, in the process of computing the Aeronautical Tariffs.

19.16 Based on the material before it and its analysis, the Authority had proposed in CP 22 to consider the CGF service providers as Independent Service Providers of BIAL (and not as BIAL's agents) and accordingly compute the ARR for the current control period.

c. Stakeholder Comments on Service Providers of CGF as Agents of BIAL

- 19.17 Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14. Stakeholders have also commented on Consideration of CGF Service providers as agents of BIAL. These comments are presented below.
- 19.18 On the issue of Service Providers of CGF as Agents of BIAL, IATA stated that:

 "The airport had filed in court arguing that CGF service providers are its agents and it is the principal. In such a scenario, turnover from the agents would be BIAL's revenue. Therefore, consistent with IATA's position laid out in point (8) above, turnover from the agents should be treated as aeronautical revenue of BIAL."
- 19.19 On the issue of Service Providers of CGF as Agents of BIAL, Air France stated that:

"Concerning the issue of treatment of cargo, ground handling and fuel service providers as either concessionaires or as agents of BIAL, we consider as it is also the IATA's consistent position that so long as the airport receive revenues (n any form) from such services, the revenues should be treated as aeronautical revenue irrespective of whether related assets used for provision of the services appear in the airport operator's books or not. So we are fully supporting the determination of Aeronautical tariffs under the single till approach made by AERA in considering the CGF providers (cargo, ground handling and fuel service providers) as agents of BIAL (and not as third party concessionaires)."

19.20 On the issue of Service Providers of CGF as Agents of BIAL, British Airways stated that:

"Cargo services, ground handling services and fuel into-plane services are regarded as aeronautical services under the AERA Act in recognition that the airport operator has monopolistic power to impact the cost of provision of these services. Therefore, revenues derived by the airport operator from these services, regardless of whether the services are provided by the airport itself or concessioned out, should be treated as aeronautical revenue. British Airways would further consider the revenue generated from airline lounges, operation and maintenance of passenger boarding and disembarking systems, hangers, heavy maintenance services for aircraft, and flight catering services as aeronautical revenue and as such thinks assets associated with these operations would be Aeronautical Assets.

So long as the airport receive revenues (in any form) from services such as cargo services, ground handling services and fuel into-plane services, the revenues should be treated as aeronautical revenue irrespective of whether related assets used for provision of the services appear in the airport operator's books or not. As such we support the determination of aeronautical tariffs (as well as UDF) considering the CGF Service providers as Agents of BIAL (and not as third party concessionaires)."

19.21 On the issue of Service Providers of CGF as Agents of BIAL, Menzies Aviation stated that:

"We (MABB) contend that we are Independent third- party Cargo Service Providers by virtue of Service Provider Right Holders Agreement (SPRH) entered in to with the Airport Operator through Global Tender. We would like further clarify that we are not Agents of the Airport Operator. Also we are independent company formed under

Indian Companies Act, 1956. We are consistent in our position and would like the same to be considered in entirety, where applicable in the Consultation paper 14/2013-14."

- Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 22. Stakeholders have also commented on issue of Service Providers of CGF as agents of BIAL. These comments are presented below:
- 19.23 On the issue of Service Providers of CGF as Agents of BIAL, FIA stated that:

"In the CP No.14/2013-14, Authority had sought the view from the Stakeholders whether ISPs providing services related cargo, ground-handling, fuel throughput, etc. should be treated as agents of BIAL or third party concessionaires. In this context, FIA had submitted inter alia that Authority has laid down the CGF Guidelines with the intent to regulate tariff(s) of ISPs on stand-alone basis and not as agents of the airport operator (in the present case BIAL). The CGF Guidelines still hold the ground as far as determination of tariff(s) of aeronautical services of ISPs are concerned and has not been set aside under any legal proceedings.

Now in the CP No.22/2013-14, it is stated that BIAL in its subsequent submissions dated 06.09.2013 has accepted that the CGF Service providers are not its agents. The Authority has also noted that BIAL in its letter has stated that "As long as the service providers render the services within the framework of SPRH agreement, such service provider has freedom to operate its business and carry out the provisioning of services independently. Hence they are not agents as understood under legal parlance". The Authority on reading the relevant clauses of the SPRH agreements felt that apart from the "legal parlance" CGF concessionaires cannot be regarded as agents of BIAL even in a financial sense in as much as BIAL does not appear to have made any payments in terms of reimbursement of costs etc. to the CGF Service providers for the services provided by them. The Authority, therefore, has proposed to consider the CGF Service providers as Independent Service Providers (ISPs) and treat them as such.

In the event of CGF service providers being treated as ISPs, it will be within the purview of Authority's jurisdiction to determine the tariff of such CGF service providers within the regulatory framework."

d. BIAL's comments on stakeholder Comments on Service Providers of CGF as Agents of BIAL

19.24 The Authority noted that BIAL has not provided any specific comments on the Stakeholders' comments.

e. BIAL's own Comments on Service Providers of CGF as Agents of BIAL

19.25 In response to Authority's Proposal in CP 14 BIAL stated as under on the issue of Service Providers of CGF as Agents of BIAL:

"BIAL has contended before Airport Economic Regulatory Authority Appellate Tribunal (AERAAT) that Cargo, Ground handling & Fuel (CGF) service providers are Agents. It is clarified that as per the provisions of Concession Agreement between Government of India and BIAL, BIAL is given freedom to enter into Service Providers Right Holders (SPRH) agreements with respect to services such as Cargo, Ground handling & Fuel farm services.

As per SPRH agreements, the services can be rendered by independent entities who are selected through a transparent bidding process and the framework within which such services to be rendered is determined. As long as the service providers render the services within the framework of SPRH agreement, such service provider has freedom to operate its business and carry out the provisioning of services independently. Hence they are not agents as understood under legal parlance.

After careful perusal of SPRH agreement provisions, BIAL submits that CGF services are currently provided by concessionaires of BIAL, who are not its agents and should be treated as Concessionaires of BIAL. BIAL requests Authority to kindly consider the above submission need fully while determining Aeronautical tariffs (as well as UDF)."

f. Authority's examination of Stakeholder Comments (including comments from BIAL) on Service Providers of CGF as Agents of BIAL

- 19.26 The Authority noted that IATA, Air France and British Airways had earlier in CP 14 stated that they support AERA's view to consider CGF Service providers as agents of BIAL. The Authority however had analysed this again in CP 22 based on further submissions provided by BIAL.
- 19.27 Hence the Authority decides to consider the CGF Service providers as Independent Service Providers and not as agents of BIAL.

Decision No. 15. Treatment of CGF Service Providers

 The Authority decides to consider the CGF service providers as Independent Service Providers of BIAL (and not as BIAL's agents) and accordingly compute the ARR for the current control period.

20 Treatment of Cargo, Ground Handling & Fuel throughput Revenues

a. BIAL Submission on Treatment of Cargo, Ground Handling & Fuel throughput Revenues

- 20.1 BIAL in its MYTP 2012 submission had stated as under on Treatment of Cargo, Ground Handling & Fuel throughput Revenues.
- As per BIAL's initial submission dated 14th September 2011, BIAL had classified the revenues from Cargo, Fuel Farm and Ground Handling activities under Aviation Concessions (under both Single and Dual Till submissions).
- 20.3 In their MYTP 2012 submissions, BIAL submitted that

"The revenue from services other than the aeronautical services viz., from Non-aeronautical Revenue (NAR) was focused and treated as standalone services right from the inception. The initial business plan and financial model has been prepared with the premise that Aeronautical Revenue and Non Aero Revenues being treated distinctly. Also, Government of Karnataka (GoK) has provided financial support of Rs.335 Cr as viability gap funding loan to improve the viability of the project and enhance the bankability of the initial phase by entering into State Support Agreement (SSA) only based on the above criteria".

20.4 Further, BIAL had stated that:

"BIAL was the first PPP airport and is a pioneer in developing, maintaining and running the airport operations which primarily aims at focusing on its core competence viz., airport operations. This being the fact, BIAL has concessioned the aviation concessions and NAR activities to the experts / market leaders".

20.5 Explaining the process of selecting the professional partners / concessionaires for concessioning the aviation activities, BIAL has stated that

"BIAL has selected professional partners / concessionaires based on international bidding process who will provide various services such as Cargo Facility, Ground Handling, Aviation Fuel, Flight Catering, Retail, Food & Beverages, Advertising and so on. The process mainly ensured competitive price structures and defined the adequate quality standards to be complied with, at minimum. Also, it was ensured that a minimum of 2 concessionaires operate in every business so as to safeguard adequate competition and better service to end users."

20.6 In respect of the Cargo, Fuel Farm and Ground Handling activities under Aviation Concessions, BIAL had entered into Service Provider Right Holder Agreement (SPRH) with

service providers wherein BIAL is entitled for agreed percentage of Revenue share on gross turnover or Minimum Annual Guarantee (MAG) whichever is higher.

20.7 As regards the treatment of NAR, BIAL had stated that:

"As per Article 10 of the Concession Agreement (CA) read with Schedule-6, Regulated Charges i.e., Landing, Parking, Housing, PSF and UDF are only to be regulated. Further, as per Article 10.3 of CA, BIAL is free without any restriction to determine the charges to be imposed in respect of the facilities and services provided at the Airport or on the site, other than the facilities and services in respect of which Regulated Charges are levied.

Based on the above, the revenue from various services other than Regulated Services has been considered as NAR."

- 20.8 BIAL had also stated that the Projections of Non-Aeronautical Revenues are based on the business plan projections submitted by Concessionaires as per agreement entered into with BIAL. Further BIAL has also stated that "AERA has determined the tariff for aviation concessionaires" viz., Cargo facility, Fuel Farm, Into plane services and Ground handling facilities operating at BIAL and have issued Order No.19,20,21,22& 23 of 2011-12. BIAL has considered in the MYTP, the revenue projections submitted by these concessionaires to AERA and subsequently approved by AERA."
- 20.9 BIAL had in their presentation made before the Authority on 8th April 2013 submitted as under:

"Tariffs for the services of cargo facility, ground handling and fuel supply also should not be determined or regulated since the same fall under services that are not to be regulated as per the Concession Agreement."

The Authority noted that as BIAL had engaged other Concessionaires to carry out the activities of Ground Handling Services, Cargo facility and Supplying fuel to the aircraft and BIAL has considered the same as "Non-Aeronautical Revenues" in MYTP 2012 under both Single and Dual Till. The details of these "Aeronautical Activities" that have been concessioned by BIAL and whose Revenue has been considered as "Non-Aeronautical Revenues" by BIAL were as under:

Table 85: Details of Aviation concessions

Aeronautical Service	Independent Service Provider	Revenue considered by BIAL		
	Air India SATS Airport Services (AISATS)	BIAL had clarified that BIAL does not have Ground Handling Revenue and BIAL gets only Rentals from the Service providers.		
Ground Handling Services	Globe Ground India Pvt Ltd (GGI)	BIAL has entered into separate rental contracts under which conditions the space is being made available to the service provider, including the fees payable therefore. The rental contract are coterminus with the SPRH Agreement		
	Menzies Aviation Bobba Bangalore (MABB)	Minimum Annual Guaranteed Turnover Fee, part of the Turnover Fee (being 18% of the		
Cargo facility	Air India SATS Airport Services (AISATS)	Gross-Turnover of the SPRH in each relevant Financial Year) that is due to the Airport irrespective of the actual Gross Turnover.		
	Express Industry Council of India (EICI)	The amount of the MAG Turnover Fee for each Financial Year is specified in Schedule of the respective SPRH Agreements		
Into Plane Service	Indian Oil Sky Tanking Ltd (IOSL) Bharat Star Services P Ltd (BSSPL).	BIAL receives as Airport Operator Fee an amount equal to 5% of the gross turnover of the ITP Service Provider.		
Fuel Farm	Indian Oil Sky Tanking Ltd (IOSL)	IOSL is charging Rs. 1500/KL and has termed it as Fuel Throughput Fee. This Fuel Throughput Fee has two components – "Airport Operator Fee" (viz., Rs. 1067/KL) payable to BIAL and "Operating Cost and Reserve Fund" (viz., Rs. 433/KL) retained by IOSL.		

20.11 "Aeronautical Activities" concessioned by BIAL and whose Revenue had been considered as "Non-Aeronautical Revenues" in BIAL's Business model was as under:

Table 86: Details of Aeronautical activities concessioned out, as submitted by BIAL - MYTP 2012 - Rs. Crores

Particulars	2012	2013	2014	2015	2016
Ground Handling Services					
Cargo facility	28.43	27.63	28.85	29.46	29.57
Into Plane Service	0.62	0.55	0.55	0.56	0.56
Fuel Farm	51.03	43.71	44.15	44.59	45.04

- 20.12 Further BIAL's MYTP 2013 submission stated as under on Treatment of Cargo, Ground Handling & Fuel throughput Revenues:
- 20.13 As per BIAL's MYTP 2012, BIAL had classified the revenues from Cargo, Fuel Farm and Ground Handling activities under Aviation Concessions as Non-Aeronautical Revenues.
- 20.14 The Authority noted that BIAL had engaged Concessionaires to carry out the

activities of Ground Handling Services, Cargo facility and Supplying fuel to the aircraft. Furthermore, BIAL had considered the revenues share received from these CGF service providers as "Non-Aeronautical Revenues" in the MYTP 2013 under both Single and Dual Till.

Authority's Examination of BIAL Submissions on Treatment of Cargo, Ground Handling Fuel throughput Revenues

- The Authority Examination of BIAL Submissions on Treatment of Cargo, Ground Handling & Fuel throughput Revenues and Proposals placed for Stakeholders comments in CP 14 is as under.
- The Authority had in its DIAL and MIAL Tariff Determination Order (Order No 3/2012 dated 24th April 2012 and 32/2012 dated 15th January 2013), 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) and MIAL (Paras 20.1 to 22.81). The Authority 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 the Airport Operator 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.
- 20.17 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.
- 20.18 The Authority had, therefore, while arriving at the above-mentioned approach of treatment of revenue from Cargo and Ground Handling services 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 had 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 aeronautical revenue, as long as this service is provided by the airport operator himself. It had mentioned that the classification of cargo service as aeronautical service has been done in the AERA Act. It noted that the Government has also regarded cargo service as aeronautical service.

20.20 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 133rd 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 the Authority, a recommendation which was accepted by the Ministry and accordingly fuel supply was included as an aeronautical service. The Authority also noted 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 hands.

Cargo Facility Services

- 20.21 The Authority had noted from BIAL's submission that there are two agencies providing ground handling services at Bengaluru International Airport viz., Air India SATS Airport Services Pvt Ltd. and Menzies Aviation Bobba Bangalore Pvt Ltd.
- The Authority has determined tariffs in respect of services provide by these two Independent Service Providers [ISP(s)] vide its Orders Order No 22/ 2011-12 dated 25.10.2011 and 44/2012-13 dated 01.03.2013 for Air India SATS Airport Services Pvt Ltd and Order No 21/2011-12 dated 25.10.2011; 16/2012-13 dated 20.09.2012 and 14/2013-14 dated 10.06.2013 for Menzies Aviation Bobba Bangalore Pvt Ltd.
- 20.23 The Authority had observed from the tariff model that the revenue in the hands of BIAL from the provision of Cargo services at Bengaluru International Airport, Bangalore is in the form of a revenue share from these two ISPs. In the tariff model, BIAL had not furnished the break-up of revenue earned from the two ISPs. BIAL has presented a single stream of revenue from Cargo services. Historical numbers till FY 2011-12 were based on the actuals in the hands of BIAL. BIAL had submitted that its projection of Revenue share from Cargo activities was based on the estimated revenues submitted by the concessionaires to the Authority for determination of their tariff. BIAL had considered the revenues from the Cargo handling activities as part of Non-Aeronautical revenues in the tariff model.
- 20.24 In addition, the Authority had noted that one of the cargo service providers viz. Al

SATS appears to have accommodated Express Cargo activities to Express Industry Council of India (EICI) that is rendering Express Cargo facility service for which EICI is paying rental to AI SATS. The Authority vide its Order No. 16/2013-14 dated 21st June 2013 had determined the tariffs of EICI for Express courier cargo facility service. It thus appeared that BIAL has no direct linkage with EICI.

20.25 The Authority had noted that as per Schedule 3: Part 1 – Airport Activities of the Concession Agreement between Ministry of Civil Aviation and BIAL, Cargo handling and Cargo terminals form part of Airport Activities. The Authority further noted that charges levied in respect of these Cargo Handling services were not included in the Schedule 6 of the Concession Agreement. However, under the legislative policy guidance of the AERA Act, the Authority has undertaken the determination of tariff in respect of Cargo Handling Services at Bengaluru International Airport, Bangalore vide its Orders referred in Para 20.22 above

20.26 As discussed above, BIAL had concessioned out the Cargo Handling Services to third party ISPs and thus the revenue accruing to BIAL from these third party ISPs was proposed to be considered as non-aeronautical revenue in the hands of BIAL.

Ground Handling

- 20.27 The Authority had noted from BIAL's submission that there were two agencies providing ground handling services at Bengaluru International Airport viz., Air India SATS Airport Services Pvt Ltd. and Globe Ground India Pvt Ltd.
- The Authority had determined tariffs in respect of services provide by these two Independent Service Providers [ISP(s)] vide its Orders Order No 23/ 2011-12 dated 25.10.2011 and 18/2012-13 dated 01.10.2012 for Air India SATS Airport Services Pvt Ltd and Order No 24/ 2011-12 dated 17.10.2011 and 19/2012-13 dated 12.09.2012 for Globe Ground India Pvt Ltd.
- The Authority had observed from the tariff model that the revenue in the hands of BIAL from the provision of Ground Handling services at Bengaluru International Airport, Bangalore was only in the form of Rentals for space provided to the Ground handling agencies.

 BIAL had considered these rentals from Ground Handling agencies as part of Non-Aeronautical revenues in the tariff model.
- 20.30 The Authority had noted that as per Schedule 3: Part 1 Airport Activities of the Concession Agreement between Ministry of Civil Aviation and BIAL, Ground Handling Services

and Ground Handling equipment form part of Airport Activities. The Authority further noted that charges levied in respect of ground handling services are not included in the Schedule 6 of the Concession Agreement. However, under the legislative policy guidance of the AERA Act, the Authority had undertaken the determination of tariff in respect of ground handling services at Bengaluru International Airport, Bangalore vide its Orders referred in Para 20.28 above

20.31 As discussed above, BIAL had concessioned out the Ground Handling services to third party independent service providers and thus the revenue accruing to BIAL from these third party independent service providers was proposed to be considered as non-aeronautical revenue in the hands of BIAL.

Fuel Farm Facility

- The Authority noted that BIAL had not made any specific proposal for the Throughput Fee earned from the Fuel Farm Facility at Bengaluru International Airport, Bangalore. BIAL had not made a separate submission in line with the Airport Guidelines in respect of the Eligible Yield per KL to be charged for its fuel farm services. BIAL had not also detailed any specific costs that are incurred for rendering these services.
- 20.33 The Authority noted from the BIAL's Fuel Facility Service Provider Right Holder Agreement dated 01.03.2006, that the SPRH comprising the consortium of Indian Oil Corporation Limited, Indian Oil tanking Limited and Sky tanking Holding GMBH were awarded the Service provider Right for the design, construction, financing, testing and commissioning of the fuel farm facility at Bengaluru International Airport, Bangalore.
- Further, as per the Operating Agreement dated 01.03.2006, between BIAL and the SPRH comprising the consortium of Indian Oil Corporation Limited, Indian Oil tanking Limited and Sky tanking Holding GMBH (Operators), the Operator was responsible for collecting the Revenue from the fuel farm facility and disbursing the same. The Fuel farm Facility payments, Operating Costs, Through put Fees, Operating Fee and Airport Operator Fee were in accordance with Part III of Schedule D of the Operating Agreement dated 01.03.2006.
- 20.35 Clause 13.1 of the Operating Agreement dated 01.03.2006, provided that the Operator shall calculate the Throughput Fees in accordance with Part III of Schedule D for each litre of ATF uplifted into an Air Carrier. Further, Clause 13.1.2 provided that the Throughput Fees shall be collected in accordance with the Supplier Agreements provided

always that the Operator shall implement a charging policy which is fair and nondiscriminatory between Suppliers regardless of the volume of ATF supplied.

20.36 Clause 14.1 of the referred Agreement laid down the mechanism for application of the Throughput Fee revenue from the Fuel Farm Facility which will be applied to discharge the Facility Charges and Reserve Appropriation in order of priority as listed under:

- 20.36.1 Operating Costs to the Operator;
- 20.36.2 Airport Operator Fee to BIAL;
- 20.36.3 Facility Payments to the SPRH;
- 20.36.4 Operating Fee to the Operator; and
- 20.36.5 Reserve Appropriation.

20.37 Clause 14.3 of the Agreement provided that the Operator shall pay to BIAL, the Airport Operator Fee by monthly instalments, calculated in accordance with Part V of Schedule D. It further provided that the Airport Operator Fee shall be, exclusive, of all Taxes, including any applicable service tax which shall be, payable by the Operator (in addition to the Airport Operator Fee) and recovered by the Operator through the Throughput Fee. The rates of the Airport Operator Fee payable during each financial year shall be notified to the Operator by BIAL in accordance with Part V of Schedule D of the Operating Agreement dated 01.03.2006.

Clause 14.6 of the Operating Agreement also stated that BIAL shall establish the Reserve Fund and the Operator shall transfer the Reserve Appropriation into the Reserve Fund, by monthly instalments. It further stated that the Reserve Fund shall be operated by BIAL who shall notify the Operator of the Reserve Appropriations that BIAL considers should be met during a relevant Financial Year. Clause 14.6.3 further clarified that if BIAL so determined, the proceeds of the Reserve Fund accumulated in a Financial Year may be utilized and carried forward as Revenue for the succeeding Financial Year in order to reduce the Throughput Fee applicable for such succeeding Financial Year.

20.39 The Authority had noted that as per Schedule 3: Part 1 – Airport Activities of the Concession Agreement between Ministry of Civil Aviation and BIAL, Aircraft fuelling services form part of Airport Activities. The Authority further noted that charges levied in respect of the Aircraft fuelling services / Fuel Farm services were not included in the Schedule 6 of the Concession Agreement. However, under the legislative policy guidance of the AERA Act, the Authority had undertaken the determination of tariff in respect of services for supply of fuel

for aircrafts at Bengaluru International Airport, Bangalore. Details of the Tariff determination Orders were as under:

Service Provider	Aeronautical	Orders
	Service	
Indian Oil skytanking	Fuel Farm	No.05/2013-14 dated 22.04.2013
	Services	
Indian Oil skytanking	Into Plane	19/2011/12 dated 25.10.2011; 25/2012-13 dated
	Services	22.11.2012
Bharat Star Services P Ltd	Into Plane	20/2011/12 dated 25.10.2011; 26/2012-13 dated
District State Sta	Services	22.11.2012

As regards the ITP Services, the Authority noted that these were in the nature of aeronautical services in terms of Section 2(a) of the Act. In the instant case, BIAL did not provide the ITP services themselves. The ITP services were being provided by the concessionaires (Indian Oil skytanking and Bharat Star Services P Ltd). These concessionaires, viz., the ITP service providers were regulated by the Authority and their rates had been approved by the Authority separately. BIAL only received certain part of the revenue received by these ITP services providers as a concession fee. Therefore, the Authority was of the view that the concession revenue received by BIAL from the ITP service provider(s) may be treated as non-aeronautical revenue in the hands of BIAL.

20.41 As regards the Fuel Farm Services, the Authority noted that the Fuel Farm Operator was responsible for collecting the Revenue from the fuel farm facility and disbursing the same. The Authority had in its Consultation paper No. 46/2012-13 dated 14.03.2013 to consider the MYTP and ATP submitted by IOSL for Fuel Farm Services provided at BIA, Bengaluru, inter alia, made the following proposal for stakeholder consultation:

"(ii) The Authority noted that the IOSL is charging Rs. 1500/KL and has termed it as "Fuel Throughput Fee". This "Fuel Throughput Fee" has two components — "Airport Operator Fee" (viz., Rs. 1067/KL) and "Operating Cost and Reserve Fund" (viz., Rs. 433/KL).

(iii)The Authority decided that the "Airport Operator Fee" component of the said "Fuel Throughput Fee" charged by IOSL is to be determined as part of exercise of determination of aeronautical tariffs in respect of Bangalore International Airport.

(iv) The Authority tentatively decided to determine, for the time being, the amount of "Airport Operator Fee" at Rs. 1067/KL towards the component of fuel supply service provided by BIAL at Bangalore International Airport, till its final determination as part of aeronautical tariffs in respect of Bangalore International Airport, based on the

tariff proposal submitted by BIAL. Hence, this amount viz., Rs. 1067/KL, which is being charged by BIAL as Airport Operator Fee, will continue to be charged by it presently.

BIAL has been charging this fee since about 2008 and not made any increase thereto."

- 20.42 In response to the Authority's proposal contained in the above mentioned Consultation Paper comments were received from Indian Oil Corporation Limited and Shell MRPL Aviation Fuels and Services Ltd. The stakeholders, in general agreed to the proposal proposed in the Consultation paper.
- Accordingly the Authority had in MYTO No. 05/2013-14 dated 23.04.2013, determined the "Airport Operator Fee" component of the tariff item "Throughput Fee" as part of the exercise of determination of tariff for aeronautical services provided by BIAL (i.e., the Airport Operator) at Bangalore Airport. The Authority also decided that, purely for the time being, the "Airport Operator Fee" component of "Fuel Throughput Fee" is determined at Rs. 1067/KL, till its appropriate final determination as part of aeronautical tariffs in respect of Bangalore International Airport based on the tariffs proposal submitted by BIAL. This "Airport Operator Fee" is being charged by BIAL as Airport Operator, towards the aeronautical service of supply of fuel provided by it.
- 20.44 Based on the material before it and its analysis, the Authority had proposed in CP14:
 - 20.44.1 To consider the revenue from Cargo and Ground Handling services and Into Plane services (provided by third party concessionaires) accruing to BIAL as non-aeronautical revenue for determination of tariffs of aeronautical services for the current control period.
 - 20.44.2 To note that the Fuel Farm Facility is operated by IOSL and the assets of this facility are also on the balance sheet of IOSL. To further note that IOSL is paying Fuel Through put charge of Rs. 1067 per KL to BIAL and that it is not paying any additional amounts towards revenue share. The Authority thus proposed to consider the Throughput Fee revenue from fuel farm service concessioned out by BIAL to IOSL as aeronautical revenue in the hands of BIAL.
- 20.45 Further Authority's examination of BIAL's MYTP 2013 submission on issues pertaining to Treatment of Cargo, Ground Handling & Fuel throughput Revenues and proposals placed for stakeholder's consultation were as detailed below.
- 20.46 The Authority noted that the Fuel Farm Facility was operated by IOSL and that IOSL

is paying Fuel Through put charge of Rs. 1067 per KL to BIAL. The Authority thus proposed to consider the Throughput Fee revenue from fuel farm service concessioned out by BIAL to IOSL as aeronautical revenue in the hands of BIAL.

20.47 As far as the classification of Revenues obtained by BIAL from Fuel Throughput Charge is concerned, the Authority's position had been already made clear in its tariff determination order in respect of Mumbai International Airport (MIAL) (Para 22.3) of Order No 32/2012-13 dated 15th January 2013. The Authority had noted that the activity of bringing fuel into the Airport is an integral and inalienable part of the chain of supply of fuel to the aircraft at the airport. As per the definition of Aeronautical Services of the AERA Act "any service provided for supplying fuel to the aircraft at an airport" is an Aeronautical service. Fuel Throughput charge is levied by the Airport Operator on the Oil marketing companies in the process of supply of Fuel to the Aircraft at Bengaluru Airport. The supply of fuel in this case, i.e., entry of fuel into the Kempegowda International Airport, Bengaluru is entirely in the control of BIAL, the Airport Operator and thus, BIAL can be regarded as a service provider in the chain of supply of fuel to the aircraft at the Kempegowda International Airport, Bengaluru. The Authority had therefore consistently regarded revenues in the hands of the Airport Operator on account of Fuel Throughput Charge as Aeronautical Revenues. The Authority further noted that in its tariff determinations of Chennai and Kolkata Airports, AAI in its submission had also regarded Fuel Throughput charge as a charge towards Aeronautical Service and accordingly reckoned the revenue in AAI's hands on account of this charge as Aeronautical Revenue.

20.48 The Authority had detailed its deliberations and analysis on treatment of Cargo, Ground handling and Fuel supply to Aircraft, in CP 14.

In Para 4.20.1 of CP 14, Authority had noted that "A view could be taken that the revenues earned by BIAL from these Cargo, Fuel Farm and Ground Handling services is caused to be provided by airport operator and hence merits to be considered as Aeronautical Service". Similarly, in Para 18.64 of CP 14, the Authority had reiterated that "Hence if these three services (CGF) are provided by the airport operator through third party concessionaire, a view could be taken that still it is the airport operator who has caused these three services to be provided by such appointed third-party concessionaire".

20.50 Thereafter, this issue was also deliberated upon in the Stakeholders' meeting held on 22nd July 2013 and the minutes of meeting detail as follows:

"...The Chairperson clarified that the manner of treatment of revenue from cargo, ground handling and fuel facility is the same as was considered in the earlier Consultation Papers, i.e., if airport operator provides these services itself then revenue accruing to it from these services is treated as aeronautical. However, if these services are provided by an independent Third Party Concessionaire (ISP) the revenue share/royalty etc. accruing to the airport operator from such ISPs is treated as non-aeronautical revenue. However, there may be a need to revisit this issue in the next Control Period. This is because, even when the aeronautical service is provided by the third party concessionaire, it can be said that the aeronautical service in question is "caused" to be provided by the airport operator (through third party concessionaire)..."

20.51 The Authority had, in response to CP 14, received the comments of MoCA vide letter No. AV 20036/19/2013-AD dated 24th September 2013. In this letter, MoCA has, inter alia stated that:

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

- In view of the above analysis, the Authority proposed to consider the amounts received by BIAL from Cargo, Ground Handling and Fuel Supply services as part of Aeronautical Revenues. Additionally, the Authority also proposes to regard revenues in the hands of BIAL on account of Fuel Throughput Charge also as Aeronautical Revenues.
- 20.53 Based on the material before it and its analysis, the Authority had proposed in CP 22 as follows:
 - 20.53.1 To note that the Fuel Farm Facility is operated by IOSL and the assets of this facility are also on the balance sheet of IOSL. To further note that IOSL is paying Fuel Through put charge of Rs. 1067 per KL to BIAL. The Authority thus proposed to consider the Throughput Fee revenue from fuel farm service concessioned out by BIAL to IOSL as aeronautical revenue in the hands of BIAL.

20.53.2 To consider the revenue from Cargo Facility, Ground Handling and Into Plane services (provided by third party concessionaires) accruing to BIAL as Aeronautical revenue for determination of tariffs of aeronautical services for the current control period.

c. Stakeholder Comments on Issues pertaining to Treatment of Cargo, Ground Handling & Fuel throughput Revenues

Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14. Stakeholders have also commented on treatment of Cargo, Ground Handling & Fuel throughput Revenues in respect of Kempegowda International Airport, Bengaluru. These comments are presented below:

20.55 On the issue of revenue from Cargo services, IATA stated that:

"Cargo services, ground handling services and fuel into-plane services are regarded as aeronautical services under the AERA Act in recognition that the airport operator has monopolistic power to impact the cost of provision of these services. Therefore, revenues derived by the airport operator from these services regardless of whether the services are provided by the airport itself or concessioned out, should be treated as aeronautical revenue. IATA believes that this interpretation is well aligned with the spirit of the AERA Act which is to curb the monopolistic powers of the airport in areas that can impact industry-related costs such as in cargo services, ground handling services and fuel services. The Authority has also acknowledged that it is possible to view that revenues earned by the airport operator from CGF services are caused to be provided by the airport operator and therefore merit to be classified as aeronautical revenues.

In line with the position above, IATA proposes the treatment of the following revenues derived by the airport from cargo services, ground handling services and fuel services as aeronautical revenue:

Concession revenue received by the airport operator from ITP service providers

Airport Operator Fee component of the Fuel Throughput Fee paid by IOSL to BIAL

Revenue share to BIAL from the two cargo service providers

Rentals collected by BIAL for space provided to the two ground handling service providers"

20.56 On the issue of revenue from Cargo services, FIA stated

"Revenue from these services to be treated as aeronautical as these are aeronautical services whether provided by BIAL or third parties."

20.57 On the issue of revenue from Ground Handling services, APAO stated that:

"The Consultation Paper has proposed to consider revenue from Cargo, Ground Handling and Fuel Farm (CGF) services as non-aeronautical revenue, except for fuel throughput fees.

4.9.2.2. APAO response:

APAO submits that revenue share from fuel throughput fee be treated as non-aeronautical revenue. The Consultation Paper does not mention the reasons as to why such revenue share is proposed to be treated as aeronautical revenue. BIAL has concessioned out fuel farm services to a concessionaire and fuel throughput fee paid by IOSL to BIAL is in fact BIAL's revenue share, which is computed in the form of per kilolitre charges. The calculation per kilo litre is a unit of measure and is not reflective of the nature of service. APAO therefore submits that such revenue share be considered as non-aeronautical revenue. APAO further submits that, whether CGF services are provided by BIAL or by third party concessionaires, revenue from CGF services in the hands of BIAL, in line with Concession Agreement, should be treated as non-aeronautical revenue"

20.58 On the issue of Treatment of Fuel Throughput charges, British Airways stated that:

"Cargo services, ground handling services and fuel into-plane services are regarded as aeronautical services under the AERA Act in recognition that the airport operator has monopolistic power to impact the cost of provision of these services. Therefore, revenues derived by the airport operator from these services, regardless of whether the services are provided by the airport itself or concessioned out, should be treated as aeronautical revenue. British Airways would further consider the revenue generated from airline lounges, operation and maintenance of passenger boarding and disembarking systems, hangers, heavy maintenance services for aircraft, and flight catering services as aeronautical revenue and as such thinks assets associated with these operations would be Aeronautical Assets.

So long as the airport receive revenues (in any form) from services such as cargo services, ground handling services and fuel into-plane services, the revenues should

be treated as aeronautical revenue irrespective of whether related assets used for provision of the services appear in the airport operator's books or not."

20.59 On the issue of Treatment of Fuel Throughput charges, Cathay Airways stated that:

"We are in full agreement with Clause 13(1) (a)(vi) and (vii) of AERA Act that the airport's revenue from Cargo services should be treated as aeronautical revenue for the purpose of tariffs determination. We are hence at a complete loss when the proposed decision is to take the revenue from cargo services as non-aeronautical revenue. Furthermore, revenue derived from ground handling and fuel services being treated as non-aeronautical would contradict as these services are obviously aeronautical. We urge the authority to review this so as to include the revenue of these services for the purpose of tariff determination."

20.60 HPCL on the issue of cargo revenue stated that:

"We have perused the above Consultation Paper and noted that the IOSL is charging Rs. 1500/KL and has termed it as "Fuel Throughput Fee". This "Fuel Throughput Fee" has two components –Airport Operator (Viz. Rs. 1067/KL) and "Operating Cost and Reserve Fund" (viz., Rs. 433/Kl).

BIAL has not made any specific proposal for the Throughput Fee earned from the Fuel Farm Facility at Bengaluru International Airport, Bangalore. BIAL also has not made a separate submission in line with the Airport Guidelines in respect of the Eligible Yield and also has not provided any detailed specific costs that are incurred for rendering these services.

We feel that Rs.1500/KL of Fuel Throughput Charges levied by SIAL is on the higher side when the amount is compared with charges presently charged at other locations. However; since BIAL has not sought any revision as on date we propose that there should not be any upward revisions to such costs till 31st Mar 2016. Moreover we are also of the opinion that a study should be made to bring down such Fuel Throughput Charges which are presently being charged by BIAL so as to make it at par with other locations.

In case in future if authority decides to revise the charges we request that same may be please be made prospective only so that there is no financial loss to us"

20.61 Menzies Aviation on the issue of fuel farm stated that:

"Notwithstanding how the share of Cargo revenue accruing in the hands of Airport Operator, we (Menzies Aviation Bobba Bangalore Private Limited- MABB) contend that the Cargo services performed by us are "Aeronautical services" as per AERA act, We are consistent in our position and would like the same to be considered in entirety, where applicable in the Consultation paper 14/2013-14.

Our comments originate from the fact that a detailed history and implied legislation exist for Cargo and Ground Handling Services under the aegis of International Air Transport Authority (IATA) for treatment of the services as part of Aeronautical Services.

However, we would like to indicate that our above stated position does not speak of regulation of Tariff as majority of Regulators globally do not regulate Tariffs of Cargo and Ground Handling and these are left to market forces of demand & supply like any other commoditized pricing."

20.62 With regard to the fuel throughput charges MoCA stated as under:

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

20.63 Further, Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 22. Stakeholders have also commented on treatment of Cargo, Ground Handling & Fuel throughput Revenues. These comments are presented below:

20.64 APAO on treatment of Cargo, Ground Handling & Fuel throughput Revenues stated as under:

"As per Article 10 of the Concession Agreement read with Schedule-6 of that Agreement, the Regulated Charges are Landing charges, Housing charges, Parking charges, Passenger Service Fee (PSF) and User Development Fee (UDF). Further, as per Article 10.3 of the Concession Agreement, BIAL is free, without restriction, to determine the charges to be imposed in respect of the facilities and services provided at the Airport or on the site, other than the facilities and services in respect of which Regulated Charges are levied. Therefore, BIAL considered the revenue from services

other than Regulated Services as non-aeronautical revenue. The initial business plan and financial model submitted to the Government of Karnataka by BIAL was also prepared on this basis. The Authority had, in Consultation Paper No.14, considered the amounts received by BIAL from Cargo and Ground Handling services as non-aeronautical revenues based on the fact that BIAL had concessioned out these services to independent third party service providers. This position was also in consonance with the Concession Agreement. We accordingly request the Authority to maintain this position and consider the amounts received by BIAL from Cargo and Ground Handling services as non-aeronautical revenue."

20.65 IOCL has welcomed AERA's proposal on considering Fuel Throughput charge and revenue from CGF as Aeronautical Revenues.

d. BIAL's response to Stakeholder Comments on Issues pertaining to Treatment of Cargo, Ground Handling & Fuel throughput Revenues

20.66 Subsequent to the receipt of comments from the Stakeholders on the CP 14 and CP 22, the Authority forwarded these comments to BIAL seeking its response to these comments. BIAL has provided responses to the Stakeholders' comments, which are presented below:

20.67 In response to the Stakeholder comment, BIAL had stated that:

"BIAL submits that revenue from CGF services be treated as non-aeronautical in line with the Concession Agreement."

"BIAL submits that its revenue share received from ISPs be treated as nonaeronautical revenue and reiterates its submissions made in response to CP 22."

e. BIAL's own comments on Issues pertaining to Treatment of Cargo, Ground Handling & Fuel throughput Revenues

20.68 On the issue of Treatment of Cargo, Ground Handling & Fuel throughput Revenues, BIAL as response to proposal placed in CP 14 stated that

"For the services of cargo handling, ground handling and supply of fuel (collectively referred to as "CGF services"), the CP has proposed to consider revenue therefrom as non-aeronautical revenue, except for fuel throughput fees. BIAL submits that revenue share from fuel throughput fee be treated as non-aeronautical revenue. The CP does not contain reasons as to why such revenue share is proposed to be treated as aeronautical revenue. BIAL has concessioned out fuel farm services to a

concessionaire and fuel throughput fee paid by IOSL to BIAL is in fact BIAL's revenue share, which is computed in the form of per kilolitre charges. Calculation per kilolitre is a unit of measure and is not reflective of the nature of service. BIAL therefore submits that such revenue share be considered as non-aeronautical revenue. BIAL submits that CGF services are currently being provided by its concessionaires and therefore, revenue from CGF services, as proposed by Authority, be treated as non-aeronautical revenue. BIAL submits to the Authority that above CGF services to be treated in line with Concession agreement."

20.69 Further, on the issue of Treatment of Cargo, Ground Handling & Fuel throughput Revenues, BIAL as response to proposal placed in CP 22 stated that:

"BIAL submits that all CGF revenue including into plane services be treated as non-aeronautical revenue in accordance with the Concession Agreement. BIAL submits that the proposal made in the CP in respect of CGF revenue be preferred over the revised proposal made in the Addendum"

f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to Treatment of Cargo, Ground Handling & Fuel throughput Revenues

- 20.70 The Authority has carefully considered the comments made by the stakeholders on treatment of Cargo, Ground Handling & Fuel throughput Revenues in respect of BIAL.
- 20.71 The Authority noted that IATA, FIA, British Airways and Cathay Pacific have supported considering revenue from CGF services as Aeronautical Service.
- 20.72 APAO and BIAL have stated that the revenue from Fuel Through put and CGF Services should not be considered as Aeronautical Revenue. The Authority had already in the framework to CP 14 and in CP 22 (Refer Para 20.49 above) noted that a view could be taken that the revenue from CGF Services, whether provided by the Airport Operator or Concessionaire could be considered as Aeronautical Revenues. The Authority had in response to CP 14 received comment from MoCA which had also stated that all revenues from Fuel ThroughPut and CGF Services should be considered as Aeronautical Revenues.
- The Authority noted that BIAL and APAO have stated that the CGF services are not defined as Aeronautical Services in the Concession Agreement. The Authority notes that the Act defines CGF Services as clearly Aeronautical services. The Authority also notes that the Concession Agreement has stated that IRA would be formed which could regulate any aspect of Airport Activity. Hence the Authority considers it well within the Authority's purview to

consider the CGF services as Aeronautical Services and to consider the revenue earned by the Airport Operator, whether by directly rendering the service or through Third Party concessionaires either as a revenue share or in any other form, be treated as Aeronautical Revenues.

20.74 The Authority has noted HPCL's comment that:

"We feel that Rs.1500/KL of Fuel Throughput Charges levied by BIAL is on the higher side when the amount is compared with charges presently charged at other locations. However; since BIAL has not sought any revision as on date we propose that there should not be any upward revisions to such costs till 31st Mar 2016. Moreover we are also of the opinion that a study should be made to bring down such Fuel Throughput Charges which are presently being charged by BIAL so as to make it at par with other locations."

The Authority notes Rs. 1500 per KL collected by the Fuel farm operator (IOSL) has two components: (a) Rs. 433 per KL as Operating cost and reserve fund and (b) Airport Operator Fee (in the nature of FTC) of Rs. 1067 per KL. The Fuel Throughput fee is paid by IOSL to BIAL as per agreement entered into between IOSL and BIAL on 28th February 2006. BIAL has not proposed to increase the Fuel Throughput fee or the Fuel farm Infrastructure charge. The Authority has separately determined the charge at Rs. 433 vide its Tariff Order 5/ 2013-14 issued on 23rd April 2013. The Authority noted that the Fuel Through put fee is in vogue at all the major Airports in India. The Authority notes that Fuel through put fee is being charged from the time the KempeGowda International Airport had commenced operations from May 2008 and the rates have not since then been revised. In view of this, the Authority does not feel the need to undertake any study for this purpose.

20.76 The Authority also notes British Airways' comment that

"British Airways would further consider the revenue generated from Revenue generated from airline lounges, operation and maintenance of passenger boarding and disembarking systems, hangers, heavy maintenance services for aircraft, and flight catering services as aeronautical revenue"

The Authority noted that the AERA Act does not mandate that the elements of Revenue listed by British Airways be considered as Aeronautical Revenues (other than Passenger boarding bridges considered a part of Ground Handling services) and hence they cannot be treated as Aeronautical Revenues.

20.78 The Authority, hence decides to consider the revenue from CGF Service Providers and Fuel Throughput fee charged by BIAL as Aeronautical Revenues.

Decision No. 16. Treatment of Revenue from Ground Handling, Fuel throughput and Cargo Services

a. The Authority decides:

- i. To note that the Fuel Farm Facility is operated by IOSL and the assets of this facility are on the balance sheet of IOSL. To further note that IOSL is paying Airport Operator Fee (commonly understood as Fuel Throughput charge) of Rs. 1067 per KL to BIAL. Accordingly to consider the Throughput Fee revenue from fuel farm service concessioned out by BIAL to IOSL as Aeronautical Revenue in the hands of BIAL.
- ii. To consider the revenue from Cargo Facility, Ground Handling and Into Plane services (provided by third party concessionaires) accruing to BIAL as Aeronautical revenue for determination of tariffs of aeronautical services for the current control period.

21 Non-aeronautical revenue

a. BIAL Submission on Non-aeronautical revenue

- 21.1 BIAL in MYTP 2012 had submitted category wise details on Revenues from Aeronautical Services. BIAL, in its submission had divided the Non-Aeronautical Services Revenue into 2 categories as Aviation Concessions and Non-Aeronautical Revenue.
- 21.2 Revenues from Aerobridge, Cargo, Fuel Farm and Flight Catering were classified as Aviation Concessions whereas other revenues such as Landside traffic, Revenue from Retail and F&B, Advertising and Promotions, Rentals, Utility Charges, Common Infrastructure Charges, Revenue from Information Communication Technology (ICT), were categorised as Non-Aeronautical Revenue.

21.3 BIAL in its submission had stated that:

"The revenue from services other than the aeronautical services viz., from Non-aeronautical Revenue (NAR) was focused and treated as standalone services right from the inception. The initial business plan and financial model has been prepared with the premise that Aeronautical Revenue and Non Aero Revenues being treated distinctly. Also, Government of Karnataka (GoK) has provided financial support of Rs.335 Cr as viability gap funding loan to improve the viability of the project and enhance the bankability of the initial phase by entering into State Support Agreement (SSA) only based on the above criteria. BIAL was the first PPP airport and is a pioneer in developing, maintaining and running the airport operations which primarily aims at focusing on its core competence viz., airport operations. This being the fact, BIAL has concessioned the aviation concessions and NAR activities to the experts / market leaders.

BIAL has selected professional partners / concessionaires based on international bidding process who will provide various services such as Cargo Facility, Ground Handling, Aviation Fuel, Flight Catering, Retail, Food & Beverages, Advertising and so on. The process mainly ensured competitive price structures and defined the adequate quality standards to be complied with, at minimum. Also, it was ensured that a minimum of 2 concessionaires operate in every business so as to safeguard adequate competition and better service to end users.

BIAL has entered into Service Provider Right Holder Agreement (SPRH) with service providers wherein BIAL is entitled for agreed percentage of Revenue share on gross turnover or Minimum Annual Guarantee (MAG) whichever is higher.

As per Article 10 of the Concession Agreement (CA) read with Schedule-6, Regulated Charges i.e., Landing, Parking, Housing, PSF and UDF are only to be regulated. Further, as per Article 10.3 of CA, BIAL is free without any restriction to determine the charges to be imposed in respect of the facilities and services provided at the Airport or on the site, other than the facilities and services in respect of which Regulated Charges are levied. Based on the above, the revenue from various services other than Regulated Services has been considered as NAR."

- 21.4 BIAL had also stated that the Projections of Non-Aeronautical Revenues are based on the business plan projections submitted by Concessionaires as per agreement entered into with BIAL.
- 21.5 Summary of Non-Aeronautical Revenues for the first control period, as submitted by BIAL was as detailed below:

Table 87: Summary of Non-Aeronautical Revenues proposed by BIAL - MYTP 2012 - Rs. Crores

Particulars	11-12	12-13	13-14	14-15	15-16
Aerobridge Charges	8.89	8.00	8.72	9.75	10.82
Cargo	28.43	27.63	28.85	29.46	29.57
Fuel Farm	51.65	44.27	44.71	45.15	45.60
Flight Catering	5.22	5.65	6.11	6.61	6.70
Ground Handling	-	ı	ı	-	1
Sub-Total – 1	94.19	85.54	88.39	90.97	92.70
Landside Traffic	22.63	27.35	28.55	30.31	32.14
Terminal Entry	-	ı	ı	-	1
Retail	28.69	29.50	32.70	36.83	41.31
Food & Beverage	13.55	13.77	15.03	16.80	18.72
Advertising and Promotion	33.62	29.70	32.72	36.81	37.00
Rent and Land Lease	25.91	26.31	22.03	29.92	29.92
Utility Charges	5.63	5.61	5.63	5.63	5.64
ICT	11.83	12.60	12.60	12.69	14.09
Common Infrastructure Charges	-	-	18.00	20.06	22.29
Sub Total – 2	141.86	144.83	167.27	189.06	201.12
Total	236.05	230.37	255.65	280.03	293.82

21.6 Drivers to each stream of Revenue submitted by BIAL were as below.

Table 88: Drivers to the revenue streams as indicated by BIAL

Sl. No.	Revenue stream	Primary Drivers
1	Aerobridge charges	ATM
2	Cargo facility	Cargo Tonnage
3	Fuel Farm	ATM
4	Flight Catering	MAG
1	Landside Traffic	Passengers
2	Retail / duty free	Passengers
3	Food & Beverages	Passengers
4	Advertisement & Promotions	MAG
5	Rents & Land leases	Space
6	Information, Communication & Technology	ATM
7	Common Infrastructure Charges	Passengers
8	Utility charges	Consumption

21.7 BIAL has, in addition submitted as follows:

"18. Services other than Regulated Services / Revenues from Services other than Aeronautical Services

Authority's Approach: The Authority has proposed to apply the Single Till regulation mechanism to regulate all major airports. BIAL's comments with respect to the Single Till mechanism have been set out in the preceding paragraphs. As stated above, it is BIAL's submission that the Single Till mechanism is statutorily ruled out and is further inapplicable to BIAL. In this section, BIAL is submitting its comments in relation to the manner in which the Single Till mechanism is sought to be implemented by the Authority. As a part of the tariff determination process, in relation to services other than regulated services, the Authority has, among other things, proposed to:

- require the airport operator to forecast expenditure;
- undertake scrutiny of bottom-up projections of revenue made by the airport operator;
- undertake benchmarking of revenue levels;
- commission experts to ascertain whether opportunities for such revenues are underexploited;
- follow a bottom-up approach for review of operations and maintenance expenditure;
- hold stakeholder consultations;
- require the airport operator to project revenues; and

• not provide for error correction for variation in revenue.

Clauses 8.9, 11.1 to 11.7, 13.1, 17.5.10 of Order No.13 and clause 4.2.5, entire clause 5 and clause 6.21.3 contain the proposed modes of regulation of services other than regulated services.

Observations: The Authority's proposed regulations amount to a completely intrusive regulation of services other than regulated services. The proposed regulations pose a fundamental question of jurisdiction of the Authority. Under Section 13 of the AERA Act, the Authority's functions extend only to determination of tariffs for aeronautical services. In the exercise of this function, the Authority cannot extend its jurisdiction to regulate, in any manner, the provision of services other than regulated services. Even under a Single Till mechanism (which is inapplicable to BIAL), the Authority need not undertake any regulatory activities in relation to services other than regulated services. The proposed regulations will make inroads into operational freedom of the airport operator apart to acting as a disincentive for the development of revenues from services other than regulated services. There is no jurisdiction in law for the Authority to call upon the airport operator to forecast expenditure in relation to services other than regulated services. Additionally, it is extremely difficult for the airport operator to forecast with any certainty either the revenues or expenditure for non-aeronautical services. Predictability in respect of aeronautical services itself is extremely low and depends on multiple variables. In such circumstances, to expect the airport operator to forecast revenues from non-aeronautical services is an equally difficult task. The Authority's proposals to undertake scrutiny of bottom-up projections of revenue made by the airport operator; benchmarking of revenue levels; commissioning experts to ascertain whether opportunities for such revenues are underexploited are likewise, beyond the ambit of functions of the Authority and the Authority wholly lacks jurisdiction to do so. Such an exercise, apart to being impermissible, would be a complete disincentive to the airport operator to exploit revenues from services other than regulated services. Effectively, by way of the proposed regulations, the Authority has proposed to completely regulate services other than regulated services. Also, by effect of the proposed regulations under the Single Till regime, any revenues that may be garnered by the airport operator are ploughed back to subsidize regulated services and therefore, the concept of airport operator's freedom is only illusory and only notional. In reality, under the proposed regulations, regulated services and services other than regulated services, are

similarly treated, but for determination of tariffs. This is certainly not contemplated under the AERA Act and is opposed to the very objective of privatization, i.e. introduction of private capital and/or private management capacities.

Submissions: The proposed regulations are completely antithetical to the provisions of the AERA Act and any form of regulation of services other than regulated services inter alia as provided in clauses 8.9, 11.1 to 11.7, 13.1, 17.5.10 of Order No.13 and clause 4.2.5 and entire clause 5 of Direction No.5, need to be revisited and dropped. There can no regulation of any nature with respect to services other than regulated services, even under a Single Till regime. Without prejudice to the above, the Authority need to provide for error correction with respect to revenues from services other than regulated services.

Services Other Than Regulated Services

Tariffs for services excluded from the scope of regulation in Article 10.3 of the Concession Agreement should not be determined or regulated. Tariffs for the services of cargo facility, ground handling and fuel supply also should not be determined or regulated since the same fall under services that are not to be regulated as per the Concession Agreement. For Mumbai and Delhi airports, services of cargo facility and ground handling are not regulated since the same have been excluded in the respective OMDA. Rule of parity demands that similar treatment be accorded to BIAL.

- 21.8 BIAL has, in its MYTP 2013 submission considered the Revenue from other than Aeronautical Services in line with its earlier submission except for the following changes detailed below:
 - 21.8.1 Considered revenue estimate for 2012-13 in line with the actual revenues earned for 2012-13
 - 21.8.2 Considered Interest income earned and projected as part of the revenue from Non-Aeronautical services
 - 21.8.3 Revised the estimate of per pax revenue from Retail and F&B revenues from 2013-14 from its earlier submission and changed its estimate of Advertisement revenue for the year 2015-16.
 - 21.8.4 Cargo growth rates for the period 2013-14 to 2015-16 were considered higher than earlier projections, leading to increase in revenue from Cargo services.

b. Authority's Examination of BIAL Submissions on Non-aeronautical revenue

21.9 The Authority's examination of BIAL Submissions on Non-aeronautical revenue

and proposal placed for Stakeholders' consultation in CP 14 as below.

- 21.10 The Authority had carefully considered BIAL's submission on Services other than Regulated Services and Revenue from such Non-regulated services. Under the Single Till mechanism that was proposed by the Authority in its guidelines, the principle prescribed by the Authority was to scrutinize all the items comprising the Regulatory Building Block and has accordingly included criteria for scrutiny of the Revenue from Non-Aeronautical services.
- 21.11 The Authority had reviewed BIAL's submission on requirement not to regulate the tariff for Cargo facility, ground handling and fuel supply as they are not to be regulated as per the concession agreement and that for Mumbai and Delhi airports they were not regulated. BIAL's understanding that the services were not regulated in Mumbai and Delhi Airport is incorrect as the tariff for these aeronautical services were determined by the Authority in these airports also. The tariff so determined is also available on the Authority's website.
- 21.12 In view of this being the first control period and in view of the expansions proposed and its possible impact on the Non-Aeronautical revenues, the Authority proposed to accept the submission of BIAL to true up the Non-Aeronautical revenues based on the actual results for the Control period.
- 21.13 The Authority had carefully considered BIAL's submission on Non-Aeronautical Revenues.
- Aerobridge charges: The Authority noted that the Operator proposed to introduce additional Aero Bridges as part of its Terminal Expansion plans which are likely to be completed in 2013-14. However, no increase in % of aircrafts using Aerobridge, Charge per aircraft had been considered by BIAL for the 5 years in the control period. The Authority also noted that as part of its Annual Tariff Proposal (ATP) submission, BIAL did not propose to charge Aerobridge charges. Hence, the Authority did not propose to consider Aerobridge charges as part of Non-Aeronautical Revenues.
- 21.15 **Terminal Entry Charges**: The Authority noted that BIAL has earned a nominal terminal entry charge of Rs. 0.3 Crores in the year 2010-11. No terminal entry charges were projected by the company during the control period.
- 21.16 ICT Charges: The Authority noted that ICT Charges were projected as part of Non-Aeronautical Revenues by BIAL. The Authority noted that these charges were proposed to be recovered from users of the service. BIAL, in its revised MYTP submission in November 2012, had stated as follows on functioning of ICT department:

"To put it in perspective, the business model followed in AAI Airports (till private airports came in) was for respective airlines and concessionaires to design and deploy and manage their own systems and services. This resulted in "siloed" approach and the airlines/ concessionaires were NOT leveraging the benefits that accrue with Shared Common Infrastructure that most International Airports deploy now.

Bangalore International Airport being one of the Greenfield airports readily opted to don the role of a Service Provider for ICT services and delivered services through the BIAL ICT department. This approach has allowed all airlines and concessionaires to dispense with their own dedicated IT set up — be it outsource or insource; but to 'consume the services', serviced through enterprise class devices and managed on 24x7 basis by BIA ICT department. The Common Infrastructure also avoids disparate Infrastructure Installations at different points in time in a Secure Airport Environment. Also to be noted is the fact that the model chosen at BIAL is an Insource model for the Service delivery and ICT department is fully responsible to carry out all the phases of Service Delivery — Plan, Design, Installation and Operations and Maintenance for all the ICT services deployed on 24x7 basis. For the Terminal expansion many of the ICT services are delivered and Project management is done by ICT department itself.

BIAL ICT from AOD 25th May 2008, has been the ICT service provider and has ensured to not only match any IT Company as a "service provider" but has also set a benchmark for Airport ICT services with consistent high availability and Service uptime of all ICT services (99.99% or 100% uptime). As a service provider, BIA has adhered to industry standards and benchmarks like ITIL standards and ISO 20000 standard for IT services and delivery models.

Most airports have engaged an External Service provider to extend common PAX services (CUTE, CUSS and BRS) and charge Airlines directly on "per boarded passenger's" basis. However, BIAL is providing these services directly to the Airlines. BIAL has NOT raised any Invoices on Airlines till date for these Passenger services directly. ICT department strives to add value to Customer experiences and does engage with airlines and concessionaires periodically and based on mutually agreed terms may introduce new services on an ongoing basis, to enhance the value proposition both to the passengers as well to the airlines.

Objectives:

To provide a common Passenger IT services to enable all passengers to have the same experience be it low cost airline or full fare airlines.

To keep enhancing Customer experiences and to meet life style needs with self service offerings to make the airport journey seamless.

To provide Shared Common IT Infrastructure for Airlines and concessionaires for any business applications.

To provide an Integrated IP Platform for the end-users data exchange (IP v4 & IP v6)

To provide a Closed user group Communication platform – Radios.

To provide various managed IT Services for Airlines and concessionaires from a bouquet of ICT services.

To professionally manage on a 24x7 basis and benchmark BIA ICT to any other IT service provider in the Industry for Quality of Service and Service Standards.

Bird eye view of IT Services

Some of the common ICT services that are extended to all clients in the Airport campus for airport services and airport operations are listed here under:

Airline/ Passenger Services:

CUTE services

CUSS services

BRS services

Public Announcement services

Airport Operations Database and Flight Information services

Internet / Wi-Fi Services

Trunk Mobile Radio services

IP Voice services

FAS - Fire Alarm Services

Electronic Safety and Surveillance Services – CCTV and Access Control Services.

To support, the above services BIAL ICT provides other Shared Infrastructure and Services like Data Networks, IT security, Systems, Database services, Storage services, hardware services, Help Desk Services etc.

Apart from the above listed common services, "Tailored ICT services" are provisioned based on specific customer requirements and deployed and managed again on 24X7 basis.

The services are charged on "pay per use" basis for the backend services. For example if an entity needs managed firewall services, it takes the services as a managed services like from any other IT company/ service provider's with similar SLA's.

The pricing model is based on aggregation of all service costs for a given IT service and costs compounded over the total depreciation period. A service fee is computed and charged to the cost unit provided (Radios, Data ports, Telephones, etc.). ICT invoices are then raised on monthly basis only for the Non-aviation services for their back offices...."

- 21.17 From the above submission of BIAL, the Authority noted that ICT service was being directly provided by the Airport Operator BIAL, to the airlines, passengers and other users of the airport. BIAL had considered the Revenue earned from these service as part of Non-Aeronautical Revenues. BIAL had also generally apportioned its common assets in specified ratios which may also include assets used for rendering the Aeronautical services. To the extent the ICT Assets have been considered as part of Aeronautical assets, and costs incurred to provide the services are considered as part of Aeronautical Operating expenditure, under Dual Till, this would mean that the return on these assets are provided as part of the Aeronautical charges whereas the revenues are considered as part of Non-Aeronautical assets. The Authority noted that BIAL had not considered the revenues from ICT services as part of the Aeronautical services and submitted the same for tariff determination. While the Authority proposed to consider the submission made by BIAL on the same, it proposed to review the same, based on additional information to be received from BIAL, at the time of final order for tariff determination.
- 21.18 **Common Infrastructure Charge**: The Authority notes that the Operator proposed to introduce Common Infrastructure Charge on Passengers with effect from 2013-14 from each Departing Passenger. The Authority also noted that as part of its Annual Tariff Proposal (ATP) submission under Single Till, BIAL proposed to charge this as part of Aeronautical Tariff. Hence the Authority proposes not to consider this as part of Non-Aeronautical Revenues.
- 21.19 **Consideration of Interest Income**: The Authority noted that the Business Model submitted by BIAL did not project any interest income from cash maintained by the company. The Authority also noted that BIAL had earned an Interest of Rs. 29.09 crores from banks as can be seen from the Schedule to the audited financial statements of the company for the year 2011-12 and Rs. 16 Crores for the year 2012-13, which had however not been projected

in the Financial Model and its submissions.

21.20 On enquiry to BIAL on why the Interest income has not been considered as part of Non-Aeronautical Income, BIAL had responded that:

"The interest income is from idle cash in the system which is result of cash generated out of promoter's income. Hence the same is not offered in the projections even though the annual report of FY 2011-12 has Rs. 29 crore."

21.21 The Authority also noted that the company has projected a cash balance being available at the end of every year in the control period as follows:

Table 89: Details of Projected cash balance as provided by BIAL – MYTP 2012 - Rs. Crores

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
Cash	158.31	146.35	63.92	22.26	68.22
DSCR Reserve	54.94	56.97	66.29	83.38	85.02
Total Cash	213.25	203.32	130.21	105.65	153.24

- 21.22 While the normal cash balance projected was low, BIAL was required to maintain in liquid cash, the reserves required to be maintained as per the covenants of the loan agreements viz 1 quarter's principal and Interest for 1 month. As these were cash balances maintained for business purposes, it was proposed that Interest income should be projected and included as part of Non-Aeronautical Revenues.
- 21.23 The Authority noted the response provided by BIAL on the Interest Income. However, as the Profits that may remain as Retained earnings are considered as part of the Equity balance for Gearing purposes, if they are invested in the Capital Expenditure, the Authority proposed to consider the Interest income earned and projected as part of the Non-Aeronautical Revenue. The Authority proposed to estimate the interest on cash balance that will be maintained by the company, as per its projections, at a rate of 5% on the closing cash balance maintained in the previous year. The Authority also noted that BIAL had submitted certificate from a Chartered Accountant detailing the Interest received on the Security Deposit received for a hotel project. The Authority proposed to consider the Interest Income, excluding the Interest earned on hotel deposits (Refer Para 11.11 above) as part of the Non-Aeronautical Revenues.
- 21.24 Accordingly, the interest computed for the control period was as given below:

Table 90: Interest Income computed by Authority for the period 2013-14 to 2015-16 - CP 14 - Rs. Crore

Particulars	2013-14	2014-15	2015-16
Opening cash balance maintained	308.48	162.82	107.64

Particulars	2013-14	2014-15	2015-16
Interest on opening cash balance	15.42	8.14	5.38

- 21.25 Comparison of Estimates with the Actual numbers 2011-12 and 2012-13: BIAL had estimated the revenues for the period 2011-12 to 2015-16, being the revenues for the first control period. As the financial year 2011-12 and 2012-13 were completed, the audited financial statements for these years were available. The Authority proposed to correct the Projections based on the actual revenues earned during 2011-12 and 2012-13.
- 21.26 **Ground Handling Charges**: BIAL had not proposed any Ground Handling charges to be included in the business plan. The Authority noted that the company has earned revenue of Rs. 0.6 Crores from Ground Handling charges in 2011-12.

Pursuant to the query raised by the Authority, BIAL has clarified that:

"At BIAL we don't have ground handling revenue, instead rental revenues are collected from Ground handling concessionaires. A revenue was being collected from sub-contractors of ground handlers previously. The same is not projected due to non-clarity on the same"

- 21.27 To summarise, the Authority proposed to carry out the following changes to the Non-Aeronautical revenues proposed by BIAL.
 - 21.27.1 To consider interest income, except that earned from deposit received for Hotel, as Non-Aeronautical revenues.
 - 21.27.2 To correct the Non-Aeronautical revenues projected by BIAL for 2011-12 and 2012-13 based on the actual results.
 - 21.27.3 To consider a CPI based increase in Non-Aeronautical revenues for the period 2013-14 to 2015-16, where no increase has been projected by BIAL.
- 21.28 Also, changes to estimated passenger traffic numbers were made based on the details specified in Para 12.11 above.
- 21.29 **Recomputed Revenue from Non-Aeronautical Services**: In accordance with the above, the recomputed Non-Aeronautical revenues were as given below:

Table 91: Recomputed Revenue from Other than Aeronautical services proposed by the Authority – CP 14 - Rs. Crores

Particulars	11-12	12-13	13-14	14-15	15-16
Aerobridge Charges	-	-	-	-	-
Cargo	28.41	27.10	24.86	25.38	25.45
Fuel Farm	0.62	0.55	0.56	0.56	0.57
Flight Catering	5.22	5.60	6.11	6.61	6.70

Particulars	11-12	12-13	13-14	14-15	15-16
Ground Handling	0.62				
Sub-Total – 1	34.87	33.25	31.53	32.55	32.71
Landside Traffic	22.63	29.30	30.00	33.47	38.33
Terminal Entry	0.26	0.30	-	-	-
Retail	28.73	33.90	35.05	41.42	48.66
Food & Beverage	13.43	14.00	16.51	19.51	22.94
Advertising and Promotion	33.62	36.90	32.72	36.81	37.00
Rent and Land Lease	25.91	26.90	24.88	38.57	43.89
Utility Charges	5.32	5.30	5.63	5.63	5.64
ІСТ	11.83	12.50	12.60	14.33	16.78
Others	1.59	2.90	-	-	-
Common Infrastructure Charges	-	-	-	-	-
Sub Total - 2	143.32	162.00	157.39	189.74	213.25
Interest on Cash	22.98	9.94	15.42	8.14	5.38
Total	201.17	205.20	204.34	230.43	251.35

- 21.30 Based on the material before it and its analysis, the Authority had proposed in CP 14:
 - 21.30.1 Not to consider Aerobridge charge and revenue from ICT services as part of the Non-Aeronautical Revenue and consider these charges as Aeronautical charges.
 - 21.30.2 To review the assets and costs incurred for incurring ICT services and appropriately consider the same in the determination of tariff at the time of final order as to whether the costs and revenue are included in Aeronautical or Non-Aeronautical section.
 - 21.30.3 To consider Interest income earned as part of Non-Aeronautical Revenue, except for Interest earned on Security deposit received from Hotel project.
 - 21.30.4 To consider the actual Non-Aeronautical Revenue for the period 2011-12 and 2012-13 and projections for the balance period
 - 21.30.5 To consider the resultant Non-Aeronautical revenue as computed by the Authority and presented in Table 91.
 - 21.30.6 To accept BIAL's proposal to true up the Non-Aeronautical Revenue based on the actual revenues earned by BIAL during the control period, at the beginning of the next control period
- 21.31 Further Authority's examination of BIAL's revised MYTP 2013 submission on Revenue other than Aeronautical Revenue detailed in CP 22 is as under:
- 21.32 The Authority notes that BIAL had considered revision in estimate of revenue from

Non-Aeronautical services for Retail, F&B and Advertisement revenues, which the Authority proposes to consider.

- 21.33 The Authority also notes that BIAL has considered Interest income earned/projected as part of Non-Aeronautical Revenues in line with the Authority's proposal in CP 14.
- 21.34 The Authority noted that BIAL had not carried out any other changes considered by the Authority as detailed in Para 21.30.1 above to Para 21.30.3 above. The Authority proposed to carry out these changes in the revised model submitted by BIAL.
- 21.35 The Authority also proposed to true up the Non-Aeronautical Revenues at the beginning of the next control period, in line with its proposal made in CP 14.
- 21.36 The Authority had also noted BIAL's submissions relating to ICT Revenues. BIAL has stated as follows:

"...Charges presently collected and/or propose to collect -

Charges presently collected — Currently only ICT charges are levied to users (concessionaires) / service providers. The revenue streams are mainly from -

Trunk Mobile Radio System (TMRS), IP phones, IP ports, Internet bandwidth / shared bandwidth, servers / network equipment. These charges are collected mainly from airlines & other concessionaires. These facilities are also being used by BIAL operations, CISF, Customs, etc.

Communication infrastructure / mobile coverage. These charges are collected from service providers viz Telco companies

Charges proposed to collect -

CUSS & CUTE as CIC charges (Directly / through SITA) and

BRS charges through SITA

- 21.37 BIAL had informed that the charges it proposes to collect on ICT had not been factored in the Business Plan.
- 21.38 The Authority noted that the ICT services were largely provided to Airlines and passengers and the ICT Assets were considered as part of Aeronautical RAB. Hence the Authority proposed to consider the ICT revenues as part of Aeronautical Revenues.
- 21.39 **Recomputed Revenue from Non-Aeronautical Services**: In accordance with the above, the recomputed Non-Aeronautical revenues were as given below:

Table 92: Recomputed Revenue from Other than Aeronautical services proposed by the Authority – Single Till – CP 22 - Rs. Crore

Particulars	11-12	12-13	13-14	14-15	15-16
Aerobridge Charges	The Authority h	nad conside	red revenue	s from these	charges as
Fuel Throughput charge	Aeronautical in	CP 14.			
Cargo		These Aeronautical services are provided at Kempegowd			
Ground Handling	International A		•		
Fuel into plane service	Revenues from as Non-Aerona letter 24 th Sep account of the Concessionaire Refer Paragrap	utical Revenue tember 202 ese services es are now re	nues. Howe 13, Revenue that are p eckoned as	ver, pursuares accruing rovided by	nt to MoCA to BIAL on Third Party
Flight Catering	5.22	5.65	6.11	6.61	6.70
Landside Traffic	22.63	29.27	32.29	36.10	41.35
Terminal Entry	0.26	0.25			
Retail	28.69	33.92	39.41	46.62	54.82
Food & Beverage	13.42	13.96	16.30	19.27	22.66
Advertising and Promotion	33.62	36.95	32.83	36.86	45.29
Rent and Land Lease	25.91	26.56	26.51	40.45	46.06
Utility Charges					
ICT	Co	Considered as Aeronautical Revenue			
Others	1.59	2.01			
Sub Total	131.33	148.56	153.45	185.92	216.88
Interest on Cash	22.98	9.94	13.70	12.76	4.40
Total	154.32	158.50	167.16	198.67	221.27

Table 93: Revenue from Non-Aeronautical services to be considered for reduction from ARR under 40% Shared Revenue Till – CP 22 - Rs. Crore

Particulars	11-12	12-13	13-14	14-15	15-16
Total Non-Aeronautical Revenues other than Interest Income	131.33	148.56	153.45	185.92	216.88
40% of the above (A)	52.53	59.42	61.38	74.37	86.75
Interest on Cash recomputed	22.98	9.94	13.70	12.76	4.40
40% of the above (B)	9.19	3.98	5.48	5.10	1.76
Total (A + B)	61.73	63.40	66.86	79.47	88.51

21.40 Based on the material before it and its analysis, the Authority had proposed in CP 22 as under:

- 21.40.1 Not to consider Aerobridge charge and revenue from ICT services as part of the Non-Aeronautical Revenue and consider these charges as Aeronautical charges.
- 21.40.2 To consider revenues from Cargo, Ground Handling, Fuel Supply (Fuel Through put charge, Fuel Into plane charge etc.) as aeronautical revenues.
- 21.40.3 To consider Interest income earned as part of Non-Aeronautical Revenue, except for Interest earned on Security deposit received from Hotel project.
- 21.40.4 To consider the actual Non-Aeronautical Revenue for the period 2011-12 and 201213 and projections for the balance period and to consider the resultant NonAeronautical revenue as computed by the Authority and presented in Table 92 and
 Table 93 under Single Till and 40% Shared Revenue Till respectively
- 21.40.5 To accept BIAL's proposal to true up the Non-Aeronautical Revenue based on the actual revenues earned by BIAL during the control period, at the time of determination of Aeronautical Tariffs for the next control period.

c. Stakeholder Comments on Issues pertaining to Non-aeronautical revenue

- 21.41 Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14. Stakeholders have also commented on non-aeronautical revenues to be considered in respect of Kempegowda International Airport, Bengaluru. These comments are presented below:
- 21.42 FIA on the issue of Non-aeronautical revenue stated that the Authority projected Non-aero Revenue without considering impact of terminal expansion.
- 21.43 On the issue of Non-aeronautical revenue, AAI stated that

"The revenue from ICT should be treated as aeronautical as these are mainly used for flight movement related information and activity".

"The treatment of commercial revenue inside the Terminal Building should be treated as aeronautical revenue as Terminal Bldg. is treated as aeronautical asset"

21.44 Further subsequent to the Stakeholder Consultation process, the Authority had received comments / views from various stakeholders in response to the material and the tentative presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 22. Stakeholders have also commented on non-aeronautical revenues to be considered in respect of Kempegowda International Airport, Bengaluru. These

comments are presented below:

21.45 BPAC on the issue of Non-aeronautical revenue stated that:

- "a. We understand that UDF driven revenues is expected to contribute about 90% of the total estimated revenues for the FY 2014-2015 & 2015 2016. Obviously there are many other sources of aeronautical revenue. Why is UDF forming the bulk of the source of revenue generation? It must be residual. The distribution and source of aeronautical revenue should be proactively made available to the public.
- b. We feel the necessity for the revenue sources that are currently classified into aero and non-aero to be reclassified keeping in view of prudential accounting norms. For instance, Advertising revenue, commercial activities happening in the terminal etc. are purely the earning due to travelling public and therefore need to be considered Aero.
- c. The activities of flight catering, landside traffic, terminal entry, retail, F&B, advertisement etc. are purely traffic driven revenues based on the principle of 'zero traffic, zero revenue' and hence illogical to be classified under non-aero.
- d. ICT investment is classified under aero or non-aero? Need clarity.
- e. Interest income: 60% to be considered under aero and 40% under non-aero.
- f. Revenue break up from various sources earned till date must be obtained to know if the forecasts are too optimistic
- g. Today the non-aero revenue is too small compared to aero revenue due to the fact that the land allocated to BIAL by GoK for development of non-aero business is lying idle earning no revenue, even after 6 years. We would like to bring forward the following submissions for the review of AERA in this regard:
- a. State government extended the patronage, purely for the benefit of the passengers and public interest, in the form of:
- i. Rs. 350 Crore Cash
- ii. 4008 acres valued at 175 in 1999 with a 3% annual lease rental. If the lease rental value is revised as per the capital gains indexation valuing today, the land would cost at 353 crores. $(175 \times 785 / 389)$
- b. The chunk of GoK land, just other side of the KIA wall, has already been developed by the GoK for Aerospace Industries and SEZ. Many business units have already started functioning there. Therefore, the inability of BIAL to develop around 1000

acres of land meant purely for non-aero business development is beyond the logic and hence looks deliberate.

- c. If BIAL fails to develop the land and the revenue thereof generated is not contributing for the benefit of travelling public, GoK should take over the surplus land with BIAL to develop Airport City, SEZ, Aero Space Park, MRO etc. in line with the state government's activities and business plans happening at next plot of KIA and the revenue thus generated from those activities should be used for cross-subsidizing the User Fees.
- d. Since BIAL enjoys all concessions from GoK to develop various sources of non-aero revenue, intending for the sole benefit of passengers, there is no reason why the non-traffic revenue to be treated separately by the promoters. Hence we are of the opinion and conclusion that single till is the only option to be considered for tariff determination for BIAL.
- e. The views of GoK on this issue, considering the larger interest of people of Karnataka and to safeguard the public investment from being misused and misinterpreted by the promoters, to be sought before finalizing the method of tariff determination."
- a. While noticing with great appreciation, the decision of Authority to reallocate the revenue from Fuel farm, cargo, GHA and into place services, we would also like to request Authority to apply same logic and accounting principles for the sources of revenues from flight catering, landside traffic, terminal entry, retail, F&B, advertisement etc. since all these revenues are purely passenger driven.
- 21.46 Cathay Pacific has supported AERA's treatment of ICT and CGF as Aeronautical revenue.

21.47 FIA has stated that:

- "69. The Authority has considered mere increase of approximately 19% and 11% increase in FY 2014-15 and FY 2015-16 respectively in spite of the fact that the terminal expansion is scheduled to be completed in FY 2013-14. 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.
- 70. In the CP No.22/2013-14 (Paragraph No.14.7), with respect to revenue from Retail, Food and beverage and Advertising & Promotion the Authority has accepted

the BIAL's submission as per its MYTP-2013 and no detailed evaluation has been made by the Authority to consider the impact of terminal expansion, inflationary increase and real increase while projecting these non-aeronautical revenues. As per Paragraph No.14.9 of the CP No.22/2013-14, with respect to revenue from Rent and Landslide traffic, the Authority has considered CPI based increase in per-pax revenue in terms of BIAL's submissions. Hence, the real increase has not been factored under the said heads. Hence, it is submitted that the Authority should reasonably estimate real increase and consider the same in projecting these Non-aeronautical revenues.

- 71. As per Paragraph No. 14.12 of the CP No.22/2013-14, the ICT charges (proposed to be collected) has not been factored in business plan by BIAL and accordingly, has not been factored in by the Authority while computing ARR. Hence, it is submitted that the Authority should obtain the details of these charges from BIAL and include the same in computing the ARR as the same would result in reduction of the Target Revenue.
- 72. In both CP No.14/2013-14 and CP No.22/2013-14, the Authority has considered nominal interest @ 5% p.a. on the cash balance, however the rationale / basis for 5% rate has not been mentioned. It is submitted that the justification and reasonable analysis should be provided for considering such a nominal rate of interest.
- 73. It is noteworthy that Non-aeronautical revenue is one of the major components for determining ARR (approximately 32% of ARR in Single Till and 12% in 40%- Shared Till). Thus, it is imperative that the Authority should have evaluated in detail rather than broadly relying on projections and submissions of BIAL. In this regard, Authority should conduct or commission its own independent study with respect to impact on revenue from terminal expansion, inflationary increase and real increase."

d. BIAL's response to Stakeholder Comments on Issues pertaining to Non-aeronautical revenue

- 21.48 Subsequent to the receipt of comments from the Stakeholders on the CP 14 and CP 22, the Authority forwarded these comments to BIAL seeking its response to these comments. BIAL has provided responses to the Stakeholders' comments, which are presented below:
- 21.49 On BPAC's comments on Non-Aeronautical Revenue, BIAL has commented that:

"Detailed process and computation for UDF have already been considered by AERA through a defined consultation process. BPAC raises this issue without having examined the previous consultation process and position adopted by AERA.

Relevant details have been submitted to AERA and they are in public domain.

BIAL has provided relevant details to AERA. BIAL has also made detailed submissions in this regard in its submissions dated April 08, 2013; its responses to CP 14 and CP 22 and the same are incorporated herein by reference. BIAL reiterates that real estate activities are beyond the purview of tariff determination.

BIAL reiterates its submissions made to AERA in this regard, which are available in public domain.

BIAL submits that all CGF revenue be treated as non-aeronautical. All requisite details and views have been provided to AERA and they are in public domain"

21.50 On FIA's comments on Non-Aeronautical Revenues, BIAL has stated that:

"BIAL submits that it has considered inter alia bottom up projections, potential for growth and increase in area while arriving at projections for non-aeronautical revenues. BIAL had further submitted necessary details to AERA for necessary consideration and evaluation. BIAL submits that non-aeronautical services and revenues are beyond the purview of regulation and reiterates its comments made in this regard in its responses to CP 14 and CP 22."

21.51 On FIA comment that information on ICT revenues have not been provided, BIAL has stated that:

"Details of ICT Charges have been submitted to the AERA. AERA has considered ICT revenue as aeronautical revenue and consequently as part of ARR in CP 22. However, BIAL has requested AERA to consider ICT revenues as non-aeronautical revenue vide its responses to CP 22."

21.52 BIAL has also stated that:

"BIAL reiterates its requirement of 30% SRT to substantiate the cash flow requirements, as indicated in its letter dated 30th July 2013 and in response to CP No. 22"

- e. BIAL's own comments on Issues pertaining to Non-aeronautical revenue
- 21.53 BIAL, in response to Authority's Proposal placed in CP 14 stated as under

"It is BIAL's submission that functions under Section 13(1)(a) do not extend to tariff determination for services other than regulated services. Without prejudice to BIAL's stand on appropriate till mechanism, even if tariff were to be determined on single till basis, BIAL submits that regulation of non-aeronautical services is not in accordance with AERA Act. BIAL submits that, per the CP, non-aeronautical services are proposed to be directly regulated in so far as day to day management is concerned. The Authority has, among other things, proposed to:

- require BIAL to forecast expenditure;
- undertake scrutiny of bottom-up projections of revenue made by BIAL;
- undertake benchmarking of revenue levels;
- commission experts to ascertain whether opportunities for such revenues are underexploited;
- hold stakeholder consultations; and
- require BIAL to project revenues.

Clauses 8.9, 11.1 to 11.7, 13.1, 17.5.10 of Order No.13 and clause 4.2.5, entire clause 5 and clause 6.21.3 of Direction No.5 / Airport Guidelines contain proposed modes of regulation of services other than regulated services. Without prejudice to BIAL's multiple submissions on appropriate till mechanism, BIAL submits that the Authority cannot prescribe regulation mechanisms towards non aeronautical services. Moreover, at paragraph 26.44 of the CP, it is stated that Authority has no jurisdiction to determine tariffs for non-aeronautical revenues. In such premises, it may not be within the purview of the Authority to prescribe any of the aforesaid regulations in respect of non-aeronautical services and/or services other than regulated services.

NON AERONAUTICAL ICT REVENUES

BIAL submits that, in the course of business, BIAL is rendering various ICT services and generating revenues, some of which are non-aeronautical in nature. BIAL has considered such revenue as non-aeronautical revenue and corresponding assets as well as expenditure is classified as non-aero asset and non-aeronautical expenditure. The MYTP submissions that were made to the Authority has the above classification.

CGF SERVICES

Per clause 3.2.2 of the Concession Agreement, BIAL is entitled to grant Service Provider Rights for the performance of airport activities or non-airport activities. In terms of clause 3.2.2, BIAL has concessioned out CGF services to third party concessionaires. BIAL had submitted a letter dated September 06, 2013 in this regard and contents of the same are reiterated. The copy of the above letter annexed herewith as 'Appendix B'."

21.54 BIAL, in response to Authority's Proposal placed in CP 22 stated as under:

"As submitted above, CGF revenues, in entirety, may kindly be treated as non-aero revenues as per Concession Agreement. BIAL reiterates its submissions in respect of ICT made."

f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to Non-aeronautical revenue

- 21.55 The Authority has carefully reviewed the submissions made by BIAL and other Stakeholders' in response to CP 14 and CP 22.
- 21.56 The Authority notes FIA's comments that the Authority should reasonably estimate or appoint a consultant to determine revenue from new premises. The Authority notes that the new expanded Terminal has commenced operations from January 2014. There are less than two years left in the current control period viz. 2014-15 and 2015-16 when the revenues from additional space in Terminal building is estimated to increase the Non-Aeronautical revenues. The Authority notes that the Non-Aeronautical revenues from the expanded Terminal building are yet to stabilise. Hence, at this stage they cannot be accurately estimated. Hence the Authority had decided to accept BIAL's proposal to true up the Non-Aeronautical Revenues at the end of the current control period.
- The Authority notes AAI's comment that the "treatment of commercial revenue inside the terminal building should be treated as aeronautical revenues as Terminal building is treated as Aeronautical asset". The Authority notes that AAI's view is misguided. The Authority has treated revenue from Non-Aeronautical services as Non-Aeronautical revenues.
- The Authority has noted BPAC's view that the revenue sources that are currently classified into aero and non-aero should be reclassified. The Authority notes that BPAC has given certain examples for the same i.e. "advertising revenue, commercial activities happening in the terminal etc. are purely the earning due to travelling public and therefore need to be considered Aero" and that the "activities of flight catering, landside traffic, terminal entry, retail, F&B, advertisement etc. are purely traffic driven revenues based on the principle of "zero traffic, zero revenue" and hence illogical to be classified under Non-Aero".
- 21.59 The Authority notes that the definition of Aeronautical Services is laid down in

AERA Act and the Authority is bound to consider the provisions of the AERA Act, while considering the classification between Aeronautical and Non-Aeronautical services. Hence, the Authority is unable to accept BPAC's comment that the revenues listed down by BPAC have to be considered as Aeronautical Revenues.

- The Authority notes that BPAC has commented that GoK should take over the surplus land with BIAL to develop Airport City, SEZ, Aerospace park etc. and that the revenue thus generated from those activities should be used for cross-subsidizing the user fees. The Authority has no comments to make on the same and that GoK is the owner of the land which has been given on lease to BIAL and according to the land lease deed, the purpose of grant of land was to "make the project viable". Furthermore, GoK letter received in response to CP 22 clearly states GoK's view on the treatment of land (Refer Para 11.59 above).
- 21.61 The Authority notes BPAC's query whether "d. ICT investment is classified under aero or non-aero? Need clarity." The Authority has addressed this already in Para 8.21 above on allocation of assets between Aeronautical Services and Non-Aeronautical services, treating ICT investment as Aeronautical assets.
- The Authority notes BPAC's comment that "Interest income: 60% to be considered under Aero and 40% under non-aero". The Authority notes that there is no objective data/ reasoning provided by BPAC to elaborate the rationale of 60% and 40%. The Authority has considered the Interest income as part of Non-Aeronautical Income. In the computation of the 40% Shared Revenue Till, 40% of this Interest income is reckoned towards determination of Aeronautical Tariffs.
- 21.63 The Authority notes that BIAL has requested that ICT revenues and CGF revenues should be considered as Non-Aeronautical Revenues. The Authority has already explained the analysis as to why these revenues are considered as Aeronautical Revenues. (Refer Para 8.21 above and discussions in Para 20 above)
- 21.64 The Authority also noted BIAL's submission dated 30th January 2014 on revenues proposed to be earned from new ICT revenues such as CUTE, CUSS and BRS services. BIAL has submitted as below:

"The Airlines use the Common Shared Services provided by the Airports for Check-In and Baggage Reconciliation. The Check-In Systems comprises of the CUTE Terminal Assisted Check-in as well as the CUSS Kiosks for Self check-in by Passengers.

All private airports in India as well as the AAI Airports are charging the Airlines on "Per passenger" basis for Providing, Operating and maintaining the Airport Check-In Infrastructure (Check-In Systems and Self-service kiosks) as well as the Baggage reconciliation System.

These services are provided and charged by the Airport in the following modes:

Airport provides the services directly (with back-end support from a Managed Service provider) and charges this as a part of the Common ICT Infrastructure Shared Service fee.

Airport enters into a concession agreement with the service provider, wherein the concessionaire charges the Airlines on "Per pax" basis and provides a concession fee to the airport.

At BIAL, The airport has provided the CUTE, CUSS & BRS Services since AOD (May 2008) based on the request from AOC. However, BIAL has not levied these charges on Airlines so far. The CUTE, CUSS, BRS Systems have reached End-of-Life as well as End-of Support and have to be replaced with new systems (Hardware and Software application) in line with the Technology trends in the Airport and hence incur fresh CAPEX/OPEX Costs.

Since a lot of Investment is required to upgrade the Check-In and Baggage reconciliation systems, a decision was taken to change the Service provisioning model to a Concession service as followed at most Airports in India including the AAI Airports. The following rates (Exclusive of applicable taxes) are proposed to be charged to the Airlines:

Check-In Systems (CUTE & CUSS) : 0.90 \$ per boarded Passenger

Baggage Reconciliation Services (BRS) : 0.35 \$ per Boarded Passenger

The above rates are comparable to charges levied at other Indian airports.

Table 1: Glimpse of Airport Charges

Airport	Service	Airport	Airport	Scope of	Remarks
'	Provider	charges	charges	ICT	
		Levied on	Levied on	Services	
		Airlines (Per	Airlines (Per		
		Passenger)	Passenger)		
		Domestic	International		
MIAL	SITA	INR 55	INR 65.65	CUTE &	BRS Services
				CUSS	are intended to
					be charged
DIAL	Wipro	INR 42	INR 57	CUTE &	CUSS Services
	Airport IT			BRS	are intended to

Airport	Service Provider Services	Airport charges Levied on Airlines (Per Passenger) Domestic	Airport charges Levied on Airlines (Per Passenger) International	Scope of ICT Services	Remarks be charged	
	(ARINC)				shortly	
HIAL	GHIAL- Internal	INR 70	INR 110	CUTE, CUSS & BRS, VDGS, PBB, BHS etc.	The CIC break up is not provided by the Airport	
CIAL	SITA	INR 75	INR 81.25	CUTE, CUSS & BRS		
AAI-Phase I (13 Airports)	SITA	INR 58	INR 65	CUTE		
AAI- Phase II (25 Airports includes Chennai & Kolkata)	SITA	INR 54	INR 54	CUTE and BRS		
Proposed for	Proposed for BIAL					
BIAL	In-house ICT Team	INR 59	INR 59	CUTE & CUSS	Uniform Charges for International and Domestic	
BIAL	ICT Service Provider	INR 23	INR 23	BRS	Uniform Charges for International and Domestic	

Note: The above rates may be checked from the Airport sources. Conversion Rate considered in the above table is 1\$ = INR 65.

Revenue Projections (INR) for the Period FY 2015-2016

Check-In Services (CUTE & CUSS)

2014-15	2015-16
421,838,495	469,855,114

Baggage Reconciliation Services

Note: A revenue share of 37% from the prospective IT Service Provider for BRS is considered.

2014-15	2015-16
60,844,841	67,770,627

- 21.65 The Authority note that CUTE, CUSS and BRS services are a part of the Ground Handling services. Hence, the Authority proposes to consider the revenues accruing from these services as part of Aeronautical Revenues.
- 21.66 The Authority has received further clarification from BIAL on the quantum of CUTE/ CUSS/BRS charges vide its submission dated 13th May 2014 as follows:

"BIAL implementing the new CIC (consisting of CUTE, CUSS & BRS) charges w.e.f 1st July 2014 through a concessionaire. The charges that were agreed upon for imposing are USD 1.15 per departing pax and BIAL revenue share will be 45% of USD 1.25 per departing pax."

- 21.67 The Authority decides to consider the revenue share from the above as Aeronautical revenues.
- The Authority had requested BIAL to submit the Financial Statements for 2013-14, which BIAL has submitted vide letter dated 5th May 2014. The Authority notes that the actual revenues earned during 2013-14 is different from the projections considered by the Authority for 2013-14. A comparison is detailed below:

Table 94: Comparison of revenues considered for 13-14 vis-a-vis Actuals for 13-14

Particulars	Projections considered for 13-	Actuals 13-14	
	14 MYTP 2013		
Flight Catering	6.11	6.11	
Landside Traffic	32.29	30.92	
Terminal Entry, Others	0	3.33	
Retail	39.41	41.62	
Food & Beverage	16.3	15.35	
Advertising and Promotion	32.83	37.64	
Rent and Land Lease	26.51	26.13	
Utility Charges	0	0.00	
Others	0	0.00	
Sub Total	153.45	161.10	
Interest on Cash	13.70	21.53	
Total	167.15	182.63	

21.69 The Authority decided to consider the actuals, as given above, for 2013-14. The revised Non-Aeronautical Revenues decided to be considered by the Authority is as given below:

Table 95: Recomputed Revenue from Other than Aeronautical services proposed by the Authority – Single Till – for MYTO Rs. Crore

Particulars	2011-12	2012-13	2013-14	2014-15	2015-16			
Aerobridge Charges	The Authority had considered revenues from these charges as Aeronautical in CP 14.							
Fuel Throughput charge								
Cargo	These Aeronautical services are provided at Kempegowda International							
Ground Handling	Airport by Third Party concessionaires hence Revenues from these services accruing to BIAL were earlier, in CP 14, reckoned as Non-Aeronautical Revenues. However, pursuant to MoCA letter 24 th September 2013,							
Fuel into plane service	Revenues accruing to BIAL on account of these services that are provided by Third Party Concessionaires are now reckoned as Aeronautical Revenues.							
Flight Catering	5.22	5.65	6.11	6.61	6.70			
Landside Traffic	22.63	29.27	30.92	35.63	40.80			
Terminal Entry/ Others	0.26	0.25	3.33	0.00	0.00			
Retail	28.69	33.92	41.62	44.35	52.15			
Food & Beverage	13.42	13.96	15.35	18.90	22.22			
Advertising and Promotion	33.62	36.95	37.64	36.86	45.29			
Rent and Land Lease	25.91	26.56	26.13	40.45	46.06			
Utility Charges	Deducted from Operating Expenditure							
ICT	Considered as Aeronautical Revenue							
Others	1.59	2.01	0.00	0.00	0.00			
Sub Total	131.33	148.56	161.10	182.80	213.22			
Interest on Cash	22.98	9.94	21.53	17.52	9.50			
Total	154.32	158.50	182.63	200.32	222.72			

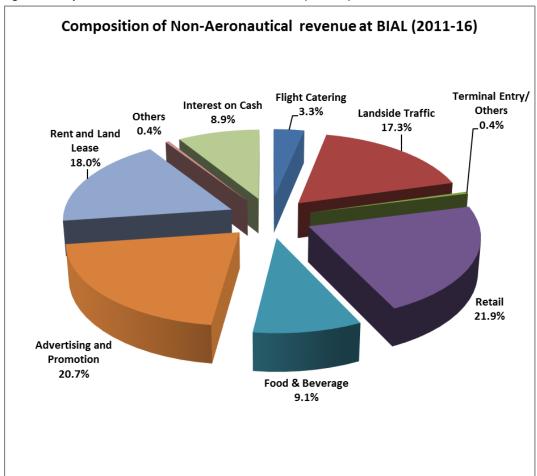


Figure 3: Composition of Non-Aeronautical Revenue at BIAL (2011-16)

Table 96: Revenue from Non-Aeronautical services to be considered for reduction from ARR under 40% Shared Revenue Till – for MYTO - Rs. Crore

Particulars	2011-12	2012-13	2013- 14	2014-15	2015-16
Total Non-Aeronautical Revenues other than Interest Income	131.33	148.56	161.10	182.80	213.22
40% of the above (A)	52.53	59.42	64.44	73.12	85.29
Interest on Cash recomputed	22.98	9.94	21.53	17.52	9.50
40% of the above (B)	9.19	3.98	8.61	7.01	3.80
Total (A + B)	61.73	63.40	73.05	80.13	89.09

Decision No. 17. Non-aeronautical Revenue

a. The Authority decides

i. To consider Aerobridge charge and revenue from ICT services (in which CUTE, CUSS and BRS has been considered by BIAL as ICT services, but taken as part of Ground Handling services by the Authority – Refer Para 21.65 above) as revenues arising out of Aeronautical service and thus consider these charges as Aeronautical charges.

- To consider revenues from Cargo, Ground Handling, Fuel Supply (Fuel Through put charge, Fuel Into plane charge etc.) as aeronautical revenues as detailed in Decision No. 16 above
- iii. To consider Interest income earned as part of Non-Aeronautical Revenue, except for Interest earned on Security deposit received from Hotel project. The interest earned on Security Deposit received for Hotel Project (Refer Para 11.11 above) is excluded from the computation of ARR.
- iv. To consider the actual Non-Aeronautical Revenue for the period 2011-12, 2012-13 and 2013-14 and projections for the balance period and to consider the resultant Non-Aeronautical revenue as computed by the Authority and presented in Table 95 and Table 96 under Single Till and 40% Shared Revenue Till respectively.
- v. To accept BIAL's proposal to true up the Non-Aeronautical Revenue based on the actual revenues earned by BIAL during the control period, at the time of determination of Aeronautical Tariffs for the next control period.

22 Inflation and WPI based increase

a. BIAL's Submission on Inflation and WPI based increase

- 22.1 As per BIAL's submission, BIAL had considered a WPI as follows:
 - "The WPI figures are derived based on the forecasted Producer Price Index (PPI) values as provided by analyst's projections"
- WPI had been considered by BIAL at 8.90%, 7.58%, 6.17%, 5.96% and 5.76% for the 5 years in the Control period in its MYTP 2012 and MYTP 2013 submissions

b. Authority's Examination of BIAL Submissions on WPI

- 22.3 The Authority's examination of the issue in CP 14 was as follows:
- The Authority noted that as per "Results of the Survey of Professional Forecasters on Macroeconomic Indicators 22nd Round (Q3:2012-13)" the current forecast by RBI states that the WPI for next five years was revised to 6.5% per annum. Presented below is the relevant extract from the published report:

"Long Term Forecasts:

"Long term forecast for real GDP for the next five years (2013-14 to 2017-18) and the next ten years (2013-14 to 2022-23), is expected to be 7.3 per cent and 8.0 per cent, respectively. Over the next five years, inflation based on WPI and CPI-Industrial Workers is expected to be 6.5 per cent and 7.8 per cent respectively. Over the next ten years, inflation based on WPI and CPI-Industrial Worker is expected to be 6.0 per cent and 6.5 per cent respectively.

Long Term Forecasts for Growth and Inflation

	Annual average percentage change over the next five years			
	Mean	Median	Max	Min
Real GDP	7.3	7.3	8.5	6.0
WPI	6.5	6.5	8.0	5.5
CPI-IW	7.7	7.8	10.0	6.5

Source: http://rbidocs.rbi.org.in/rdocs/Publications/PDFs/01SPFMD250113_F.pdf"

22.5 In view of the above, Authority proposed to consider WPI at 6.5% for determination of aeronautical tariffs in respect of Bengaluru International Airport during the current control period.

- Further, the Authority was of the view that the actual inflation during the Control Period may differ from the forecast assumption considered presently and thus inflation may be trued up for the current control period while determining the aeronautical tariff for Bengaluru International Airport for the next control period.
- 22.7 Based on the material before it and its analysis, the Authority had proposed in CP 14:
 - To consider WPI at 6.5% for the current control period based on the latest assessment by RBI.
 - 22.7.2 To true up the WPI index for actual WPI index as may occur for each year of the Control Period, the effect of which would be given in the next control period commencing from 01.04.2016.

c. Stakeholder Comments on Issues pertaining to Inflation and WPI based increase

- Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the tentative presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14 and CP 22. Stakeholders have also commented on inflation to be considered in respect of Kempegowda International Airport, Bengaluru. These comments are presented below:
- 22.9 On the issue of Inflation BPAC stated that:

"May please ensure that RBI data at what inflation risk premium bonds of duration matching the remaining length of the concession period are yielding is compared"

d. BIAL's response to Stakeholder Comments on Issues pertaining to Inflation

- 22.10 Subsequent to the receipt of comments from the Stakeholders on CP 14 and CP
- 22, the Authority forwarded these comments to BIAL seeking its response to these comments.
- 22.11 On BPAC's comment, BIAL had stated that BPAC needs to clarify its comments.
- e. BIAL's own comments on Issues pertaining to Inflation
- 22.12 BIAL has not provided its own comments on the issue.
- f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to Inflation
- 22.13 The Authority has carefully considered the comments made by the stakeholders on consideration of inflation in respect of BIAL.

- The Authority is unable to understand the comment of BPAC. The Authority has used estimated WPI for the purposes of projecting the Aeronautical Revenues over the remaining period of the current control period. Thereafter, as indicated in different sections, the Authority would true up the revenues and expenditure of different regulatory building blocks.
- The Authority has had reference to the latest forecast of inflation by RBI as presented in its "Results of the Survey of Professional Forecasters on Macroeconomic Indicators 25th Round (Q2:2013-14)", where WPI for next five years has been forecast to be 5.9% per annum.

Decision No. 18. Inflation

a. The Authority decides

- To consider WPI at 5.9% for remaining years of the current Control Period based on the latest assessment by RBI and use this number for the purposes of projections of Aeronautical revenues and expenditures as relevant.
- ii. As far as Truing up is concerned, the Authority has separately decided under the respective sections, truing up of the revenues and expenditures of the different regulatory building blocks and therefore the truing up of the WPI does not arise.

23 Calculation of WPI - X

a. Authority's view on X factor

23.1 The Authority, in its Guidelines, had provided the considerations behind the determination of the factor. The Guidelines, in this regard, state as under:

"The objective of targeted efficiency improvement, in the determination of X, is to simulate a competitive environment in a non-competitive situation by allowing Airport Operator to raise Tariff(s) to offset cost increases, but by a rate lower than inflation in order to encourage greater efficiency. The targeted efficiency improvement can be high, in case the Authority considers that there is high scope for efficiency and the Airport Operator needs to make more effective or efficient use of its resources. Also, the targeted efficiency improvement can be low, in case the Authority considers there is limited scope for efficiency improvement."

- This is the first control period in respect of BIAL. The Authority, accordingly felt that the sufficient information on the determination of X factor for this control period may not be available and accordingly for the current control period, the Authority proposed to consider the X factor as Nil. The Authority also noted that determination of X-factor would require an independent study. The Authority proposed to conduct such a study and consider its results appropriately while determining the aeronautical tariffs for the next control period.
- 23.3 Based on the material before it and its analysis, the Authority had proposed in CP 14 and CP 22 to consider X factor as NIL while determination of aeronautical tariff for the current control period.

Decision No. 19. Calculation of WPI – X

a. The Authority decides to determine X factor as NIL for the current control period.

24 Sensitivity Analysis, calculation of Yield and Target Revenues

- As per the Base Model submitted by BIAL as part of MYTP 2013, the YPP number under single till submitted by BIAL was Rs. 416.84 and that under 30% Shared Revenue Till was Rs. 600.95.
- The Authority had analysed BIAL's submissions as well as the comments of MoCA vide letter dated 24th September 2013 and finally made the computations under Single till (YPP Rs. 347.61), 30% Shared Revenue Till (YPP Rs. 376.06) and 40% Shared Revenue Till (YPP Rs. 365.06) for each of the regulatory building block and presented its analysis in the respective sections of CP 22. The Authority had finally decided to make ARR computations based on 40% Shared Revenue till "to strike an appropriate balance between the needs of expansion of the airport as well as passenger interest".
- 24.3 The recomputed ARR as per the Authority accordingly under Single Till and 40% Shared Revenue Till as detailed in CP 22 were as follows:

Table 97: Recomputed Aggregate Revenue Requirement by the Authority – CP 22 - Single Till – Rs. Crore

	Tariff Year 1	Tariff Year	Tariff Year	Tariff Year	Tariff Year 5
Details		2	3	4	2015 16
	2011-12	2012-13	2013-14	2014-15	2015-16
Average RAB	1,480.65	1,368.69	2,085.19	2,910.69	2,877.73
Fair Rate of Return	11.71%	11.71%	11.71%	11.71%	11.71%
Return on average RAB at %	173.44	160.33	244.26	340.95	337.09
Operating Expenditure	199.11	270.46	264.63	347.82	399.36
Working Capital Interest	-	-	7.01	9.04	10.52
Depreciation	130.30	131.56	153.90	230.62	236.56
Corporate Tax	-	4.19	17.83	3.93	21.81
Less: Revenue from services	(154.32)	(158.50)	(167.16)	(198.67)	(221.27)
other than Regulated services	` ,	,	,	, ,	
Pre-control period losses					
Aggregate Revenue	348.53	408.04	520.47	733.69	784.08
Requirement					
Total ARR					2,794.81
No. of passengers (Crore)	1.27	1.20	1.31	1.46	1.63
Discounted ARR a of 01.04.11	348.53	365.25	417.04	526.25	503.42
Present Value					2,160.50
Aeronautical Revenues computed	471.27	459.40	482.90	602.54	714.71
Present Value					2,160.50

	Tariff Year 1	Tariff Year	Tariff Year	Tariff Year	Tariff Year 5
Details		2	3	4	
	2011-12	2012-13	2013-14	2014-15	2015-16
Yield per Pax (Rs.)					347.61

Table 98: Recomputed Aggregate Revenue Requirement by the Authority - CP 22 - 40% Shared Revenue Till - Rs. Crore

Details	Tariff Year 1	Tariff Year 2	Tariff Year	Tariff Year 4	Tariff Year 5	
	2011-12	2012-13	2013-14	2014-15	2015-16	
Average RAB	1,308.22	1,207.93	1,841.37	2,576.42	2,551.37	
Fair Rate of Return	11.71%	11.71%	11.71%	11.71%	11.71%	
Return on average RAB at %	153.26	141.51	215.71	301.82	298.89	
Operating Expenditure	180.09	248.43	238.11	313.44	359.60	
Working Capital Interest	-	-	6.31	8.26	9.63	
Depreciation	117.46	118.72	138.83	207.12	212.68	
Corporate Tax	-	0.10	-	-	11.50	
Less: Revenue from services other than Regulated services	(61.73)	(63.40)	(66.86)	(79.47)	(88.51)	
Pre-control period losses	-					
Aggregate Revenue Requirement	389.08	445.36	532.10	751.18	803.79	
Total ARR					2,921.51	
No. of passengers (Crore)	1.27	1.20	1.31	1.46	1.63	
Discounted ARR	389.08	398.66	426.36	538.78	516.06	
Present Value	2,268.9					
Aeronautical Revenues computed	471.27	459.40	482.90	675.89	801.71	
Present Value	2,268.93					
Yield per Pax (Rs.)		365.06				

- 24.4 Furthermore, the Authority decided to update the ARR calculation in this Order considering the following:
 - 24.4.1 Consider the actual Revenues and Expenses as per the Financial Statements of the year 2013-14 with respect to Traffic, Revenue, Operating and Maintenance Expenditure, Cost of Debt etc.
 - 24.4.2 Consider the actual tax paid (MAT) as a part of the Regulatory Building block
 - 24.4.3 Shifting date of implementation of Aeronautical Tariffs from 1st April 2014 to 1st July 2014.

- 24.4.4 Consider Property tax cost for the control period and changes to Operating Expenditure estimate accordingly.
- 24.5 Below table enumerates the Sensitivity analysis of the change in ARR and YPP from MYTP 2013 submission made by BIAL under 30% SRT to the MYTO for computation made by the Authority under 40% Shared Revenue Till, taking into consideration MoCA letter dated 24th September 2013.(Refer Para 2.37 above)

Table 99: Summary of changes - Impact on ARR and YPP (between MYTP 2013 and MYTO) – 40% Shared Revenue Till

Particulars	Aggregate Revenue Requirement (Rs. Crore)	Yield per Pax (Rs.)
As submitted by BIAL – 30% Shared Revenue Till	4630.8	600.95
After disallowance of Pre-control period losses	3936.1	488.62
After changing Cost of Equity from 24.4% to 16%	3397.9	423.88
After considering additional 10% contribution of Non-Aeronautical Revenues (30% SRT changed to 40% SRT)	3286.6	409.50
After making adjustment for actuals for 2013-14 and other changes decided by the Authority	3151.5	396.7
After considering Initial RAB disallowance (EIL Report), Changes in asset allocation, Depreciation etc.	2980.9	376.34
Recomputed by the Authority – 40% Shared Revenue Till	2980.9	376.34

 $ARR = RAB_{Aero} \times FRoR + Depreciation_{Aero} + Opex_{Aero} + Tax_{Aero} - 40\%$ Revenue from Non - Aero Services

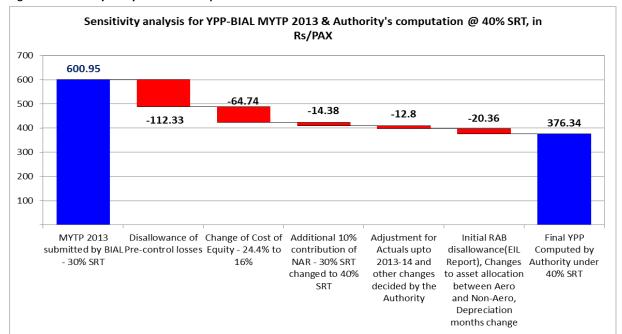


Figure 4: Sensitivity Analysis - YPP - Computations made under 40% Shared Revenue Till

24.6 Based on all the Decisions of the Authority, presented in respective sections above, the final target revenue requirement for the current Control Period in respect of BIAL is presented in the table below:

Table 100: Aggregate Revenue Requirement and Yield - Single Till - MYTO - Rs. Crore

B . "	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
Details	2011-12	2012-13	2013-14	2014-15	2015-16
Average RAB	1480.65	1368.69	2077.77	2947.13	2964.10
Fair Rate of Return	11.54%	11.54%	11.54%	11.54%	11.54%
Return on average RAB at %	170.93	158.01	239.87	340.23	342.19
Operating Expenditure	199.10	270.45	256.42	389.92	424.41
Working Capital Interest				10.13	11.20
Depreciation	130.29	131.56	144.39	231.51	239.25
Corporate Tax	36.06	21.37	32.04	0.07	24.21
Less: Revenue from services other than Regulated services	-154.32	-158.50	-182.63	-200.32	-222.72
Pre-control period losses					
Aggregate Revenue Requirement	382.07	422.89	490.09	771.54	818.53
Total ARR					2885.12
No. of passengers (Crore)	1.27	1.20	1.29	1.44	1.60
Discounted ARR	382.09	379.12	393.88	555.92	528.74
Present Value					2239.75
Aeronautical Revenues computed	475.23	463.11	488.19	645.58	761.37

Details	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
	2011-12	2012-13	2013-14	2014-15	2015-16
Present Value					2239.75
Yield per Pax (Rs.)					363.52

Table 101: Aggregate Revenue Requirement and Yield – 40% Shared Revenue Till – MYTO – Rs. Crore

Dataile	Tariff Year 1	Tariff Year 2	Tariff Year 3	Tariff Year 4	Tariff Year 5
Details	2011-12	2012-13	2013-14	2014-15	2015-16
Average RAB	1308.22	1207.93	1835.48	2608.42	2626.07
Fair Rate of Return	11.55%	11.55%	11.55%	11.55%	11.55%
Return on average RAB at %	151.13	139.55	212.05	301.34	303.38
Operating Expenditure	180.07	248.42	232.76	355.14	383.21
Working Capital Interest				9.21	10.20
Depreciation	117.46	118.72	130.42	207.81	214.82
Corporate Tax	15.85	0.53	6.28	0.00	9.98
Less: Revenue from services other than Regulated services	-61.73	-63.40	-73.05	-80.13	-89.09
Pre-control period losses					
Aggregate Revenue Requirement	402.79	443.82	508.46	793.38	832.50
Total ARR					2980.94
No. of passengers (Crore)	1.27	1.20	1.29	1.44	1.60
Discounted ARR	402.80	397.86	408.60	571.53	537.61
Present Value					2318.40
Aeronautical Revenues computed	475.23	463.11	488.19	698.87	824.22
Present Value					2318.40
Yield per Pax (Rs.)					376.34

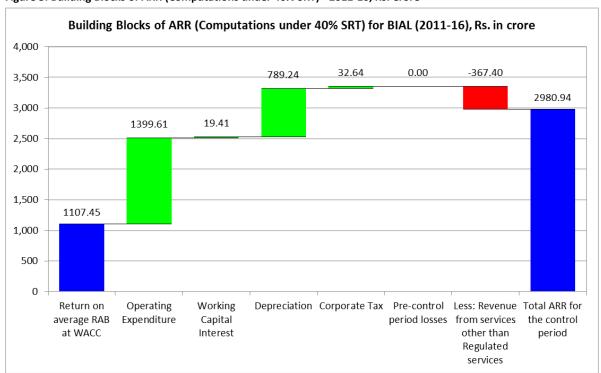


Figure 5: Building Blocks of ARR (Computations under 40% SRT) - 2011-16, Rs. Crore

25 Annual Tariff Proposal

a. BIAL's submission on Tariff structure / Rate card

25.1 BIAL, vide its submission dated 12th April 2013 (received on 16th April 2013), submitted its Annual Tariff Proposal (ATP) for FY 2013-14, FY 2014-15 and FY 2015-16. BIAL has stated as under:

"Kindly refer to the revised MYTP submitted in Nov 2012. Pursuant to MYTP submitted, detailed Annual Tariff Proposal (ATP) applicable to 1st Regulatory Control period in respect of Aeronautical Services viz., landing, Housing & Parking, Passenger Service Fee (Facilitation), User Development Fee (UDF) for FY 2013-14 (effective from 1st May 2013), FY 2014-15 & FY 2015-16 are enclosed herewith vide Annexures (I & II) for your consideration and approval please. Further MYTP proposals were submitted under Dual Till & as well under Single Till, hence ATP proposals were also submitted under both proposals for needful consideration.

BIAL reserves the right to submit further submissions as may be required.

25.2 Details of tariff items proposed by BIAL as per its rate card were as follows.

Table 102: Tariff Items proposed by BIAL in its tariff card – MYTP 2012

Tariff Item	Single Till	Dual Till	Whether common
			in Single Till and
			Dual Till
Landing, Parking and	Increased rates proposed	Increased rates proposed	Yes
Housing Charge			
Common	New Levy of Rs. 50 per	-	No
Infrastructure Charges	embarking pax, constant		
	through the control period		
User Development	Rs. 1700/- for 2013-14, to be	Rs. 1700/- for 2013-14, to	Yes
Fee – International	increased by 6% per annum	be increased by 6% per	
		annum	
User Development	Balancing Amount between the	Balancing Amount	No
Fee – Domestic	revenue requirement and other	between the revenue	
	collections proposed to be	requirement and other	
	collected from departing	collections proposed to be	
	passengers	collected from departing	
		passengers	

25.3 UDF rates proposed by BIAL under Single and Dual Till in MYTP 2012 were as given below

Table 103: UDF proposed for FY 2013-14 to FY 2015-16 by BIAL - MYTP 2012

	F : .:	Proposed	UDF Rates b	y BIAL und	er Single & D	ual Till	
Type of Passenger	Existing UDF Rates	2013-14*		2014-15		2015-16	
	Nates	Single	Dual	Single	Dual	Single	Dual
Domestic (Rs.)	231.4	783.09	1729.43	742.07	1634.52	740.82	1667.54
International (Rs.)	952.3	1700	1700	1802	1802	1910.12	1910.12
* Proposed UDF levy by BIAL is w.e.f. 1st May, 2013							

Further BIAL has, in its revised submission MYTP 2013 submission considered the same tariff card as proposed by it in its initial submissions, except that it had proposed to merge CIC with UDF, in line with Authority's decision, but had proposed discount structure as part of Rate card. The rate card indicated the existing as well as proposed charges for Landing, Parking and Housing of the Aircrafts of different weights as well as the UDF. For example, as indicated in MYTP 2013, BIAL had given the existing rates for the Landing of the Aircraft and what was proposed by BIAL for the period October 2013 to March 2014 as per Table 104 and Table 105. Similarly, the tariff card also gives details of charges for 2014-15 and 2015-16.

Table 104: Landing Charges - Existing rates

Weight of Aircraft	International Flight	Other than International Flight
Up to 100 MT	Rs. 250.50 per MT	Rs. 187.90 per MT
Above 100 MT	Rs. 25,050/- + Rs. 336.60 per MT in excess of 100 MT	Rs. 18,790/- + Rs. 252.50 per MT in excess of 100 MT

Table 105: Landing Charges - Proposed rates (1st October 2013 to 31st March 2014) - MYTP 2012

Weight of Aircraft	International Flight	Other than International Flight
Up to 100 MT	Rs. 578.90 per MT	Rs. 294.80 per MT
Above 100 MT	Rs. 57,890/- + Rs. 777.80 per MT in excess of 100 MT	Rs. 29,480/- + Rs. 396.10 per MT in excess of 100 MT

25.5 As far as the UDF computation is concerned, the details of UDF computed and submitted by BIAL as part of MYTP 2013 were as given below:

Table 106: UDF submitted by BIAL as part of MYTP 2013 submissions

Type of Passenger	Existing UDF Rates	UDF Rates under Single & 30% Shared Revenue Till as per BIAL*							
		2013	3-14	201	4-15	2015-16			
		Single	30% SRT	Single	30% SRT	Single	30% SRT		
Domestic (Rs.)	231.4	644.18	1260.31	590.13	1090.6	600.85	1114.94		
International (Rs.)	952.3	2576.73	5041.25	2360.52	4362.41	2403.41	4459.77		
* Proposed UDF levy is w.e.f. 01st October, 2013.									

b. Authority's Examination of BIAL Submissions on Tariff Structure/ Rate Card

25.6 The Authority carefully considered the tariff card submitted by BIAL. Authority's

analysis detailed in in CP 14 were as follows:

- 25.7 The Authority had carefully considered the tariff card submitted by BIAL. As would be seen from Table 102, except UDF and the Common Infrastructure Charges (CIC) the other tariff items are the same both for Single Till and Dual Till. The Authority has noted that BIAL have in the ATP stated that:
 - "...the UDF is a fee charged by the airport to develop world class facilities UDF would apply only from/after the date of operation of the new airport, and would enable BIAL to make the project viable."
- 25.8 The charges directly impinging on the passengers are (a) Development Fee, sometimes also called the Airport Development Fee (b) User Development Fee (c) Passenger Service Fee, particularly, the facilitation component thereon and in case of BIAL, (d) the proposed (new) charge of "Common Infrastructure Charge" (CIC). The Development Fee is regarded as the pre-financing Capital receipt. According to Section 22A of the AAI Act, the Development Fee is not applicable in respect of Bengaluru International Airport as developed by BIAL. The User Development Fee, on the other hand is a revenue enhancing mechanism to bridge any revenue shortfall so that the Airport Operator is able to get the fair rate of return (that includes Fair Rate of return on Equity). Hence, the nature and character of Development Fund (DF) / Airport Development Fund (ADF) and User Development Fee (UDF) are distinct and different. The Authority noted that as per the Concession Agreement, UDF is permitted to be used for "the development, management, maintenance, operation and expansion of the facilities at the airport." The facilitation component of PSF is proposed to be merged into UDF so that the PSF gets restricted to only the Security component. The CIC was a new charge on passengers proposed by BIAL.
- As regards the Passenger Service Fee (Facilitation Component) [PSF(FC)] presently Rs. 70/- per embarking passenger, BIAL had submitted that there is no increase proposed and existing levy of PSF(FC) is to be discontinued w.e.f. 1st May, 2013 and merged with proposed UDF levy w.e.f. 1st May, 2013.
- 25.10 It was seen from the Table 103 that BIAL had proposed the domestic UDF under Single Till to be 339% of the existing rates and the International UDF to be 179% of the existing rates (w.e.f 1st May 2013). In Dual Till, these percentages are 748% and 179% respectively. The Authority had noted from the Table 102 that BIAL had proposed to levy UDF on departing passengers. Further, the UDF proposed for departing International passengers was the same

under Single and Dual Till for each of the Tariff Years 2013-14, 2014-15 and 2015-16.

- The Authority noted that the ATP submitted by BIAL was corresponding to the Yield per Passenger of Rs. 454.81 under Single Till and Rs. 635.55 under Dual Till. BIAL had in their ATP submission also stated that BIAL reserves the right to submit further submissions as may be required.
- The Authority also noted that Fuel Throughput charges collected by it had not been submitted in ATP for tariff determination. The Authority also noted that these charges were included as part of Non-Aeronautical revenue projections under Aviation Concessions, which the Authority proposed to determine as Aeronautical Tariffs.
- 25.13 The Authority noted that BIAL had proposed a levy of Rs. 50 per departing passenger to be collected as part of Aeronautical tariff under Single Till. This charge had however not been proposed by BIAL under Dual Till. The Authority proposed not to consider a separate CIC charge of Rs. 50 per departing passenger under Single Till and merge the same along with the UDF.
- The Authority also noted that BIAL had adopted a % applicability for levying landing charges on Domestic Pax flights and on UDF on International passengers. No explanation/ details had been furnished by BIAL for the same. Also, the Authority noted that BIAL had provided for Discounts on Landing charges for Domestic Pax flights and Domestic Cargo Flights. However, BIAL had not submitted any details on the same at the time of submission of its Annual Tariff Proposals. Also, the Authority's position on discounts had been clearly elaborated in its Airport Order. Hence the Authority proposed to work out the tariff card without considering any discounts and any % reduction to the % applicable, as computed by the Airport Operator.
- The Authority also noted that BIAL had proposed a minimum charge of Rs. 5000/for landing of all Aircrafts. The Authority noted that there is a circular of MoCA that no charges
 may be levied for aircrafts below 80 seats. Hence the Authority proposed not to consider a
 charge for ATRs. If there is a change in MoCA's instruction in this regard, the Authority was
 open to considering a charge for ATRs.
- The Authority, on account of its various proposals in respect of respective building blocks, had determined the Yield per Passenger at Rs. 364.09 under Single Till and at Rs. 376.78 under Dual Till. In order to assess the impact of this Yield per Passenger on the passenger charges in terms of UDF, the Authority had considered the aeronautical revenue

under the other heads namely, Landing, Parking charges and Housing Charges the same as proposed by BIAL. Thus the only variable item in the tariff card was UDF and impact of any change in the YPP was thus reflected in the UDF.

- 25.17 The Authority had considered the revenue from Landing and Parking charges, Housing Charges from the ATP submitted by BIAL and considered the existing Fuel Throughput charge of Rs. 1067 as accounted by BIAL. In computing the revised UDF numbers, the Authority had reworked the UDF International and UDF- Domestic rates to remain in the existing proportion at 4:1.
- The Authority had considered different scenarios both under Single Till and Dual Till in its computation of ARR and based on which yield per passenger, effective implementation of new aeronautical tariffs as well as UDF. The Authority noted that BIAL's annual tariff proposals were based on the effective date of implementation on 01.05.2013. The Authority, had calculated the UDF based on the effective date tentatively being 1st October 2013 (taking into account reasonable time for effective stakeholders' consultation, as well as Authority's analysis of the issues that may be raised.)
- 25.19 Accordingly the UDF recomputed, for tariff revision to commence from 1st October 2013 were as follows.

Table 107: Summary of Recomputed UDF (Domestic) based on Authority's proposals, keeping charges other than UDF and CIC as per BIAL's tariff proposal (w.e.f 1st October 2013) – CP 14

Type of Passenger	Existing UDF Rates	Recomputed UDF Rates under Single & Dual Till as per Authority*							
		2013-14		2014-15		2015-16			
		Single	Dual	Single	Dual	Single	Dual		
Domestic (Rs.)	231.4	262.32	399.28	281.37	412.68	294.17	429.74		
International (Rs.)	952.3	1049.27	1597.14	1125.48	1650.73	1176.69	1718.95		

^{*} Proposed UDF levy is w.e.f. 01st October, 2013. The Authority would round off the above numbers to the nearest rupee.

- 25.20 Based on the material before it and its analysis, the Authority had proposed in CP 14:
 - 25.20.1 To consider the multi-year ATP(s) for FY 2013-14, 2014-15 and 2015-16 submitted by BIAL for Bengaluru International Airport, Bangalore at the MYTP stage itself.
 - 25.20.2 To consider levy of UDF only on departing passengers (both domestic and international) and to note that UDF is different under Single Till and Dual Till.

- 25.20.3 To merge the CIC Charge proposed by BIAL under Single Till into the UDF. (BIAL had not proposed any CIC charge under Dual Till)
- 25.20.4 To determine the other charges in the tariff card, namely, Landing and Parking charges, and Fuel Throughput Charges, as proposed by BIAL, noting that BIAL has proposed same charges under both Single Till and Dual Till.
- 25.20.5 To note the determination of UDF under Single Till and Dual Till as indicated in Table 107 (effective from 1st October 2013).
- 25.20.6 To note that based on different Means of Finance for expansion as may be proposed by BIAL the Authority would determine the UDF for domestic and international departing passengers.
- 25.21 Further, the Authority carefully considered the revised tariff card submitted by BIAL as part of MYTP 2013, the Authority proposed the following for Stakeholders Consultation in CP 22:
- The Authority noted that BIAL had not submitted rate card for Fuel Throughput fee. BIAL has not submitted any Fuel Throughput rate in its Rate card submitted as part of its earlier submission MYTP 2012. In both the submissions namely MYTP 2012 and MYTP 2013, BIAL had taken the position that the Fuel Throughput Fee is a Non-Aeronautical Revenue and probably because of this stand, BIAL may not have included Fuel Throughput Fee rate in the ATP that is about Aeronautical Charges.
- The Authority however, had been consistently taking a stand that Fuel Throughput charge (or by whatever name termed like Fuel Throughput fee, Fuel Concession fee etc.) is levied towards an Aeronautical service namely that of supplying fuel to an aircraft.
- As regards the Revenues accruing to BIAL on account of revenue share received from CGF Service Providers (who are Third Party Concessionaires), the Authority had received the comments of MoCA vide its letter dated 24th September 2013. Accordingly the Authority had reckoned the revenues accruing to BIAL on account of revenue share etc. received from CGF Service Providers towards revenue items that make up ARR based on which the Aeronautical tariffs (comprising of LPH, FTC and UDF) were determined.
- Authority's analysis of discounts on landing charges had already been detailed in CP 14 and were not being reproduced here. As far as the issue of minimum landing charge of Rs. 5000 per ATM is concerned, the Authority had proposed the same with the exception that less than 80 seater Aircrafts (in accordance with the Gol letter dated 9th February 2004) will

not be charged any landing charge. The Government's letter of 9th February 2004 on this subject was Annexed to the Proposed Tariff card. Extract from MoCA letter dated 9th February 2004 is given below:

- "... (iii) No landing charges shall be payable in respect of:
- (a) aircraft with a maximum certified capacity of less than 80 seats, being operated by domestic scheduled operators; and
- (b) helicopters of all types..."
- 25.26 Accordingly, the Authority did not propose to consider any discounts in the rate card and also did not propose to consider landing charges for less than 80 seater Aircrafts.
- 25.27 The Authority also noted that BIAL had submitted a Variable Tariff Proposal vide letter dated 2nd December 2013 (elaborated from Para 25.32 below). In this rate card, apart from other aspects BIAL had also proposed tariff for Aerobridge usage, which was not part of the ATP submission made as part of MYTP 2012 or even MYTP 2013. During discussions on 19th December 2013 BIAL affirmed that it proposed to charge Aerobridge charges. However, BIAL had not submitted detailed workings with respect to the computation of Aerobridge charges. Hence, the Authority did not propose to consider Aerobridge charges as stated by BIAL for the purpose of computation of Aeronautical tariffs in this Consultation Paper. However, based on detailed workings and submissions to be made by BIAL, Aerobridge charges may be considered at the time of issue of Order for determination of Aeronautical Tariffs for the current control period.
- 25.28 As elaborated in Para 21.38 above, the Authority proposed to treat the ICT Revenues as part of the Aeronautical Charges.
- To summarise, revenues from the following charges were being reckoned for the purposes of calculation of Aeronautical Tariffs being treated as Aeronautical Revenues (a) Landing, Parking and Housing (b) Fuel Throughput Charge (c) ICT Revenues (d) Revenues (rentals, revenue share etc.) accruing to BIAL on account of the following aeronautical services concessioned out to third party concessionaires (i) Fuel Into-plane services (ii) Cargo Services (iii) Ground Handling services (e) Aerobridge charge (f) User Development Fee.
- 25.30 The Authority had in its CP 14 presented the table on recomputed UDF effective 1st October 2013. As this Consultation Paper was issued in January 2014, the Authority proposed the revision in tariff effective 1st April 2014 and the recomputed UDF as per the

Authority was as given below:

Table 108: Summary of Recomputed UDF based on Authority's proposals, keeping charges other than UDF as per BIAL's tariff proposal (w.e.f 1st April 2014) – CP 22

Type of Passenger	Current	Current PSF UDF (FC)**	Total current Pax charge	Recomputed UDF Rates under Single, 30% Shared Revenue Till & 40% Shared Revenue Till as per Authority*					
	UDF			Single	2014-15 30%	40%	2015-16 Single 30% 40%		
Domestic (Rs.)	231.4	77.0	308.4	227.7	341.5	290.8	243.0	363.7	310.0
International (Rs.)	952.3	77.0	1029.3	910.9	1365.9	1163.4	972.0	1454.9	1240.0

^{*} Proposed UDF levy is w.e.f. 01st April, 2014. The Authority would round off the above numbers to the nearest rupee.

^{**} FC – Facilitation Component of Passenger Service Fee. For recomputed UDF rates by the Authority, this component of Rs. 77 is included or merged into proposed UDF.

25.31 Based on the above, the table of Aeronautical Revenues considered by the Authority under various heads was as detailed below:

Table 109: Component wise Contribution to Aeronautical Revenues - CP 22 - Rs. Crore

Nature of Revenue	Actual / Estimate			Projections for 2014-15 and 2015-16					
	2011-12	2012-13	2013-14	Single Till 30% Shared Revenue Till		40% Shared Revenue Till			
				2014-15	2015-16	2014-15	2015-16	2014-15	2015-16
Passenger Service Fee	43.85	40.90	43.51	0.00	0.00	0.00	0.00	0.00	0.00
Landing Fee	96.47	98.10	101.75	241.62	299.11	241.62	299.11	241.62	299.11
Parking Fee	2.97	3.50	3.44	1.82	2.16	1.82	2.16	1.82	2.16
Housing Fee	0.00	0.00	0.00	7.06	8.46	7.06	8.46	7.06	8.46
User Development Fee	226.73	218.30	241.30	264.61	315.59	396.79	472.38	337.96	402.60
Fuel Farm including into-plane	51.46	50.10	44.70	45.15	45.60	45.15	45.60	45.15	45.60
Cargo	28.41	27.10	28.80	29.50	29.60	29.50	29.60	29.50	29.60
Ground Handling	0.60	0.90	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Aerobridge Charge	8.95	7.90	6.80	0.00	0.00	0.00	0.00	0.00	0.00
ICT Revenue	11.82	12.60	12.60	12.78	14.18	12.78	14.18	12.78	14.18
Total	471.27	459.40	482.90	602.54	714.71	734.72	871.49	675.89	801.71
Collections detailed as per ARR table	471.27	459.40	482.90	602.54	714.71	734.72	871.49	675.89	801.71

Details for 2011-12 and 2012-13 is as per the break-up of audited Financial Statements

For 2013-14, components of Landing, Parking, PSF and UDF was estimated initially by BIAL at Rs. 32.50 Crore per month which has been considered

Cargo, Fuel Farm/ Fuel Into plane, Ground handling, ICT Revenues have been considered for 2013-14, 2014-15 and 2015-16 as per the estimate submitted by BIAL as part of MYTP 2013

- Variable Tariff Proposal submitted by BIAL: The Authority noted that BIAL had 25.32 submitted a variable tariff proposal for what it has termed as "BIAL's Proposal for improved passenger traffic and sustained operational excellence". The Authority had discussions with BIAL on the variable tariff proposal on 19th December 2013 and noted that the Variable tariff proposal was about charging different tariffs depending on the "time of the day". The purpose of variable tariff, as understood by the Authority from its discussions with BIAL was to increase the number of Peak hours during the particular day. The Authority also noted that this was likely to result in improving the passenger through put thereby enhancing the handling capacity of the Airport beyond its current estimates. The Authority had noted the variable tariff proposal submitted by BIAL and has asked BIAL to (a) Analyse, compare and provide data on such practices followed by any other airport (including International) (b) Ensure that there are no discrimination which is not permitted as per ICAO Policies (c) Indicate the issues in implementation of variable tariff in a transparent manner with respect to different components of Aeronautical tariffs including UDF together with detailed computations / workings of the charges in different categories considering the variable tariff proposal submitted by it.
- 25.33 For the purpose of CP 22, the Authority proposed to compute the UDF based on the general ATP submitted by BIAL and not to consider the variable tariff proposal submitted.
- 25.34 Based on the material before it and its analysis, the Authority had proposed in CP 22:
 - 25.34.1 To consider the multi-year ATP(s) for FY 2013-14, 2014-15 and 2015-16 submitted by BIAL for Kempegowda International Airport, Bengaluru at the MYTP stage itself.
 - 25.34.2 To consider levy of UDF only on departing passengers (both domestic and international) and to note that UDF is different under Single Till and 30% and 40% Shared Revenue Till.
 - 25.34.3 To merge the Facilitation component of PSF into the UDF w.e.f 1st April 2014.
 - 25.34.4 To determine the other charges in the tariff card, namely, Landing, Parking and Housing charges, as proposed by BIAL, noting that BIAL has proposed same charges under both Single Till and Shared Revenue Till.
 - 25.34.5 To consider ICT Revenues as Aeronautical Revenues
 - 25.34.6 To not determine Aerobridge charges pending receipt of detailed computations from BIAL.

- 25.34.7 To note the calculation of UDF under Single Till and Shared Revenue Till as indicated in Table 108 (effective from 1st April 2014)
- 25.34.8 To consider revenues (rentals, revenue share etc.) accruing to BIAL on account of the following aeronautical services concessioned out to third party concessionaires (i) Fuel Into-plane services (ii) Cargo Services (iii) Ground Handling services as Aeronautical Revenues
- 25.34.9 To note that revenue from Fuel Throughput Charge is considered as Aeronautical Revenue and to retain the charge at the current level of Rs. 1067/- per kilolitre for the current control period.
- 25.34.10 Not to consider the variable tariff proposal proposed by BIAL for the purpose of the Consultation Paper

c. Stakeholder Comments on Issues pertaining to Tariff Structure/Rate Card

- 25.35 Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 14. Stakeholders have also commented on Tariff Structure/ Rate Card in respect of Kempegowda International Airport, Bengaluru. These comments are presented below:
- 25.36 On the issue of tariff proposals, IATA stated that:

"IATA is strongly opposed to the 131% increase in landing fee for international flights as that would present a significant shock to airlines' operating costs. IATA urges a significantly more moderate increase, if need be, that will support a cost environment more conducive for airlines to operate in and be able to grow services. From international experience, a 10% increase in landing fee would already be considered as at the high end.

- IATA reiterates its rejection of a differential in landing fee between international and domestic flights as this is in gross contravention of ICAO principles and a highly unfair situation to have one airline subsidizing another airline for the same usage of facilities on account of the flights' origins.
- IATA notes that AERA has proposed to use a ratio of 4:1 for setting international and domestic UDF in perpetuation of the unfair ratio that exists in the current UDF split. The airport operator itself had proposed a more reasonable ratio of 1:1.6 in its application to the Ministry in 2008. In its current submission, the airport had also proposed a lower ratio of between 0.98 and 2.6 (depending on the till scenario). As

mentioned in IATA's submission in the Mumbai tariff determination, MIAL's proposal of 1:2 converges towards what would be a fairer ratio. IATA therefore urges a more equitable ratio of 1:2 or lower to be applied at BLR.

• IATA agrees with the Authority's proposal to merge the Common Infrastructure Charge into the UDF. This will simplify the rate card"

25.37 On the issue of tariff, AAI stated that

"The AERA has proposed to levy UDF on the departing passengers only.

In the proposal of BIAL, they have proposed to charge UDF for development of the Airport also. AAI has no comments at this stage since AERA has not spelt out its policy in this regard.

To review the policy of CIC to be merged with UDF, it is felt that C.I.C proposed should be part of aeronautical tariff. A policy need to be framed regarding % age of revenue to be recovered from passenger through UDF and amount of revenue to be recovered from Airline through airport charges.

There are certain directives issued by Govt. of India to AAI regarding aeronautical charges like discount on small aircraft rates, rate for Flying Club etc. It needs to be examined whether the same directives will also be applicable for the private airports."

- 25.38 On the issue of Levy of User Development Fee at Kempegowda International Airport, FIA stated that it is legally untenable.
- 25.39 On the issue of tariff proposal at Kempegowda International Airport, Air France stated that

"BIAL has submitted its Multi-Year Tariff Proposal for the FY 2013, 2014 and 2015 on both the single till and dual till approaches, leading to tremendous and unacceptable increases in landing charges, and passenger charges.

We are strongly opposed in particular to the 131% increase in landing charges for international flights and the 95% increase in parking charges from 1 October 2013 as that would represent a major shock to our operating costs at BLR. We urge a significantly more moderate increase in order to support more positive environment for airlines to operate in and to be able to grow services.

With regard the structure we consider this is not in line with ICAO policies, with discriminatory tariff setting between international and domestic operations. We object in particular for landing charges to the gap between domestic and

international flights, which not only remained, but would be widened with the proposal to increase less the domestic flights."

25.40 On the issue of tariff proposal, Blue Dart stated that

- "1. In the said Consultation Paper, AERA is proposing to consider final User Development Fee (UDF) for domestic and international departing passengers and proposes to determine the other charges in the tariff card, namely, Landing and Parking Charges, Common Infrastructure charges, Fixed Electricity Ground Power Charges and Fuel charges as proposed by Bengaluru International Airport Limited (BIAL). As per the Consultation 1st Paper, the Landing, Parking and Housing (LPH) charges for the Regulatory Period are proposed to increase as per submissions made by BIAL on April 12, 2013. We request you to please provide a copy of the said submission made by BIAL on April 12, 2013 to provide our views.
- 2. The said Consultation Paper broadly discusses only about the changes in UDF charges and other aeronautical charges are as per the submissions made by BIAL on April 12, 2013. Proposed increase of aeronautical charges should not be arbitrary in nature and should be linked to WPI Index and must have a scientifically tested formula. Further, increasing the already high charges will further cripple the financial position of the airlines operating at BIAL"

25.41 On the issue of tariff proposal at Kempegowda International Airport, British Airways stated that:

"Whilst on the subject of UDF British Airways supports the ICAO principle for price transparency and as such cannot see any justification for the considerable difference between the rates of UDF in respect of Domestic and International passengers. The current 1:4 ratio between the two charges is obviously horrendously unjustifiable as it is surely not reflective of actual costs, and as such is seen as discriminatory. These charges should be cost-based and therefore differential pricing, at least to this extent, is not justifiable.

British Airways is also extremely keen to ensure that any changes in the rate of UDF that is determined by you are 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 change in the tariff. The currently proposed implementation date for any new UDF of 1 October 2013 will

not allow airlines the appropriate time to properly collect the determined UDF from our customers.

Your Consultation Paper mentions that the Concession Agreement appears to have provided for capital financing through UDF, implying that UDF could be a prefinancing mechanism. Surely, if pre-financing (by getting passengers to pay upfront for use of facilities that do not exist yet) is to be a financing option, then there would not have been a need for privatisation of the airport which was meant to enable access to private sector funds. Secondly, if the UDF is meant to be a means of making up for revenue shortfall to allow the airport to achieve a fair rate of return, British Airways would support the IATA position of interpreting that particular clause in the Concession Agreement to mean that UDF would bring about returns which could then be ploughed back by the airport operator to finance future capital projects.

On the subject of unjustifiable, non-transparent or non-cost-reflective charges we also do not understand the substantial difference in landing charges between international and domestic flights and would request that these are harmonised to a level that is cost reflective of the actual costs involved in providing the necessary runway, taxiway and apron infrastructure. The differentiated landing charges are a gross contravention of ICAO principles and it is a highly unfair situation to have one airline subsidising another airline for the same usage of facilities merely because of the flights' origins."

25.42 On the issue of tariff proposal at Kempegowda International Airport, Cathay Airways stated that:

"The proposed increase in Aeronautical Tariff put forward by BIAL is astoundingly exorbitant. It is a very drastic increase of 131% in international landing, parking & housing charges. This will inevitably cause a very huge financial impact to the airlines. It is apparent that charge increase at such a drastic level will only serve to further dampen demand, compel airlines to review the commercial viability of the route, or choose other airports as transit stops. Airports play a very critical role in the economy of India. If there were further reduction of services and traffic, the consequence would be a move backward in the public good role of the airport thus affecting the economic development of India, lowering regional prosperity to the benefit of competing airports and cities.

It is noted that the aeronautical charges, be it User Development Fee and Landing Charge, are vastly different for domestic carriers and international carriers. We understand these charges are the same for the same group of users. However, in accordance with the principle of non-discriminatory application of charges, these charges and in particular the Landing Charge should be the same for both domestic and international carriers. Charges for using such services and facilities should be worked out on basis of the efforts related to their usage, not on basis of domestic or international operation, or stage length of the flights as it bears no correlation at all."

- 25.43 Further, Subsequent to the Stakeholder Consultation process, the Authority has received comments / views from various stakeholders in response to the material and the proposals presented by the Authority with respect to various elements of determination of aeronautical tariff in its CP 22. Stakeholders have also commented on Tariff Structure/ Rate Card in respect of Kempegowda International Airport, Bengaluru. These comments are presented below:
- 25.44 BPAC on the issue of Tariff Structure/ Rate Card stated that
 - "c. We also request Authority to eliminate possibilities of airport charges under different classifications and names such as UDF, PSF, and CIC etc. There should be only a single user charges for the passengers"
- 25.45 FIA on the issue of Tariff Structure/ Rate Card stated that

"Levy of User Development Fee at Kempegowda International Airport has no statutory basis

- 81. In the CP No.14/2013-14, Authority had proposed to allow UDF on embarking passengers based on the Clause 10.2 read with Clause (iii) of Schedule 6 of the Concession Agreement. The same is reproduced below for ease of reference:
- "(iii) User Development Fee (UDF) (domestic and international):

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

82. As per Paragraph No. 22.17 of the CP No. 22/2013-14, the Authority has indicated the financial impact of different regulatory approaches on the ARR as well as the resultant aeronautical tariffs and UDF. While calculating the UDF, the

Authority proposes to accept the Landing, Parking and Housing Charges (LPH) as submitted by BIAL which according to FIA is proposed to be increased ranging between 76% to 160%. As per Paragraph No. 22.18, the Authority is of view that 40%-Shared Revenue strikes a proper balance between the requirement of funds for the Capital Expansion and keeping the user charges at reasonable level. Hence, the Authority has proposed 40%-Shared Revenue Till approach for the purpose of tariff determination.

- 83. As per the Proposal No. 20 (a) (iv) of the CP No.22/2013-14, the Authority has calculated that the difference between the UDF collected under 40% Shared Revenue Till and Single Till during the remaining part of current control period is currently estimated at Rs. 160 crores. Further, as per Authority this represents the transfer of resources from the passengers to BIAL to facilitate the expansion of airport facilities by BIAL. Hence, the Authority has proposed to allow utilization of UDF towards capital expenditure for the airport expansion.
- 84. It is to be noted that Clause 6.8.5 of AERA Guidelines in no uncertain terms provides that UDF is a revenue enhancing measure to allow FRoR to the Airport Operator. It is not clear as on what basis the Authority has proposed to levy UDF at Kempegowda International Airport for the purpose of development and expansion work undertaken in the past. In a long term PPP project, it remains unclear as to how the Authority can allow the funding to be borne by the tax payers, whereas the equity holders are in control of the assets. It is imperative to note that inability to fund the project or any other reason for lack of funds cannot lead to the detriment of the consumers at large. It is well recognised regulatory position that the Regulator may disallow cases of utility where investments are prudent though recognising that such investments are their internal matter. It is for the utility to bear the brunt of such wrong investments and it cannot pass it on to consumers.
- 85. It may be noted that the Authority is allowing the tariff increase as proposed by BIAL and UDF. It may be clarified as to how, in the tariff determination exercise, is UDF coming into picture? If at all, there is a claim for UDF, BIAL should approach by way of a separate petition. It may be noted that neither AAI Act, Aircraft Act, nor AERA Act nowhere provide for provision of determination or levy of UDF on passengers. Authority neither in the CP No. 14/2013-14 nor in the CP No.22/2013-14 has deliberated upon the rationale for levying UDF. According to FIA, there is no need to levy UDF and burden the passengers unnecessarily.

- 86. It is submitted that Authority is bound under Section 13(4)(c) of the AERA Act to fully document and explain its decision. The Authority must explain the reason of allowing levy of UDF by BIAL.
- 87. It is noteworthy that the Hon'ble Supreme Court in the judgment of Consumer Online Foundation vs. Union of India & Others reported as (2011) 5 SCC 360 has categorically noted that there can be no contractual relationship between the passengers embarking at an airport and the airport operator with regard to the upgradation, expansion or development of the airport which is to be funded or financed by charges being levied on the passengers. Those passengers who embark at the airport after the airport is upgraded, expanded or developed will only avail the facilities and services of the upgraded, expanded and developed airport. Similarly, there can be no contractual relationship between the airport operator and passengers embarking at an airport for establishment of a new airport in lieu of the existing airport or establishment of a private airport in lieu of the existing airport. Thus, it is submitted that in the absence of such contractual relationship, the liability of the embarking passengers to pay UDF has to be based on a statutory provision. At this juncture, it is to be noted that UDF has no statutory foundation and at Kempegowda International Airport has been levied and further proposed to be levied on the basis of Concession Agreement.
- 88. In fact, the UDF which is being levied at the Kempegowda International Airport towards development and expansion of the airport facilities is in the nature of cess or tax. It is settled position of law that any levy or compulsory exaction which is in the nature of tax/cess 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 submitted 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.
- 89. 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 (BIAL in the present case). 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 traveller

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."

25.46 FIA has also stated that:

"104.It is submitted that under the competition law, an enterprise is under an obligation to extend its essential infrastructural facility at a reasonable cost. BIAL's control over Kempegowda International Airport renders it a monopolist having control over 'essential infrastructural facility' of the airport in the city Bangalore. The requirement of access to essential facility was first articulated by the Supreme Court of United States of America in United States vs. Terminal Railroad Assn, reported as 224 U.S. 383 (1912) . Under the principles of access to essential facility, the following four factors must be proven:-

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

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

106. It is submitted that such enormous hike in tariff by a monopolist BIAL may be viewed as 'abuse of its dominance' and accordingly liable under section 4 of the Competition Act, 2002 ("Competition Act"). 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.

25.47 IATA on the issue of Tariff Structure/ Rate Card stated that

"In line with IATA's overall position, IATA supports a tariff computation under single till. Table 63 of CP No. 22/2013-14 clearly shows that the use of hybrid till would not be in the interest of passengers. Single till better serves the interests of passengers while ensuring that the airport gets its fair rate of return.

IATA is strongly opposed to the 137% increase in landing fee for international flights as that would present a significant shock to airlines' operating costs. IATA urges a significantly more moderate increase, if need be, that will support a cost environment more conducive for airlines to operate in and be able to grow services. From international experience, a 10% increase in landing fee would already be considered as at the high end.

IATA reiterates its rejection of a differential in landing fee between international and domestic flights as this is in gross contravention of ICAO principles and a highly unfair situation to have one airline subsidizing another airline for the same usage of facilities on account of the flights' origins.

IATA notes that AERA has proposed to use a ratio of 4:1 for setting international and domestic UDF in perpetuation of the unfair ratio that exists in the current UDF split. The airport operator itself had proposed a more reasonable ratio of 1:1.6 in its application to the Ministry in 2008. As mentioned in IATA's submission in the Mumbai tariff determination, MIAL's proposal of 1:2 converges towards what would be a fairer ratio. IATA therefore urges a more equitable ratio of 1:2 or lower to be applied at BLR.

IATA agrees with the Authority's proposal to merge the Common Infrastructure Charge with UDF. This will simplify the rate card"

25.48 Lufthansa Cargo has in its comments on the tariff card stated that:

"We are concerned about proposed increase in landing charges for our technical and transit cargo flights which at times carries No load or as low as 10-20 tons of cargo and has a direct impact on cost analysis of that particular flight. We therefore would like you to consider following points.

- 1) Transit cargo flights are different from Turn around flight and Technical flight.
- 2) As Transit flight are sharing flights with other airports the load depends on space allocated to BLR airport.

- 3) In case of transit flight if load is restricted to 10 tons or so, it is not economical to operate freighter with such a low load as per kg costs becomes very high and not viable to operate flight.
- 4) Similar way Technical flights for fuel or other reasons do not carry any load so it should be kept under separate category.

Under these circumstances, we request you to kindly exclude considering increase of landing charges for cargo flights as it will defeat our purpose to create BLR as cargo HUB for South India and India as a whole.

We would also like to share with you the incentive scheme introduced by Changi Airport for cargo flights with introduction of 50% rebate for entire 2013 and 30% during 1st half of 2014. We kindly request you to consider such scheme at all the airports in India to develop cargo HUB concept. For your information such a scheme was introduced in Mar13 on fast track when SIN realised a dip of just 3.2% in 2012 and continue decline in 2013 by 5%."

25.49 Cathay Pacific has stated that:

"It is noted that the aeronautical charges, be it User Development fee and Landing Charge are vastly different for domestic carriers and international carriers. We understand these charges are the same for the same group of users. However, in accordance with the principle of non-discriminatory application of charges, these charges and in particular the Landing Charge should be the same for both domestic and international carriers. Charges for using such services and facilities should be worked out on basis of the efforts related to their usage, not on basis of domestic or international operation or stage length of the flights as it bears no correlation at all.

25.50 Lufthansa Airlines has stated that:

"ICT charges namely CUTE and BRS – have so far since airport opening been part of the UDF and is part of the CIC component of UDF. This has been confirmed to all airlines by BIAL at the time of airport opening. BIAL now proposes to take out these charges from UDF and charge them separately (USD 0.9 per pax and USD 0.35 per pax). These should be not be now taken out from UDF and charged separately.

UDF is a revenue enhancing measure to enable the airport operator to earn a fair rate of return. There is no mention of UDF being used as a pre-financing mechanism. It is levied by the authority under the same provision as development fees.

We strongly oppose the 137% increase in landing fee for international flights as this would affect the sustainability of airlines in such difficult times and significantly increase the operating costs.

There is so much information that authority still awaits from BIAL and proposes to consider at the time of passing the order ex Aerobridge Charges. There will be no transparency and stakeholders will not be consulted for the same."

25.51 FIA has summarised its various arguments and stated that:

"110. It is striking that no detailed tariff model has been made available in both the CP No. 14/2013-14 and CP No.22/2013-14. Absence of adequate information makes it difficult to verify the proposals made by the Authority. Following are some instances where information is not adequately provided or discrepancies are noticeable:

- (a) Cost of debt: The CP does not provide the breakup of the rupee term loan and ECB loan over the historic period and forecast period to calculate the actual cost of debt.
- (c) Key Operating expenses: The Authority has not provided the details of the basis which operating expenses like Personnel expenses, Operation & Maintenance, Concession Fees and OMSA fees has been computed and considered for determining ARR.
- (d) Non-aeronautical Revenue items: No details have been provided for computing the CPI base increase under select Non Aero revenue heads in both CP No.14/2013-14 and CP No.22/2013-14.
- (e) Delay in tariff fixation burdening passengers: There is an inordinate delay in tariff fixation which has diminished the effective Control Period to 24 months from 60 months leading to burdening of future passengers with past period losses.
- 111. In addition to the above submissions, it is respectfully submitted that airlines and consequently, passengers will have to bear the burden of increase in Aeronautical Tariffs as proposed by BIAL and the Authority. It is noteworthy that Airlines and passengers must not be burdened with any tariff to be collected to fund the capital investments of a private concessionaire.
- 112. The Authority is aware that airlines have been going through difficult times with high prices of crude oil. Increase in aeronautical tariff as proposed by the Authority will erode airlines capabilities to increase fares to sustain its operational capabilities. It is submitted that it would be unfair to allow such increase to fund the gap of the private airport operator especially after the privatization has taken place. Any

additional funding gap should be bridged through debt-financing, subsidy by Government, or additional equity. It seems that increase in aeronautical tariff is a means to avoid any of the said options to burden the passengers.

113. It is pertinent to note that the Authority must also take into account the difficulties being faced by the airlines and passengers before granting levies to the airport operators. Considering the fragile financials of the Airlines, UDF will inhibit Airlines' ability to raise fares. As Airlines have suffered losses significantly in the last two years due to high ATF and recent depreciation of the rupee, there is a need for Airlines to raise fares to recoup the past losses, rather than fund the Airport development program which is the responsibility of the airport operator. BIAL by way of its present proposal is acting to the detriment to airlines and the passengers.

114. Annual concession fee is being paid by the BIAL to GoI as a part of its costs which it willingly agreed to incur to win the concession under a competitive bidding process. As such, this would have been factored in the bid financial model and must not be a source of additional risk or financial burden being transferred to users. Revenue that is earned by the airport has already factored in it a fair return on investment.

115. FIA reiterates its submission that there is a critical relationship between passenger traffic and growth of the civil aviation sector. What would benefit both the airport operator as well as the airlines is a reasonable and transparent passenger tariff, both direct and indirect — since then the airlines will be able to attract more passengers and the airports would benefit both through higher collection of aeronautical charges as also enhanced non-aeronautical revenue at the airports. In FIA's view, the airport should be regarded as a single business as its aeronautical and non-aeronautical revenues are intertwined. In this backdrop, FIA endorses the "Single Till" as the basis for determining airport revenue, without any carve-outs whatsoever. It is submitted that the Shared Till Model adopted by the Authority in the CP No.22/2013-14 ought to be discarded. The Authority must bear in mind the interest of airlines and the passengers which is of paramount importance for the aviation industry.

116. It is submitted that order passed by an administrative authority, affecting the rights of parties, must be a speaking order supported with reasons. It is well settled position of law that:

(a) Reasons ought to be recorded even by a quasi-judicial authority.

- (b) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (c) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (d) Insistence on reason is a requirement for both accountability and transparency.
- (e) Reasons in support of decisions must be cogent, clear and succinct.
- (f) A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.
- (g) Requirement of giving reasons is virtually a part of 'Due Process'.
- 117. In view of the foregoing submissions, it is submitted that the Authority ought to pass reasoned order on issues inter-alia like 'bifurcation of assets and expenditure' 'allowance of operating expenditure', 'allowance of future capital expenditure', etc.
- 118. In view of the above, it is respectfully prayed that the Authority keeps in mind the interests of the airlines and civil aviation sector before finalizing any decisions regarding increase in Aeronautical Tariffs and other charges. BIAL's proposal, if accepted, will have cascading impact on the airlines and consequently, on the civil aviation industry.

d. BIAL's response to Stakeholder Comments on Issues pertaining to Tariff Structure/ Rate Card

- 25.52 Subsequent to the receipt of comments from the Stakeholders on the CP 14, the Authority forwarded these comments to BIAL seeking its response to these comments. BIAL has provided responses to the Stakeholders' comments, which are presented below:
- 25.53 On IATA, British Airways and Cathay Pacific comment on differential tariff, BIAL has stated that:

"The differentiation in rates is a worldwide phenomenon and almost all airports in world particularly the European and Australian airports have a differential pricing amongst domestic and international passengers because of the differentiation in service and time spent at airport."

25.54 On upfront collection commented by British Airways, BIAL has commented that:

"BIAL submits that the AERA Act mandates that the tariff determination exercise of a
particular airport has to give due consideration for the viable operations of the airport

as well as timely investment in the airport facilities. BIAL is the fastest growing airport in the country and is continuously investing in expansion of the airport. Hence 30% SRT as proposed by BIAL needs to be considered by AERA. This will assuage cash flow problems in terms of operational and future expansion requirements."

25.55 On IATA, Lufthansa Airlines and Cathay Pacific comment on substantial increase in charges, BIAL has stated that:

"BIAL would like to mention that there has not been any increase in landing and parking charges in almost last 10 years and even if we go by inflationary increase the current increase is justified."

25.56 On Lufthasa cargo comment on tariff, BIAL has commented that:

"BIAL submits that at present there is no differential tariff for technical and transit cargo flights in light of the maturity and volume of business. Further BIAL is focusing on creating additional infrastructure such as perishable Cargo Centre etc. so as to enable further cargo business. Hence, BIAL would like to continue with the present system of cargo charges and has accordingly submitted draft ATPs. BIAL is also of the view that the above recommendations can be relooked into by AERA while determining tariffs for second control period."

25.57 On ICT and UDF Revenues commented by Lufthansa Airlines, BIAL has commented that:

"Details of ICT Charges have been submitted to the AERA. AERA has considered ICT revenue as aeronautical revenue and consequently as part of ARR in CP 22.

User development fee has been defined in the Concession Agreement to read as "means a fee collected from embarking passengers for the provision of passenger amenities, services and facilities and will be used for the development, management, maintenance, operation and expansion of facilities at the Airport." UDF should be construed such that the concessions provided in the Concession Agreement and provisions of AERA Act are honoured."

- 25.58 On Aerobridge charge details not yet provided by BIAL, BIAL has commented that all the required details have been submitted to AERA.
- 25.59 On FIA's comment on legal tenability of charging of UDF, BIAL has commented that:

"AERA has power to levy user development fee in view of Section 13(1)(b) of the Act read with Rule 89 of the Aircraft Rules, 1937. AERA has already considered this issue in paragraphs 3.50 to 3.57 of the Hyderabad Tariff Order. The comments of FIA therefore, arise from a misconception of legal position."

25.60 On FIA's comment that BIAL is a monopoly, BIAL has stated that:

"BIAL submits that on account of competition offered by airports in the vicinity coupled with alternative means of transport and competition in other segments of the airport business by other service providers, BIAL cannot be considered as a monopoly. BIAL submits that neither the Competition Act nor the principles pertaining to monopolies are applicable to BIAL."

25.61 On FIA's general comments, BIAL has commented that:

"Details have been furnished by BIAL to AERA in the prescribed forms and formats within prescribed timelines. BIAL has also submitted detailed business plan for 10 years and the same has been examined by AERA.

As submitted by FIA, airlines propose to recoup alleged losses by increase of fares. The Act likewise permits an increase in aeronautical tariffs to meet the needs of the airport.

BIAL reiterates its request for a 30% SRT model as a workable solution to substantiate the cash flow requirement as indicated in its letter dated 30 July 2013 and in response to CP 22. BIAL without prejudice to its contentions regarding dual till, submits that the 30% SRT model will considerably (but not completely) help BIAL tide over its cash flow and expansion needs and will be in the interest of aviation sector."

e. BIAL's own comments on Issues pertaining to Tariff Structure/Rate Card

25.62 On the issue of Tariff Structure / Rate Card, BIAL in response to Authority's Proposals in CP 14 and CP 22 has stated as under

"BIAL requests Authority to consider the details pertaining to variable tariff proposal as submitted vide its letter dated January 30, 2014 and consider the same while determining the tariff structure. BIAL would like to underline the importance of variable tariffs and most importantly of peak/non-peak tariffs that would clearly help to better utilize the built airport infrastructure and thus also defer infrastructure investments.

CGF SERVICES

With respect to Authority's proposal to consider CGF Services including into plane services as aeronautical services, BIAL reiterates its submissions as under Proposal Nos. 12 and 13.

LANDING CHARGES FOR < 80 SEATER AIRCRAFTS

BIAL submits that it be permitted to levy charges on aircrafts with capacity of less than 80 seats. BIAL submits that:

Chennai airport has been permitted, in its final tariff order (Order No.38/2012-13), to levy charges of Rs.5,000/- as landing fees for all types of aircraft/ helicopter flights;

BIAL respectfully submits that a large number of small aircraft with less than 80 passengers carrying capacity use the Kempegowda International Airport. BIAL therefore requests Authority to permit BIAL to levy charges of Rs.5000/- on such aircraft and provide BIAL a level playing field."

f. Authority's Examination of Stakeholder Comments (including comments from BIAL) on Issues pertaining to Tariff Structure/ Rate Card

- 25.63 The Authority has carefully considered the comments made by the stakeholders on Tariff Structure/ Rate Card in respect of BIAL. The Authority's analysis of these comments is presented below:
- 25.64 The Authority has noted the opposition from IATA, Air France, Blue Dart and Cathay Pacific on the increase in landing charges. The Authority notes that the landing charges have not been increased for a long time since 2001 (except for a 10% increase in 2009) and hence would now need an appropriate increase. The Authority also notes that the landing charges proposed by BIAL are broadly comparable with other International Airports.
- The Authority also notes IATA's rejection of differential in landing fee between international and domestic flights which is in contravention to ICAO principles. Similar views have been expressed by Air France, British Airways and Cathay Pacific. The Authority notes that such differentiation has been existing for a long time much before the Authority had come into existence. The Authority does not wish to review this position during the current tariff determination in respect of Bengaluru International Airport.
- The Authority notes that UDF split of 4:1 has been considered as an unfair ratio by IATA and British Airways. The Authority notes that this UDF ratio had been first approved in 2008 for International passengers and in 2009 for domestic passengers by MoCA and the Authority does not find any reason to review the same during the current control period. The

Authority had consistently asked for evidence based views of the Stakeholders regarding the ratio of Domestic Vs International UDF. The Authority is also aware that IATA has broadly supported a 2:1 Ratio. However, no consensus has been arrived on this issue as yet. Apart from this, the Authority has also reviewed BIAL's responses on this issue that the International passengers have longer dwell time and additional facilities like Duty Free, Immigration and Customs etc.

- 25.67 The Authority noted AAI's comment that a policy needs to be framed regarding % of revenue to be recovered from passenger through UDF and amount of revenue to be recovered from airline through airport charges. The Authority notes that UDF is regarded as topping up measure to enable the Airport Operator to get a fair rate of return on investments. Assessment is therefore made of reasonable increases in Landing, Parking, Housing charges as well as revenues from other Aeronautical Services like Cargo, Ground Handling, Fuel Through put etc. Apart from the charges for Aeronautical Services, other important elements like Non-Aeronautical revenues etc. also need to be factored. The Authority does not therefore feel that it would be possible to fix any ex-ante percentage between the recovery through UDF and from other Airport Charges.
- 25.68 The Authority notes Blue Dart's comment that the proposed increase in aeronautical charges should not be arbitrary in nature and should be linked to WPI Index and must have a scientifically tested formula. The Authority notes that the framework of tariff determination as detailed in Airport Order and Airport Guidelines provide detailed methodology for determination of Aeronautical tariffs.
- 25.69 The Authority noted British Airways' comment that it would be usual to have a minimum of two months' notice of a change in the tariff. The Authority having considered the balance period of the current control period, fixed the effective date as 1st July 2014. The Authority expects all the Airlines to adhere to the said effective date.
- The Authority notes BPAC's comment to "eliminate possibilities of airport charges under different classifications and names such as UDF, PSF, CIC etc. There should be only a single user charges for the passengers". The Authority has also, in similar lines considered only one passenger charge in the tariffs decided by it, by merging the PSF (Facilitation Component) and the CIC into UDF. As far as PSF (Security Component) is concerned, it has different requirements and corresponding charges to be levied on the passengers.
- 25.71 The Authority noted FIA's comment that the levy of User development fee has no

statutory basis. The Authority notes that FIA has stated this in the context of AERA Guidelines providing that the UDF is a revenue enhancing measure to allow FROR to the Airport Operator. The Authority has already provided its analysis on the reason for carrying out computations under 40% Shared Revenue Till together with manner of adjustment and truing up at the end of the current control period (Refer Para 4.167 above and Para 4.170 above).

25.72 The Authority also notes FIA's comment that

"If at all, there is a claim for UDF, BIAL should approach by way of a separate petition. It may be noted that neither AAI Act, Aircraft Act, nor AERA Act nowhere provide for provision of determination or levy of UDF on passengers. Authority neither in the CP No. 14/2013-14 nor in the CP No.22/2013-14 has deliberated upon the rationale for levying UDF. According to FIA, there is no need to levy UDF and burden the passengers unnecessarily.

- 86. It is submitted that Authority is bound under Section 13(4)(c) of the AERA Act to fully document and explain its decision. The Authority must explain the reason of allowing levy of UDF by BIAL.
- 87. It is noteworthy that the Hon'ble Supreme Court in the judgment of Consumer Online Foundation vs. Union of India & Others reported as (2011) 5 SCC 360 has categorically noted that there can be no contractual relationship between the passengers embarking at an airport and the airport operator with regard to the upgradation, expansion or development of the airport which is to be funded or financed by charges being levied on the passengers. Those passengers who embark at the airport after the airport is upgraded, expanded or developed will only avail the facilities and services of the upgraded, expanded and developed airport. Similarly, there can be no contractual relationship between the airport operator and passengers embarking at an airport for establishment of a new airport in lieu of the existing airport or establishment of a private airport in lieu of the existing airport. Thus, it is submitted that in the absence of such contractual relationship, the liability of the embarking passengers to pay UDF has to be based on a statutory provision. At this juncture, it is to be noted that UDF has no statutory foundation and at Kempegowda International Airport has been levied and further proposed to be levied on the basis of Concession Agreement.
- 88. In fact, the UDF which is being levied at the Kempegowda International Airport towards development and expansion of the airport facilities is in the nature

of cess or tax. It is settled position of law that any levy or compulsory exaction which is in the nature of tax/cess 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 submitted 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."

- 25.73 The Authority notes that the computation of ARR involves different building blocks. Some impinge directly on the airlines like Landing, Parking and Housing charges whereas some impinge directly on the passengers (UDF and PSF (Security Component)). These along with other items of building block like Non-Aeronautical revenue, actual tax paid, depreciation etc. make up the total ARR. The UDF is charged in accordance with the provisions of Rule 89 of Aircraft Rules, 1937 (as amended in October 2009 to reflect the determination of UDF for major airports, by AERA) read with the corresponding Section 13(1)(b) of the AERA Act.
- The Authority has noted Lufthansa Cargo's comment that "proposed increase in landing charges for our technical and transit cargo flights which at times carries no load or as low as 10-20 tons of cargo and has a direct impact on cost analysis of that particular flight." The Authority notes that the rates of charges for landing, parking and housing are based on Maximum Take Off Weight of the particular Aircraft and not the actual weight that the Aircraft may carry in a given flight.
- 25.75 The Authority has also noted BIAL's submissions regarding the proposed collection of CUTE, CUSS and BRS charges. (Detailed submission made by BIAL referred in Para 21.64 above). The Authority had provided its analysis on considering the ICT Charges as Aeronautical Revenues.
- 25.76 The Authority has received the following submission from BIAL on 13th May 2014 relating to CUTE, CUSS, and BRS Charges.

"BIAL implementing the new CIC (consisting of CUTE, CUSS & BRS) charges w.e.f 1st July 2014 through a concessionaire. The charges that were agreed upon for imposing are USD 1.15 per departing pax and BIAL revenue share will be 45% of USD 1.25 per departing pax.

25.77 The Authority accordingly decides to consider this additional revenue element as part of ICT Charges. In addition the Authority also notes that the nature of the services of

CUTE, CUSS and BRS that are related to passenger service are included in the "Ground Handling" according to entry 1.2 in Schedule II in AAI Ground Handling Regulations, 2007 read with AIC 03/2010 dated 2nd June 2010 (Annexure B).

25.78 The Authority had discussions with BIAL on 17th April 2014 and 23rd April 2014. During these discussions, the Authority was informed that BIAL does not propose to levy any Aerobridge charges. The Authority accordingly decides not to determine any Aerobridge charges.

The issue of Variable Tariff was also adumbrated in CP22 (Refer Para 25.32 above). Thereafter, the Authority has noted further submissions from BIAL on the Variable Tariff plan made as part of BIAL's submission on 30th January 2014 as well as further discussions with BIAL's representatives. In these discussions the following details transpired.

25.80 The Authority notes that BIAL's proposal on Variable Tariff Plan provides different tariff for:

25.80.1 New flights on existing routes

25.80.2 New Entrant

25.80.3 New Route

25.80.4 Home Carrier

BIAL informed the Authority that some of the International Airports have introduced tariff plans having similar characteristics to the Variable tariff plans now proposed by BIAL. According to BIAL, introducing Variable Tariff plan would spur traffic growth and one of the objectives is that it "Helps de-peak the existing peaks and distribute the demand commensurate with un-used capacity". The Authority also noted that BIAL has stated that BIAL is unable to estimate the effect on the total quantum of the collection of Landing Charges after introduction of the Variable Tariff Plan. BIAL had hence requested the Authority to true up the Landing, Parking and Housing charges based on actual collections at the time of determination of Aeronautical Tariffs for the next control period (FY 2016 – 2021).

The Authority has noted that introduction of Variable Tariff plan is a new feature proposed by BIAL for the first time in India. The Authority notes that such Variable Tariff plans, if successful, can result in flattening the load curve and make better use of Infrastructure. The Authority has thus decided to support this proposal for the current control period. The Authority has therefore decided to approve the same as indicated in the Tariff card. BIAL has indicated that BIAL has discontinued the practice of discounts with effect from 1st April 2014.

The Authority has already decided to true up the Landing, Parking and Housing charges.

25.83 In its latest submissions received by the Authority on 3rd June 2014, BIAL has requested the Authority that "in the computation of tariffs, the option of equated UDF tariffs over remaining tariff period may be suitably considered." The suggestion of BIAL would make UDF uniform for the balance period of the current control period. The Authority's computation however, has been to balance each year, the requirement of ARR based on the building blocks and the revenues to match the ARR, for the respective year. WPI is factored in the next year's total Aeronautical Revenue requirement and tariff is computed accordingly. The Authority notes that BIAL's latest submission also indicates Landing, Parking and Housing rates for 2015-16 different from those suggested for 2014-15. On careful consideration of BIAL's suggestion of equating the UDF, on balance, the Authority does not propose to make UDF uniform for the balance period of the current control period. The Authority also notes that this does not appear to have any problems of implementation because the next year's tariffs viz 2015-16 (Aeronautical Tariffs – Landing, Parking and Housing as well as UDF) would be known from the effective date of the new tariffs, decided to be 1st July 2014. The Authority however proposes to revisit the issue of uniform UDF for the entire 5 years of the next control period at the time of tariff determination for the same.

The Authority has noted that, presently, PSF being collected at KempeGowda International Airport, Bangalore comprises two components namely PSF Security component (SC) — Rs. 130 per embarking passenger and PSF Facilitation Component (FC) - Rs. 77 per embarking passenger. The Authority decides 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).

25.85 The Authority has received the revised Annual Tariff Plan including the Variable Tariff Plan from BIAL on 3rd June 2014.

To summarise, revenues from the following charges have been decided as part of the Aeronautical Revenues (a) Landing, Parking and Housing (b) Fuel Throughput Charge (c) ICT Revenues including additional levies of CUTE, CUSS and BRS (d) Revenues (rentals, revenue share etc.) accruing to BIAL on account of the following aeronautical services concessioned out to third party concessionaires (i) Fuel Into-plane services (ii) Cargo Services (iii) Ground Handling services (e) Aerobridge charge (already collected by BIAL from 2011-12

to 2013-14) (f) User Development Fee.

25.87 Based on the changes to other building blocks and considering the implementation date of tariffs as effective 1st July 2014, the recomputed UDF as per the Authority was as given below:

Table 110: Summary of UDF computed based on Authority's decisions, keeping charges other than UDF as per BIAL's tariff proposal (w.e.f 1st July 2014)

	Current PSF		Total current	Recomputed UDF Rates under Single Till and 40% Shared Revenue Till as per Authority*			
Type of Passenger	UDF	(FC)**	Pax charge	2014-15		2015-16	
				Single	40%	Single	40%
Domestic (Bs.)	221.4	77	200.4	279.70	341.98	257.17	306.47
Domestic (Rs.)	231.4	77	308.4	Say 280	Say 342	Say 257	Say 306
International (Ds.)	052.2	77	1020.2	1118.82	1367.92	1028.69	1225.88
International (Rs.)	952.3 77	1029.3	Say 1119	Say 1368	Say 1029	Say 1226	

^{*} Proposed UDF levy is w.e.f. 1st July 2014.

25.88 Based on the above, the table of Aeronautical Revenues considered by the Authority under various heads was as detailed below:

Table 111: Component wise Contribution to Aeronautical Revenues - MYTO - Rs. Crore

Nature of Revenue	Actual			Projections for 2014-15 and 2015-16			
	2011- 12	2012- 13	2013- 14	Single Till		40% Shared Revenue Till	
				2014-15	2015-16	2014-15	2015-16
Passenger Service Fee	43.85	40.90	43.66	12.12	0.00	12.12	0.00
Landing Fee	100.44	101.81	107.18	214.31	306.71	214.31	306.71
Parking / Housing Fee	2.97	3.50	3.43	7.78	10.78	7.78	10.78
User Development Fee	226.73	218.30	231.47	303.58	327.87	356.87	390.72
Fuel Farm including into-plane	51.46	50.10	52.46	45.15	45.60	45.15	45.60
Cargo	28.41	27.10	29.42	29.50	29.60	29.50	29.60
Ground Handling	0.60	0.90	2.01	0.56	0.00	0.56	0.00
Aerobridge Charge	8.95	7.90	6.76	1.88	0.00	1.88	0.00
ICT Revenue	11.82	12.60	11.80	30.71	40.81	30.71	40.81
Total	475.23	463.11	488.19	645.58	761.37	698.87	824.22
Collections detailed as per ARR table	475.23	463.11	488.19	645.58	761.37	698.87	824.22

Details for 2011-12 and 2012-13 is as per the break-up of audited Financial Statements. Details for 2013-14 are based on unaudited financials

Cargo, Fuel Farm/ Fuel Into plane, Ground handling, ICT Revenues have been considered for 2014-15 and 2015-16 as per the estimate submitted by BIAL as part of MYTP 2013. BIAL has indicated that the revenue projections for 2014-15 and 2015-16 are taken from the tariff submissions to the Authority by the service providers of CGF.

25.89 Pictorial representation of different revenue components that go into ARR for the

^{**} FC – Facilitation Component of Passenger Service Fee. For recomputed UDF rates by the Authority, this component of Rs. 77 is included or merged into proposed UDF.

current control period is given in Figure 6. Apart from other revenue components like Landing charges, Revenue from CGF services etc. major contribution (53.2% of ARR) is seen from charges that directly impinge on the passengers in the form of UDF as well as Passenger Service Fee (Facilitation component). The Figure 6 also shows the composition of UDF broken down into (a) what would have been the UDF under Single Till, (b) Additional UDF on account of computations made under 40% SRT and (c) PSF (Facilitation Component) that is expected to be collected upto 30th June 2014 after which the same is merged with UDF.

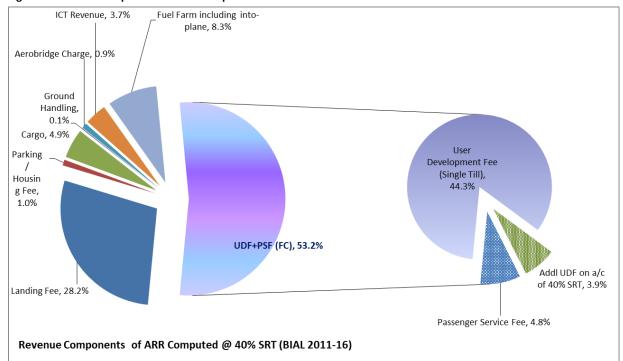


Figure 6: Revenue components of ARR computed at 40% SRT - BIAL - 2011-16

25.90 From Table 111, it could be seen that the total collection of UDF for 2014-15 and 2015-16 as per computations made under 40% Shared Revenue Till is higher than that under Single Till by Rs. 116.14 crores. As indicated in Decision No. 1 above, this amount would be adjusted from RAB at the beginning of the next control period.

Decision No. 20. Tariff Structure / Rate Card

- a. The Authority decides 1st July 2014 as the effective date for the new tariff structure and decides:
 - To consider the multi-year ATP(s) for 2014-15 and 2015-16 submitted by BIAL at the MYTP stage itself.
 - ii. To merge the Facilitation component of PSF into the UDF w.e.f 1st July 2014.

 Passenger Service Fee will now comprise only of the security component of Rs. 130/-

- per embarking passenger with effect from 1st July 2014 and there will no facilitation component in the PSF.
- iii. To consider ICT Revenues (that includes, inter alia, CUTE, CUSS, BRS) as Aeronautical Revenues (Refer Decision No. 17 a i above) and take into the calculations the quantum of revenues from the services as per the estimate submitted by BIAL.
- iv. To consider revenues (rentals, revenue share etc.) accruing to BIAL on account of the following aeronautical services concessioned out to third party concessionaires
 (i) Fuel Into-plane services (ii) Cargo Services (iii) Ground Handling services as Aeronautical Revenues.
- v. To note that revenue from Fuel Throughput Charge is considered as Aeronautical Revenue and to retain the charge at the current level of Rs. 1067/- per kilolitre for the current control period.
- vi. To determine Landing, Parking and Housing charges, as per the Variable Tariff Plan as proposed by BIAL in ATP (no landing charges for Aircrafts less than 80 seater. Refer Para 25.25 above).
- vii. To determine Aerobridge charges as NIL with effect from 1st July 2014.
- viii. To consider levy of UDF only on departing passengers (both domestic and international).
- ix. To compute UDF under 40% Shared Revenue Till both for domestic and International passengers as per Table 110 (effective from 1st July 2014) noting that this results in estimated higher UDF collection of Rs. 116 crore, as compared to Single Till and to further make adjustments as indicated in Decision No. 1 above.
- x. Truing up of ARR as per Decision No. 1 above.

26 Matters relating to quality of service

a. BIAL's Submission on Quality of service

- 26.1 BIAL had submitted the Objective and Subjective Measurement parameters as part of its MYTP 2012.
- 26.2 BIAL had also made the following submissions:

"19. Service Quality Parameters

Authority's Approach: In clause 12 of Order No.13 and clauses 6.11.3, 6.14, Appendices II, III and IV, the Authority has proposed to apply objective and subjective service quality parameters to the airport operator. The Authority has laid down service quality parameters and proposes to impose a penalty / rebate if the airport operators fail to keep up to the prescribed quality parameters. Appendix 2 to Direction No.5 contains objective service quality parameters such as maximum queuing time for Check-In, availability of baggage trolleys, parking bays, etc. Appendix 3 to Direction No.5 sets out the subjective service quality parameter, which is the rating on the ACI ASQ survey. Appendix 3 further sets out the criteria which are considered in arriving at the ACI ASQ survey which includes waiting time in check-in queue / line, availability of baggage carts / trolley, availability of parking facilities, value for money of parking facilities etc.

Observations: As per the AERA Act, only those service standards, which are set by the Central Government, can be implemented by the Authority. As per the Act, only those service quality standards that are set by the Central Government can be taken into account for determination of tariffs. Therefore, the Authority should not have proceeded to set service quality parameters, either objective or subjective. The Authority's proposals include penalizing the airport operator for non-compliance with service quality parameters, which hinges on regulating service quality and which is contrary to the mandates of Section 13 of the Act.

Additionally, a number of service quality prescriptions are dependent on the quality of service provided by third parties, over which the airport operator has little or no control. To illustrate, the first objective service quality parameter pertains to waiting time for security check. Security checking is undertaken by Central Industrial Security Force. The objective of the CISF personnel is to ensure safety of airport users / premises by thoroughly frisking passengers during the check in process. This frisking is also conducted to ensure that there is no transportation of contraband or other

impermissible articles. Therefore, the primary objective of the CISF personnel is not to ensure a quick turnaround time per passenger but to detect and prevent illegalities / unlawful activities. Thus, waiting time for security check is not a relevant factor for CISF personnel. In such circumstances, to impose on BIAL / airport operator conditions with respect to security check is unfair. Likewise, in the case of immigration check in waiting time, the primary objective of immigration department personnel is to screen passengers for appropriateness / legality of documents and baggage. And BIAL / airport operator has little or no control over officials who are in charge of immigration counters.

Additionally, there is a duplication of service quality standards in Appendix 2 and Appendix 3, such as, service quality standards with respect to waiting time in checkin queue / line, availability of baggage carts / trolley. Effectively, the airport operator is proposed to be penalized twice. To illustrate, if the airport operator is not able to meet the proposed service quality standard in relation to waiting time for check—in, the airport operator will suffer a penalty / rebate of 0.25% under Appendix 2 and the same will also be factored in for calculation of ASCI ASQ penalty / rebate of 2.5%.

27.3. Also, if the airport operator incurs additional expenses that have not been forecast, the Authority has proposed that it shall not reimburse such additional expenses. In maintaining service quality, it is but likely that, due to changed circumstances, the extent and nature of expenses that may be incurred will change. Therefore, it would be unfair to treat expenses towards maintaining service quality as "controllable' and not provide for reimbursement of the same.

It is also observed that, whilst the Authority has proposed to separately determine tariffs for providers of cargo, ground handling and fuel farm services, quality parameters are imposed on the airport operator alone.

Submissions: It is submitted that the Authority need to reconsider its approach with respect to laying down service quality parameters, either subjective or objective. The Authority need not prescribe such parameters and may await standards that may be set by the Central Government. Without prejudice, the Authority need to treat expenses incurred for complying with subjective and objective service quality parameters as uncontrollable and provide error correction / truing up.

b. Authority's examination of BIAL's Submission on Quality of service

26.3 The Authority's examination and proposal placed for stakeholders' consultation

on matters relating to BIAL's submission on Quality of Service in CP 14 is as under:

26.4 The Authority had carefully considered BIAL's submission regarding the Service Quality Parameter. The Authority is required to, in terms of clause (d) of section 13(1), monitor the set performance standards relating to quality, continuity, and reliability of service as may be specified by the Central Government or any Authority authorized by it in this behalf. Therefore, in the scheme of the Act, the Authority had 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 related to determinate of tariff whereas another relates to monitoring of set performance standards. The framework of service quality provided for in the guidelines had been stipulated by the Authority for due discharge of its tariff determination function. At the consultation stage, BIAL had made a case that the concession agreement provided that penalties related to service quality are to be collected as liquidated damages and to be routed to airport development fund. It was noted that penalties by way of liquidated damages are contractual requirements of the concession agreement whereas fixation of tariffs commensurate with the quality of service was a statutory requirement. Therefore, the system of reducing the tariff in case of default in quality of service is a system which implements the mandate of the Act. In so far as the issue of incentive for quality of service more than those prescribed was concerned, the Authority stated that airport planning is with reference to the level of service which the airport proposes to provide. The capital expenditure is also incurred accordingly. In case despite incurring the requisite capital expenditure, the airport operator was unable to provide the commensurate quality of service it is only fair that such operator should be penalized by way of reduced tariff. However, if the operator is able to provide better quality of service with the same capital expenditure due to improved efficiency, this would be a welcome circumstance and the Authority believed that the Airport operator should strive for it. It would also be relevant to submit that during the Stakeholders' Consultation, the Government's view was not in favour of giving incentives for this purpose.

The Authority in its Airport Order had ordered that while it will discharge its other functions under the AERA Act with respect to monitoring the set performance standards as may be specified by the Central Government (Section 13 (1) (d) of the AERA Act), it will, in accordance with the provisions of Section 13(1) (a) (ii) of the AERA Act, take into consideration the quality of service provided by Airport Operators on specified parameters and measures

while determining tariffs.

- The specific Objective Quality of Service Parameters and Benchmarks and the Subjective Quality of Service Parameters and Benchmarks to be measured at the major airports had already been adopted by the Authority in the Airport Guidelines (Appendix 2 and Appendix 3 of the Airport Guidelines).
- 26.7 In the Airport Guidelines, the Authority had also adopted a mechanism to consider reduced tariffs for under-performance vis-a-vis specified benchmarks on quality of service to adequately protect the interest of users. 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). The Authority had specified 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%. As regards the subjective service quality parameters the Authority had adopted 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. The Authority believed 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 had 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 ACI/ASQ survey.
- The Authority had 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 BIAL and felt that a period of six months from the date of tariff determination would be a reasonable time for BIAL to appropriately align their processes/ procedures and make any other required interventions.
- In the current determination of aeronautical tariff(s) for BIAL, at the time of CP 14 a period of about two years and two months of the first control period had already elapsed and given the transition period of six months, for implementation of the above, scheme (quality of service measurement and determination of any rebates) would be applicable at the earliest only from the fourth tariff year of the Control period i.e., 2014-15. The Authority noted that it will be possible to calculate the rebate for the year 2014-15 only in the tariff year t+2, viz., in 2016-17, which is the first tariff year of the next control period. In this light the

Authority proposed to use the rebate mechanism as indicated in the Airport Order and the Airport Guidelines for BIAL.

- 26.10 Based on the material before it and its analysis, the Authority proposed in CP 14:
 - 26.10.1 To use the rebate mechanism as indicated in the Airport Order and the Airport Guidelines for Bengaluru International Airport.
 - 26.10.2 To implement the rebate scheme from 4th Tariff year of the Current Control period i.e., 2014-15. Rebate for year 2014-15 would be carried out in 2016-17, which is the first tariff year of the next control period.
- 26.11 Further the Authority's examination and proposal placed for stakeholders consultation on matters relating to BIAL's submission on Quality of Service in CP 22 is as under:
- In CP 14, the Authority had proposed that the Authority will use the rebate mechanism as indicated in the Airport Order and the Airport Guidelines for Kempegowda International Airport. The Authority had also proposed to implement the rebate scheme from 4th Tariff year of the Current Control period i.e., 2014-15. Rebate for year 2014-15 would be carried out in 2016-17, which is the first tariff year of the next control period.
- 26.13 BIAL had requested the Authority to consider the Quality parameters as set by Concession agreement. BIAL had further submitted that the Concession agreement had sufficient checks and balances to ensure high level of quality. BIAL had further stated that according to BIAL's understanding, setting its own standards by the Authority for the Quality of Service is not permissible under the AERA Act.
- The Authority had analysed in detail the provisions of AERA Act with respect to the Standards for Quality of Service. AERA Act enjoined upon the Authority two separate functions. The first was to determine Aeronautical tariffs taking into consideration the service provided, its quality and other relevant factors (Section 13(1)(a)(ii) of the AERA Act). The second function was with regard to Performance standards under Section 13(1)(d) that states that "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". These two functions regarding Quality of Service were mandated in the AERA Act under two different sub-sections viz. Section 13(1)(a)(ii) and Section 13(1)(d) of the AERA Act. Hence, the Authority, according to its understanding of the provisions of AERA Act can act under both these sections jointly or severally. Therefore the Authority was not persuaded by

BIAL's submission that setting of standards by the Authority was not permissible under AERA Act.

- The Authority had given careful consideration to the other submission of BIAL that its Concession Agreement contained what BIAL calls as adequate provisions for maintaining quality. The Authority had noted the provisions of the Concession Agreement with respect to performance standards (particularly Article 9 and Schedule 9 Part 2 thereof). The Authority noted that these standards were based on IATA Global Airport Monitor service standards. The provisions of the Concession Agreement also indicate the consequences of not coming upto the prescribed level of performance standards. On balance, therefore, the Authority felt that the scheme of performance standards as indicated in the Concession Agreement would be reasonable for this purpose.
- 26.16 Based on the material before it and its review, the Authority proposed that BIAL shall ensure that service quality conforms to the performance standards as indicated in the Concession Agreement.

c. Stakeholders Comments on matter related to Quality of service

- 26.17 In response to proposal in CP 14, in relation to quality of service following comments were received from Stakeholders.
- 26.18 APAO stated as under in matters related to Quality of service:

"APAO wishes to submit that Clause 9.2 of the Concession Agreement in respect of 'Monitoring of Performance Standards' lays down the performance standards and penalties for not conforming to the standards. We believe these provisions are stringent and provide an adequate deterrent in case of the operator's non-compliance. Therefore, the imposition of additional penalties by the Authority would result in doubling the jeopardy for the operator. APAO therefore requests the Authority to reconsider its decision of imposing a rebate mechanism as it would impose additional onerous penalties on the operator for the same default.

The operations of any airport involve participation of various external agencies for air traffic control, security etc. Hence, the efficient functioning of an airport is also dependent upon such agencies. These agencies are independent and not under the control and supervision of the airport operator. Therefore, it may be inappropriate to penalize the airport operator alone for service quality discrepancies as some of such

discrepancies may have occurred due to factors which are completely beyond the operator's control.

Several private airports in India have been adjudged as the best airports in the world in their respective categories. It may therefore be appropriate for the Authority to consider a mechanism which recognizes awards and incentivizes superlative performance by airports"

26.19 British Airways stated as under in matters related to Quality of service

"With regards to proposal 22, Quality of Service, 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.

British Airways therefore welcomes the AERA proposal to set some incentivised standards regarding Quality of Service. It is unfortunate that we are so far into the initial regulatory period that for this initial period that you can only regulate, in this regard, for the final two years of this period, but even that is welcome. British Airways would welcome clear and targeted service measure with appropriate incentives that impact on the airport quicker than your currently proposed t+2 timeframe. In the event of poor service delivery, in essence, the airlines and our customers are paying for a service that was not provided and the airport should not be allowed to feel no near-term financial impact, giving some timely, small remedy to the airlines and focussing attention at the time of the service failure or rectifying the situation"

- 26.20 In response to proposals in CP 22, in relation to quality of service following comments were received from Stakeholders.
- 26.21 BPAC stated as under in matters related to Quality of service

"It is noted with great concern that while making investment decisions BIAL promises quality of services at par with best of the airports internationally whereas during actual delivery of service and evaluation process, the commitments in concession agreement are brought in. Authority may please note that the volume of capital investment largely depends on the service level for which the facilities are designed. In case of BIAL insisting to stick only to the concession agreement clauses, all future investments and projects also need to be designed and delivered in line with the commitments of service quality in concession agreement only. This will largely bring down the project cost and thereby the burden of travelling public. The declared service levels to be shared and displayed for the knowledge of users for assessing their travel experience.

The UDF charged from the passengers to be reimbursed in case of reduction in declared service levels, such as failure of air-conditioning, delayed delivery of baggage etc. are experienced."

d. BIAL's comment on stakeholders Comments on matter related to Quality of service

26.22 BIAL, in response to BPAC's comment has stated that all requisite views have been submitted to AERA.

e. BIAL's own comment on matter related to Quality of service

26.23 BIAL's comment in response to proposal on matter related to Quality of service in CP 14 is as under:

"Section 13(1)(d) of the AERA Act provides that the Authority is required to monitor performance standards that are set by the Central Government or any Authority authorised on its behalf. However, as per the CP, the Authority will set its own standards of quality. The same, as per the understanding of BIAL, is not permissible under the AERA Act.

Further, as per the Concession Agreement, BIAL is required to maintain quality as per IATA Global Airport Monitor service standards. But the CP proposes subjective and objective service quality parameters. The subjective service parameter is the rating on the ACI ASQ survey, while the objective parameters are set by the Authority itself. BIAL requests Authority to consider that it cannot prescribe objective quality parameters when such power is expressly conferred on the Central Government. Additionally, BIAL is required to comply with two sets of service quality parameters

at once. This is unfair especially because there are overlapping requirements and the same is tantamount to double jeopardy.

It is pertinent to point out that there exist a large number of parameters over which BIAL has no control, for instance, the time consumed during security check or immigration etc. BIAL submits that, if the proposal, as it stands, is implemented, BIAL may stand to be penalised for no fault of it and for such considerations over which it neither has any control to change or improve. BIAL once again requests Authority to consider its submissions in this regard for subjective and objective quality parameters and further in relation to rebate for non-compliance.

Further please refer the Appendix 'A' wherein we have given detailed inputs on practical issues that were involved particularly with respect to Objective service quality parameters.

We hereby request Authority to consider the Quality parameters as set by Concession agreement and Concession agreement has sufficient checks and balances to ensure high level of quality."

26.24 BIAL's comment in response to proposal on matter related to Quality of service in CP 22 is as under

"Since Authority has proposed to take cognizance of quality parameters in Concession Agreement, the same is acceptable to BIAL"

f. Authority's examination of Stakeholders' comments (including comments from BIAL) on issues pertaining to Quality of service

26.25 The Authority has noted the comments received from the stakeholders on Quality of service. The Authority has noted that APAO has stated that "Several private airports in India have been adjudged as the best airports in the world in their respective categories. It may therefore be appropriate for the Authority to consider a mechanism which recognizes awards and incentivizes superlative performance by airports". The Authority has already stated in Para 26.4 above that the Government's view was not in favour of giving incentives. The Authority has also stated in the said Para that In so far as the issue of incentive for quality of service more than those prescribed was concerned, the Authority stated that airport planning is with reference to the level of service which the airport proposes to provide and the capital expenditure is also incurred accordingly. The Authority also notes that Authority's proposals are acceptable to BIAL.

26.26 The Authority has noted BPAC's comment that

"the volume of capital investment largely depends on the service level for which the facilities are designed. In case of BIAL insisting to stick only to the concession agreement clauses, all future investments and projects also need to be designed and delivered in line with the commitments of service quality in concession agreement only. This will largely bring down the project cost and thereby the burden of travelling public. The declared service levels to be shared and displayed for the knowledge of users for assessing their travel experience."

- The Authority had clearly stated the process and methodology to be followed for Future Capital Expenditure (Refer Para 9.46 above) which the Authority feels would also address BPAC's concern. The expenditure also includes costs necessary to maintain the Quality of Service, as defined in the Concession Agreement.
- The Authority also has noted BPAC's comment that the UDF charged from passengers should be reimbursed in case of reduction in declared service levels such as failure of air-conditioning, delayed delivery of baggage etc. are experienced. The Authority notes that any deficiency of service is addressed as per the provisions of the Concession Agreement. The Authority understands that BIAL has instituted a consumer grievance redressal mechanism.

Decision No. 21. Quality of Service

i. The Authority decides that BIAL shall ensure that service quality conforms to the performance standards as indicated in the Concession Agreement.

27 Matters regarding Error Correction and Annual Compliance Statement

a. Authority's examination of Error Correction and Annual Compliance Statement

- 27.1 The Authority's examination of Error Correction and Annual Compliance Statement in CP 14 is as detailed under:
- The Authority had in its Airport Guidelines laid down the error correction mechanism with reference to the adjustment to the Estimated Maximum Allowed Yield per passenger, calculated using the error correction term of Tariff Year t-2 and the compounding factor. The error correction calculated as per the Airport Guidelines indicated the quantum of over-recovery or under-recovery due to increase or decrease respectively of the Actual Yield per passenger with respect to Actual Maximum Allowed Yield per passenger in the Tariff Year.
- 27.3 The Authority had noted that this is the first control period in which a period of over two years have already elapsed. Tariff being determined is to be recovered in the balance period of about two and half years of the current control period.
- In the case of BIAL, the Authority had proposed to make appropriate adjustments to the RAB at the beginning of the next Control period in respect of actual investments. The Authority had also proposed to consider the depreciation calculated in accordance thereof and Roll Forward RAB during the Control Period for the purpose of determination of tariffs for aeronautical services at BIAL. The Authority had also proposed to true up the traffic projection based on actual growth. The Authority had also proposed that the non-aeronautical revenue and Operating Expenditure would be trued up, in the interest of the passengers as well as those of the airport operator. Hence, the truing up for non-aeronautical revenue and Operating Expenditure was also proposed after the completion of the current control period.
- The Authority noted that BIAL should submit the Annual Compliance Statements for the individual tariff years of the first control period along with the MYTP for the next Control Period.

b. Stakeholders' comments on Error correction and Annual Compliance Statement

- 27.6 On True Up proposed by the Authority on various components of Regulatory Building Block, FIA has commented as follows:
 - "107. In the CP No. 14/2012-13 and present CP 22/2013-14, the tariff plan is subject to truing up in next control period with respect to following components:

- (a) Asset Allocation
- (b) Future Capital Expenditure
- (c) Cost of Debt
- (d) Operating Expenditure
- (e) Taxation
- (f) Non-aeronautical revenue
- (g) Traffic forecast
- (h) Working Capital Interest Expenditure
- (i) WPI Index

108. It is submitted that in the present case Authority should not leave aforementioned components for future in the garb of truing up exercise during next control period. In this context, judgment of APTEL in the case of BSES Rajdhani Power Limited vs. Delhi Electricity Regulatory Commission reported as 2009 ELR (APTEL) 880 is extracted below:

"116. Before parting with the Judgment we have to remind the Commission of the observations in our Judgment in Appeal No. 265 of 2006, 266 of 2006 and 267 of 2006 in the case of North Delhi Power Ltd. v. Delhi Electricity Regulatory Commission in which we said the following:

Before parting with the Judgment we are constrained to remark that the Commission has not properly understood the concept of truing up. While considering the Tariff Petition of the utility the Commission has to reasonably anticipate the Revenue required by a particular utility and such assessment should be based on practical considerations. ...The truing up exercise is meant (sic) to fill the gap between the actual expenses at the end of the year and anticipated expenses in the beginning of the year. When the utility gives its own statement of anticipated expenditure, the Commission has to accept the same except where the Commission has reasons to differ with the statement of the utility and records reasons thereof or where the Commission is able to suggest some method of reducing the anticipated expenditure. This process of restricting the claim of the utility by not allowing the reasonably anticipated expenditure and offering to do the needful in the truing up exercise is not prudence.

117. All projections and assessments have to be made as accurately as possible. Truing up is an exercise that is necessarily to be done as no projection can be so accurate as to equal the real situation. Simply because the truing up exercise will be made on some day in future the Commission cannot take a casual approach in making its projections. We do appreciate that the Commission intends to keep the burden on the consumer as low as possible. At the same time one has to remember that the burden of the consumer is not ultimately reduced by under estimating the cost today and truing it up in future as such method also burdens the consumer with carrying cost."

The said judgment has been followed by APTEL in various other cases like NDPL vs. Electricity Regulatory Commission reported as 2010 ELR (APTEL) 891.

109.In view of the foregoing, it is submitted that Authority should not leave everything to true up and attempt to make all the projections and assessments as accurately possible on the basis of available data.

c. BIAL's comments on Stakeholders' comments on Error correction and Annual Compliance Statement

27.7 On FIA's comment on True up, BIAL has commented that:

"BIAL submits that the required details and clarifications regarding all regulatory building blocks have been submitted to AERA during the consultation process. Further during the process of tariff determination various details were submitted in response to clarifications sought by AERA."

- d. BIAL's own comments on Error correction and Annual Compliance Statement
- 27.8 BIAL has not provided any specific comments on Error correction and Annual compliance statement.
- e. Authority's analysis on Stakeholders' comments (including comments from BIAL) on Error correction and Annual Compliance Statement
- The Authority has noted FIA's comment that "it is submitted that Authority should not leave everything to true up and attempt to make all the projections and assessments as accurately possible on the basis of available data". The Authority has also noted that FIA has cited judgements of different case laws to support their view.
- 27.10 The Authority has noted the following from APTEL judgement quoted by FIA.

 "When the utility gives its own statement of anticipated expenditure, the Commission
 has to accept the same except where the Commission has reasons to differ with the
 statement of the utility and records reasons thereof or where the Commission is able

to suggest some method of reducing the anticipated expenditure. This process of restricting the claim of the utility by not allowing the reasonably anticipated expenditure and offering to do the needful in the truing up exercise is not prudence. All projections and assessments have to be made as accurately as possible. Truing up is an exercise that is necessarily to be done as no projection can be so accurate as to equal the real situation. Simply because the truing up exercise will be made on some day in future the Commission cannot take a casual approach in making its projections. We do appreciate that the Commission intends to keep the burden on the consumer as low as possible. At the same time one has to remember that the burden of the consumer is not ultimately reduced by under estimating the cost today and truing it up in future as such method also burdens the consumer with carrying cost..."

The Authority notes that the Authority's decision for truing up is based on a proper assessment of the estimates of the future revenues and costs. The Authority has not attempted to unnecessarily, and without justification reduced the anticipated expenditure. The Authority has also stated clear reasons where the Authority had noted that the projections made by BIAL would need to be trued up.

Decision No. 22. Annual Compliance Statement

 The Authority decides that BIAL should submit the Annual Compliance Statements for the individual tariff years at the time of submission of MYTP for the next Control Period.

28 Summary of Decisions

Decision I	No. 1. Regulatory Till149)
a. The	e Authority decides)
Airpo	To compute the Aeronautical Tariffs and UDF in respect of Kempegowda International ort under 40% Shared Revenue Till as per Para 4.166 above for the current control period.	
	To carry out adjustment to ARR for the next control period as indicated in Para 4.170.12)
and S Rs. 11 transi undei BIAL.	To note that the difference between the UDF computed under 40% Shared Revenue Till single Till during the remaining part of the current control period is currently estimated at 16 Crore. (Refer Para 25.90 below). To further note that this amount represents the fer of resources from passengers to the Airport Operator on account of computation or 40% Shared Revenue Till to facilitate funding of Capital expansion of airport facilities by These adjustments will be carried out to RAB at the beginning of the next control period tailed in Para 4.170.13 above.	С
Decis at the	To true up the amounts of adjustments for ARR and RAB (detailed in Para ii and Para iii of ion No. 1 above) based on the recomputed ARR as well as revenues both based on actuals e end of the current control period. The true up amounts would be reckoned while lating ARR for the next control period.	
Decision I	No. 2. Pre-Control Period losses of BIAL160)
Act were and Loss Pre-con	e Authority notes that from the date the powers of the Authority under Chapter 3 of the e notified (this date being 1 st September 2009) BIAL has not posted any losses in its Profit s statements for the period 2009-10 and 2010-11. Hence the question of considering any trol period shortfall for the purpose of determination of Aeronautical Tariffs for the control period does not arise.	C
Decision I	No. 3. Control Period165	5
	e Authority decides to consider the first control period from 01.04.2011 to 31.03.2016 for ination of the Aeronautical Tariff	5
Decision I	·	
	Aeronautical and Non-aeronautical services193	
	e Authority decides:	L
	To consider the allocation of Opening RAB as of 1 st April 2011 between Aeronautical and Aeronautical Assets as determined by the Authority and detailed in Table 15 19:	1
	To consider the allocation of assets relating to Terminal 1 expansion between Aeronautica s and Non Aeronautical Assets as detailed in Para 8.26 above	
Aeror	To consider the allocation of Operation and Maintenance Expenditure between nautical and Non-Aeronautical services as submitted by BIAL as per Table 13 for	
comp	outation of ARR for the current control period19	L

	iv. To commission an independent study to assess the reasonableness of the asset allocation considered in Para i and Para ii above (Refer Para 8.70.1 above)	
	v. To commission an independent study to assess the reasonableness of the allocation of Operation and Maintenance Expenditure considered in Para iii above (Refer Para 8.70.2 above 191).
	vi. To true up the allocation of assets between Aeronautical and Non-Aeronautical services based on the conclusions of the study at the time of determination of aeronautical tariff determination in the next control period.)1
	vii. To true up the allocation of Operation and Maintenance Expenditure between Aeronautical and Non-Aeronautical services based on the conclusions of the study at the time of determination of Aeronautical tariff in the next control period	92
Dec	ision No. 5. Future Capital Expenditure including General Capital Expenditure24	18
a.	The Authority decides24	18
	i. To consider Capital Expenditure (Refer Table 23) for addition to RAB during the current control period, for the present, for the purpose of the determination of tariff for aeronautical services during the current control period	18
	ii. To commission an independent study on the reasonableness of the costs incurred and capitalised by BIAL during the current control period (Refer Para 9.114 above)	18
	iii. To note the proposal of BIAL for additional infrastructure proposed to be created during 2014-15, 2015-16 and the next control period (01.04.2016 – 31.03.2021). The Authority expect BIAL to firm up the scope, standard of work, design and cost of the proposed additional infrastructure (Refer Para 9.46 above and Table 21)	
	iv. To note the recommendations of IMG (accepted by ESCOI) (Refer Para 9.109.6 above) for the purposes of calculation of area of Terminal-2 for 20 Million passengers, the indicative figur for which is around 1.63 lakh sq. mtrs	e
	v. To true-up the difference between the Capitalised Expenditure as well as expenditure to be capitalised during the current control period as has been considered now (Refer Table 23) and the expenditure that would actually be incurred, based on evidential submissions along with auditor certificates.	18
	vi. To true up the additions to RAB based on the results of the independent study proposed by the Authority as detailed in Para ii above at the time of determination of aeronautical tariff for the next control period	
Dec	ision No. 6. Regulatory Asset Base27	'6
a.	The Authority decides27	76
	i. To disallow Rs. 69.45 crore from the value of asset created based on the report of EIL which was accepted by AAI and reduce the corresponding depreciated value of Rs. 57.50 crore from the Opening RAB of the current control period (Refer Para 10.71 above)	
	 ii. To consider Opening RAB as of 1st April 2011 as per the audited financial statements of BIAL and to carry out deductions to Opening RAB based on EIL Report as detailed in Table 27. 276 	

	iii. To consider Average Regulatory Asset Base as detailed in Table 31 and Table 32 under Single Till and 40% Shared Revenue Till respectively	276
	iv. To consider depreciation on 100% of the asset values (without considering any salvage value). To consider Depreciation as detailed in Table 31 and Table 32 under Single Till and 40 Shared Revenue Till respectively.	
	v. To lay down, to the extent required, the depreciation rates for airports, taking into account the provisions of the useful life of assets given in Schedule II of the Companies Act 2013 (Act of 2013), assets that have not been clearly mentioned in the Schedule II of the Companies Act 2013 in the specific context of the airport sector. The Authority has initiated the process to enable to issue a notification as appropriate, pursuant to the provisions of Part B of Schedule II of the Companies Act 2013 for this purpose.	: 18 ct 13 e it ne
	vi. To true up the Average RAB and the depreciation in the first year of the next control period based on the actual capitalised expenditure, and depreciation rates adopted in the current control period.	277
Deci	ision No. 7. Treatment of land	321
a.	The Authority decides	321
	 Not to carry out any adjustment to RAB on account of monetisation of land owing to the development of Hotel, while determining Aeronautical tariffs during the current control peri 321 	
	ii. Taking note that the Hotel project was under Arbitration and that according to BIAL has now been settled and certain payments are contemplated therein, not to consider Rs. 76.50 Crore of Interest Free Security Deposit as well as Rs. 6.89 Crore of interest earned per annun on the Hotel deposit for the period 2011-12 to 2013-14, for the purpose of tariff determination the present. (Refer Para 11.11 above)	n ion
	iii. To take into account the manner and treatment of considering the receipts from commercial exploitation of land (both Capital and Revenue) to be reckoned towards determination of Aeronautical Tariffs based on appropriate response to be received from Go (Refer Para 11.79 above) and take the same into account for the purposes of truing up the tacomputations for the current control period while determining Aeronautical tariffs in the next control period.	ariff xt
Deci	ision No. 8. Traffic Forecast	332
a.	The Authority decides	332
	i. To consider the actual traffic for the periods 2011-12, 2012-13 and 2013-14	332
	ii. To consider the growth rates proposed by BIAL for the balance period of 2014-15 to 2021. 16 in the current control period as detailed in Table 42	
	iii. To true up the traffic volume based on actual growth during the current control period while determining aeronautical tariffs for the next control period	332
Deci	ision No. 9. Cost of Debt	347
a.	The Authority decides	347

i. B	To consider the actual interest cost paid for the Rupee Term Loan and ECB Loan, paid by SIAL, for 2011-12, 2012-13 and 2013-14.	
ii 1	. To consider a ceiling in respect of the cost of debt for rupee term loan availed by BIAL at 2.50%	
1	i. To consider interest on Foreign Currency loan (on a Foreign currency – Rupee swap) at .0.15% in rupee terms, noting that the ECB loan is fully hedged for its remaining tenure till anuary 2018	347
	v. To consider the Weighted average Cost of debt as detailed in Table 49 and Table 50 undingle Till and 40% Shared Revenue Till respectively	
	To true-up the cost of debt for the current control period with actual values subject to the eiling of 12.50% for the Rupee Term Loan and 10.15% for the ECB Loan, subject to Para vinelow.	
	i. To review this ceiling of 12.50% for Rupee Term Loan upon reasonable evidence that BIA nay present to the Authority in this behalf	
	ii. Not to review the ceiling of 10.15% on the ECB Loan (Refer iii above) but should the ctual cost be lower, true up the lower cost	347
Decisi	ion No. 10. Cost of Equity3	89
i. WA	The Authority decides to consider Return on Equity (post tax Cost of Equity) as 16% for the CC calculation – both under Single Till and 40% Shared Revenue Till	
Decisi	ion No. 11. Weighted Average Cost of Capital3	98
a.	The Authority decides:	398
	To calculate WACC, for the purposes of calculating ARR, based on the audited balance heet items like debt, equity, Reserve & Surplus as well as any other means of finance (Refer ara 15.16 above)	398
	To calculate WACC as per Table 58 under Single Till and as per Table 59 under 40% Share Revenue Till (based on 16% cost of equity) for the purpose of determination of aeronautical ariffs during the current control period.	
	i. To true up the WACC calculations based on the actual Debt: Equity ratios during the ontrol period and changes to the Weighted Average cost of debt	398
Decisi	ion No. 12. Taxation4	-06
a.	The Authority decides	106
i. b	To note the actual tax paid / payable is according to MAT on account of Section 80 IA penefit under Income Tax Act availed by BIAL	106
	t. To consider the actual tax (MAT) paid in each year for the years 2011-12 to 2013-14 and he estimated tax liability for the remaining years 2014-15 and 2015-16 for the purpose of letermination of Aeronautical Tariffs	
R	i. To consider MAT cost as per Table 64 and Table 65 under Single Till and 40% Shared Revenue Till for the purpose of determination of Aeronautical Tariffs for the current control period.	106

the A	o true up the difference between the actual corporate tax (MAT) paid and that used by thority for determination of tariff for the current Control Period at the time of hination of tariff for the next Control Period
Decision N	o. 13. Working Capital and Interest thereon41
a. The	Authority decides41
	o consider the working capital interest cost computed as given in Table 70 under Single as given in Table 71 under 40% Shared Revenue Till
	true up this Working Capital Interest Expenditure based on the actual costs incurred by uring the control period, at the beginning of the next control period
Decision N	o. 14. Operation and Maintenance Expenditure43
a. The	Authority decides
of No reduc	o note that utility charges recovered from concessionaires were reflected by BIAL as part -Aeronautical Revenue. Utility charges recovered from concessionaires is decided to be d from the Utility expenditure considered as part of the Operation and Maintenance liture and accordingly net Utility expenditure is considered for computation of ARR 43
	include Rs. 47.51 Crore of actual Bad debts written off during 2012-13 as part of the ion and Maintenance Expenditure. (Refer Para 18.15 above)
Arbitr	reduce an amount of Rs. 1.98 Crore (Refer Para 18.72 above) incurred towards Hotel tion from the Operation and Maintenance Expenditure and compute the ARR ingly
iv. T detail	o consider the Operation and Maintenance Expenditure as computed by the Authority d in Table 81 and Table 82 for the purpose of determination of Aeronautical Tariffs unde Fill and 40% Shared Revenue Till respectively
based	o accept the proposal of BIAL to true up this Operation and Maintenance Expenditure on the actual costs incurred by BIAL during the control period, during the determination onautical Tariffs for the next control period.
Decision N	o. 15. Treatment of CGF Service Providers44
	Authority decides to consider the CGF service providers as Independent Service Provider nd not as BIAL's agents) and accordingly compute the ARR for the current control perioc
Decision N Services	o. 16. Treatment of Revenue from Ground Handling, Fuel throughput and Cargo 469
a. The	Authority decides:
the ba under Throu	o note that the Fuel Farm Facility is operated by IOSL and the assets of this facility are on ance sheet of IOSL. To further note that IOSL is paying Airport Operator Fee (commonly tood as Fuel Throughput charge) of Rs. 1067 per KL to BIAL. Accordingly to consider the hput Fee revenue from fuel farm service concessioned out by BIAL to IOSL as

ii. To consider the revenue from Cargo Facility, Ground Handling and Into Plane services (provided by third party concessionaires) accruing to BIAL as Aeronautical revenue for determination of tariffs of aeronautical services for the current control period	
Decision No. 17. Non-aeronautical Revenue	
a. The Authority decides	
 i. To consider Aerobridge charge and revenue from ICT services (in which CUTE, CUSS a BRS has been considered by BIAL as ICT services, but taken as part of Ground Handling ser by the Authority – Refer Para 21.65 above) as revenues arising out of Aeronautical service thus consider these charges as Aeronautical charges. 	nd vices and
ii. To consider revenues from Cargo, Ground Handling, Fuel Supply (Fuel Through put ch Fuel Into plane charge etc.) as aeronautical revenues as detailed in Decision No. 16 above	_
iii. To consider Interest income earned as part of Non-Aeronautical Revenue, except for Interest earned on Security deposit received from Hotel project. The interest earned on Security Deposit received for Hotel Project (Refer Para 11.11 above) is excluded from the computation of ARR.	497
iv. To consider the actual Non-Aeronautical Revenue for the period 2011-12, 2012-13 and 2013-14 and projections for the balance period and to consider the resultant Non-Aeronau revenue as computed by the Authority and presented in Table 95 and Table 96 under Sing and 40% Shared Revenue Till respectively.	utical le Till
v. To accept BIAL's proposal to true up the Non-Aeronautical Revenue based on the active revenues earned by BIAL during the control period, at the time of determination of Aeronautical Tariffs for the next control period.	
Decision No. 18. Inflation	500
a. The Authority decides	500
 To consider WPI at 5.9% for remaining years of the current Control Period based on the latest assessment by RBI and use this number for the purposes of projections of Aeronautic revenues and expenditures as relevant. 	ical
ii. As far as Truing up is concerned, the Authority has separately decided under the resp sections, truing up of the revenues and expenditures of the different regulatory building b and therefore the truing up of the WPI does not arise	locks
Decision No. 19. Calculation of WPI – X	501
a. The Authority decides to determine X factor as NIL for the current control period	501
Decision No. 20. Tariff Structure / Rate Card	540
a. The Authority decides 1 st July 2014 as the effective date for the new tariff structure and decides:	
i. To consider the multi-year ATP(s) for 2014-15 and 2015-16 submitted by BIAL at the I stage itself.	

ii. To merge the Facilitation component of PSF into the UDF w.e.f 1 st July 2014. Passenger Service Fee will now comprise only of the security component of Rs. 130/- per embarking passenger with effect from 1 st July 2014 and there will no facilitation component in the PSF. 540
iii. To consider ICT Revenues (that includes, inter alia, CUTE, CUSS, BRS) as Aeronautical Revenues (Refer Decision No. 17 a i above) and take into the calculations the quantum of revenues from the services as per the estimate submitted by BIAL
iv. To consider revenues (rentals, revenue share etc.) accruing to BIAL on account of the following aeronautical services concessioned out to third party concessionaires (i) Fuel Intoplane services (ii) Cargo Services (iii) Ground Handling services as Aeronautical Revenues 541
v. To note that revenue from Fuel Throughput Charge is considered as Aeronautical Revenue and to retain the charge at the current level of Rs. 1067/- per kilolitre for the current control period
vi. To determine Landing, Parking and Housing charges, as per the Variable Tariff Plan as proposed by BIAL in ATP (no landing charges for Aircrafts less than 80 seater. Refer Para 25.25 above)
vii. To determine Aerobridge charges as NIL with effect from 1st July 2014 541
viii. To consider levy of UDF only on departing passengers (both domestic and international). 541
ix. To compute UDF under 40% Shared Revenue Till both for domestic and International passengers as per Table 110 (effective from 1 st July 2014) noting that this results in estimated higher UDF collection of Rs. 116 crore, as compared to Single Till and to further make adjustments as indicated in Decision No. 1 above
x. Truing up of ARR as per Decision No. 1 above
Decision No. 21. Quality of Service551
i. The Authority decides that BIAL shall ensure that service quality conforms to the performance standards as indicated in the Concession Agreement
Decision No. 22. Annual Compliance Statement555
i. The Authority decides that BIAL should submit the Annual Compliance Statements for the individual tariff years at the time of submission of MYTP for the next Control Period

29 Order

- 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 Kempegowda International Airport, Bengaluru for the first Control Period (i.e. FY 2011-12 to 2015-16) with effect from 01.07.2014 as at Decision No. 20 above
- 29.2 The rate of UDF as indicated in Decision No. 20 above is determined in terms of the provisions of Section 13(1)(b) of the AERA Act read with Rule 89 of the Aircraft Rules 1937.
- 29.3 The rates determined herein are ceiling rates, exclusive of taxes, if any

By the Order of and in the Name of the Authority

> Alok Shekhar Secretary

To,

Bangalore International Airport Limited
Alpha-2
Kempegowda International Airport
Devanahalli
Bangalore 560300
(Through Shri Sanjay Reddy, Managing Director)



30 List of Figures

Figure 1: Stylised Illustration of the proposed True Up Process (Refer Para 4.170 above)	108
Figure 2: Components of Operation & Maintenance Expenditure - BIAL (2011 - 2016) Rs. Crore	439
Figure 3: Composition of Non-Aeronautical Revenue at BIAL (2011-16)	496
Figure 4: Sensitivity Analysis - YPP - Computations made under 40% Shared Revenue Till	505
Figure 5: Building Blocks of ARR (Computations under 40% SRT) - 2011-16, Rs. Crore	507
Figure 6: Revenue components of ARR computed at 40% SRT - BIAL - 2011-16	540

31 List of Tables

Table 1: List of Key dates in formation of BIAL	7
Table 2: Shareholding Pattern of BIAL – Initial	8
Table 3: Shareholding Pattern of BIAL – Present	8
Table 4: Table showing the Regulatory Building blocks / chapters which were commented by the	<u> </u>
Stakeholders (CP 14)	26
Table 5: Table showing the Regulatory Building blocks / chapters which were commented by the	!
Stakeholders (CP 22)	32
Table 6: Comparison between Project Agreements of DIAL/MIAL and BIAL	67
Table 7: Summary of UDF rates proposed by BIAL as part of MYTP 2013 submission	89
Table 8: Summary of Recomputed UDF based on Authority's proposals, keeping charges other th	nan
UDF as per BIAL's tariff proposal (w.e.f 1st April 2014) – CP 22	. 101
Table 9: Summary explaining the Authority's approach towards truing up	. 106
Table 10: Details of revised Pre-Control Period Shortfall claimed by BIAL – MYTP 2013 - Rs. Crore	151
Table 11: Table 10 of Consultation Paper No. 14/2013-14 - Recomputed Pre-control period short	tfall
claim considered by the Authority - Rs. Crore	. 152
Table 12: Asset allocation between Aeronautical Services and Non-Aeronautical Services submit	ted
by BIAL – MYTP 2012 and MYTP 2013	. 168
by BIAL – MYTP 2012 and MYTP 2013 Table 13: Expenditure allocation between Aeronautical Services and Non-Aeronautical Services	. 168
Table 13: Expenditure allocation between Aeronautical Services and Non-Aeronautical Services	169
Table 13: Expenditure allocation between Aeronautical Services and Non-Aeronautical Services submitted by BIAL - MYTP 2012 and MYTP 2013	169
Table 13: Expenditure allocation between Aeronautical Services and Non-Aeronautical Services submitted by BIAL - MYTP 2012 and MYTP 2013	169
Table 13: Expenditure allocation between Aeronautical Services and Non-Aeronautical Services submitted by BIAL - MYTP 2012 and MYTP 2013	169 169
Table 13: Expenditure allocation between Aeronautical Services and Non-Aeronautical Services submitted by BIAL - MYTP 2012 and MYTP 2013	169 169 172
Table 13: Expenditure allocation between Aeronautical Services and Non-Aeronautical Services submitted by BIAL - MYTP 2012 and MYTP 2013	169 169 172 188
Table 13: Expenditure allocation between Aeronautical Services and Non-Aeronautical Services submitted by BIAL - MYTP 2012 and MYTP 2013	169 169 172 188
Table 13: Expenditure allocation between Aeronautical Services and Non-Aeronautical Services submitted by BIAL - MYTP 2012 and MYTP 2013	169 169 172 188
Table 13: Expenditure allocation between Aeronautical Services and Non-Aeronautical Services submitted by BIAL - MYTP 2012 and MYTP 2013	169 172 188 193 193
Table 13: Expenditure allocation between Aeronautical Services and Non-Aeronautical Services submitted by BIAL - MYTP 2012 and MYTP 2013	169 172 188 ss 193 193
Table 13: Expenditure allocation between Aeronautical Services and Non-Aeronautical Services submitted by BIAL - MYTP 2012 and MYTP 2013	169 172 188 ss 193 193 194
Table 13: Expenditure allocation between Aeronautical Services and Non-Aeronautical Services submitted by BIAL - MYTP 2012 and MYTP 2013	169 172 188 ss 193 193 194 196

Table 22: Revised Details of Capital Expenditure Projects proposed to be added to RAB during the	5
current Control period as per Authority – CP 22 - Rs. Crore	210
Table 23: Assets decided to be considered as part of addition to RAB for the First control period -	Rs.
Crores	247
Table 24: Average RAB computation by BIAL under Single Till MYTP 2012 - Rs. Crores	249
Table 25: Depreciation rates proposed by BIAL	249
Table 26: Revised Average RAB computation under Single Till as made by the Authority – CP 14-	Rs.
Crores	259
Table 27: Computation of amount deductible from Opening RAB as of 1^{st} April 2011 based on the	EIL
Report	262
Table 28: Revised Average RAB computation under Single Till as made by the Authority – CP 22 -	Rs.
Crore	263
Table 29: Revised Average RAB computation under 40% Shared Revenue Till as made by the	
Authority CP 22 - Rs. Crore	263
Table 30: Comparison of Deprecation rates (Change proposed by BIAL effective 1st April 2014)	274
Table 31: RAB and depreciation decided to be considered by the Authority under Single Till - Rs.	
Crore	275
Table 32: RAB and depreciation decided to be considered by the Authority under 40% Shared	
Revenue Till - Rs. Crore	276
Table 33: Actual Traffic Data of Bangalore for the period 2008-09 to 2012-13	323
Table 34: Traffic Growth rates proposed by BIAL for the period 2013-14 to 2015-16 – MYTP 2012	323
Table 35: Traffic forecast for the period 2013-14 to 2015-16 as projected by L&B in their February	/
2013 report	324
Table 36: Difference in Traffic for 2012-13 between the MYTP 2012 submission and actual traffic	326
Table 37: Revised projected traffic for the period 2013-14 to 2015-16 – CP 14	326
Table 38: Traffic Growth rates considered by BIAL – MYTP 2013	327
Table 39: Revised Projected traffic for the period 2013-14 to 2015-16 estimated by BIAL	327
Table 40: Traffic projections submitted by AAI with respect to BIAL	328
Table 41: Traffic for 2013-14 - Projections -vs- actuals	331
Table 42: Traffic data decided to be adopted by the Authority for the current control period	332
Table 43: Details of Loan balances in the books of BIAL as of Mar 2012 and Mar 2013 – MYTP 201	2 -
Rs. Crore	333
Table 44: Details of capital expenditure proposed to be funded by Debt under Single and Dual Till	las
per BIAL – MYTP 2012 - Rs. Crores	333

Table 45: Weighted average cost of debt proposed by BIAL under Single Till – MYTP 2012 - Rs. C	rore
	333
Table 46: Revised weighted average cost of debt under Single Till – CP 14 - Rs. Crores	340
Table 47: Revised weighted average cost of debt under Single Till – CP 22 - Rs. Crore	341
Table 48: Revised Weighted average cost of Debt under 40% Shared Revenue Till – CP 22 - Rs. Co	rore
	341
Table 49: Computation of Cost of debt decided to be considered by the Authority under Single T	ïll
	347
Table 50: Computation of Cost of debt decided to be considered by the Authority under 40% Sha	ared
Revenue Till	347
Table 51: Details of comparable airports considered by KPMG for identification of Asset Beta	348
Table 52: Cost of Equity computed by KPMG for BIAL for the first control period under Single Till	. 349
Table 53: Optimal debt Ratios in Various Regulatory Settings	359
Table 54: Computation of Fair Rate of Return submitted by BIAL under Single Till $-$ MYTP 2012 $$	390
Table 55: Recomputed Fair Rate of Return under Single Till – CP 14	392
Table 56: Recomputed Fair Rate of Return under Single Till by the Authority – CP 22	394
Table 57: Recomputed Fair Rate of return under 40% Shared Revenue Till by the Authority – CP	22
	394
Table 58: Fair Rate of Return computed under Single Till by the Authority – For MYTO	398
Table 59: Fair Rate of return computed under 40% Shared Revenue Till by the Authority – For M	YTO
	398
Table 60: Details of Tax payments proposed, submitted by BIAL – Single Till – MYTP 2012 - Rs. Co	rores
	399
Table 61: Revised tax numbers considered for reimbursement – CP 14 - Single Till – Rs. Crores	401
Table 62: Revised tax expense considered for calculation of ARR - Single Till – CP 22 - Rs. Crore	402
Table 63: Revised tax expenses considered for calculation of ARR – CP 22 - 40% Shared Revenue	
Rs. Crore	402
Table 64: Tax expense considered for calculation of ARR - Single Till – Rs. Crore – For MYTO	406
Table 65: Tax expenses considered for calculation of ARR – 40% Shared Revenue Till– Rs. Crore -	
MYTO	406
Table 66: Working Capital Interest claim submitted by BIAL - Single Till – MYTP 2012 - Rs. Crores	. 407
Table 67: Revised working Capital interest computed by the Authority - Single Till – CP 14 - Rs. C	rore
	400

Table 68: Revised Working Capital Interest computed by the Authority - Single Till – CP 22 - Rs. Cr	
Table 69: Revised working capital interest computed by the Authority – 40% Shared Revenue Till	_
CP 22 - Rs. Crore	. 410
Table 70: Working Capital Interest decided to be considered by the Authority - Single Till - For M	YTO
- Rs. Crores	. 413
Table 71: Working Capital Interest decided to be considered by the Authority – 40% Shared Reve	nue
Till - For MYTO - Rs. Crores	. 414
Table 72: Summary of Operating and Maintenance Expenditure submitted by BIAL - Single Till –	
MYTP 2012 - Rs. Crores	. 415
Table 73: Revised Personnel cost proposed to be considered by Authority – CP 14	. 421
Table 74: Recomputed O&M Expenditure proposed to be considered by the Authority - Single Til	I —
CP 14 - Rs. Crores	. 422
Table 75: Recomputed Concession fee, as determined by the Authority - Single Till – CP 14 - Rs.	
Crores	. 422
Table 76: Recomputed OMSA Fee - Single Till – CP 14 - Rs. Crores	. 423
Table 77: Recomputed Operating and Maintenance Expenditure - Single Till- CP 14 - Rs. Crore	. 423
Table 78: Recomputed Operating and Maintenance Expenditure considered in CP 22- Single Till-	Rs.
Crore	. 425
Table 79: Recomputed Operating and Maintenance Cost proposed to be considered in CP 22 $-$ 40	0%
Shared Revenue Till – Rs. Crore	. 425
Table 80: Operating and Management Expenditure - 2013-14 Projection vs Actuals - Rs. crore	. 436
Table 81: Operating and Maintenance Expenditure decided to be considered by the Authority -	
Single Till- Rs. Crore – For MYTO	. 437
Table 82: Recomputed Operating and Maintenance Expenditure – 40% Shared Revenue Till- Rs.	
Crore – For MYTO	. 438
Table 83: Table 129 of Consultation Paper 14/2013-14 – Recomputed total amount to be recover	red
through Aeronautical tariffs after adjusting Revenues accruing to BIAL considering CGF Service	
providers as Agents	. 442
Table 84: Table 51 of Consultation Paper 14/2013-14: Summary of Recomputed UDF (Domestic)	
based on Authority's proposals, considering CGF Service providers as agents of BIAL	. 443
Table 85: Details of Aviation concessions	. 452
Table 86: Details of Aeronautical activities concessioned out, as submitted by BIAL – MYTP 2012	- Rs.
Crores	152

Table 87: Summary of Non-Aeronautical Revenues proposed by BIAL – MYTP 2012 - Rs. Crores	471
Table 88: Drivers to the revenue streams as indicated by BIAL	472
Table 89: Details of Projected cash balance as provided by BIAL – MYTP 2012 - Rs. Crores	479
Table 90: Interest Income computed by Authority for the period 2013-14 to 2015-16 – CP 14 - R	is.
Crore	479
Table 91: Recomputed Revenue from Other than Aeronautical services proposed by the Author	ity –
CP 14 - Rs. Crores	480
Table 92: Recomputed Revenue from Other than Aeronautical services proposed by the Author	ity –
Single Till – CP 22 - Rs. Crore	483
Table 93: Revenue from Non-Aeronautical services to be considered for reduction from ARR und	der
40% Shared Revenue Till – CP 22 - Rs. Crore	483
Table 94: Comparison of revenues considered for 13-14 vis-a-vis Actuals for 13-14	494
Table 95: Recomputed Revenue from Other than Aeronautical services proposed by the Author	ity –
Single Till – for MYTO Rs. Crore	495
Table 96: Revenue from Non-Aeronautical services to be considered for reduction from ARR und	der
40% Shared Revenue Till – for MYTO - Rs. Crore	496
Table 97: Recomputed Aggregate Revenue Requirement by the Authority – CP 22 - Single Till – I	Rs.
Crore	502
Table 98: Recomputed Aggregate Revenue Requirement by the Authority – CP 22 - 40% Shared	
Revenue Till – Rs. Crore	503
Table 99: Summary of changes - Impact on ARR and YPP (between MYTP 2013 and MYTO) – 40%	6
Shared Revenue Till	504
Table 100: Aggregate Revenue Requirement and Yield - Single Till – MYTO - Rs. Crore	505
Table 101: Aggregate Revenue Requirement and Yield – 40% Shared Revenue Till – MYTO – Rs.	Crore
	506
Table 102: Tariff Items proposed by BIAL in its tariff card – MYTP 2012	508
Table 103: UDF proposed for FY 2013-14 to FY 2015-16 by BIAL – MYTP 2012	509
Table 104: Landing Charges - Existing rates	509
Table 105: Landing Charges - Proposed rates (1st October 2013 to 31st March 2014) – MYTP 20	12
	509
Table 106: UDF submitted by BIAL as part of MYTP 2013 submissions	509
Table 107: Summary of Recomputed UDF (Domestic) based on Authority's proposals, keeping	
charges other than LIDE and CIC as per BIAI's tariff proposal (w.e.f. 1st October 2013) – CP 14	512

List of Tables

Table 108: Summary of Recomputed UDF based on Authority's proposals, keeping charges other	
than UDF as per BIAL's tariff proposal (w.e.f 1st April 2014) – CP 22	515
Table 109: Component wise Contribution to Aeronautical Revenues – CP 22 - Rs. Crore	516
Table 110: Summary of UDF computed based on Authority's decisions, keeping charges other tha	n
UDF as per BIAL's tariff proposal (w.e.f 1st July 2014)	539
Table 111: Component wise Contribution to Aeronautical Revenues – MYTO - Rs. Crore	539

32 Annex – Annual Tariff Plan and Variable Tariff Plan (2014-15 and 2015-16)

1	ATP – for the period 1 st July 2014 to 31 st March 2015
2	ATP – for the period 1 st April 2015 to 31 st March 2016
3	Variable Tariff Plan



Schedule of Airport Charges

RATE CARD FOR AERONAUTICAL SERVICES EFFECTIVE FROM 1ST JULY 2014 UP TO 31ST MARCH 2015

SCHEDULE OF AIRPORT CHARGES

- 1. Airport charges as applicable from 1st Jul 2014 to 31st Mar 2015
- 2. RNFC and TNLC will be collected directly by AAI

LANDING, PARKING & HOUSING CHARGES

General:-

- 1. Landing and Parking Charges are payable to Bangalore International Airport Limited
- 2. Weight of an aircraft means MTOW in MT (1000kg.) as indicated in the certificate of airworthiness
- 3. Charges shall be calculated on the basis of nearest MT (i.e 1000 kg)

a) LANDING CHARGES - Rates effective from 1st Jul 2014

Weight of Aircraft	International Flight	Other than International Flight
Up to 100 MT	Rs. 613.60 per MT	Rs. 312.50 per MT
Above 100 MT	Rs. 61,360/- + Rs. 824.50 per	Rs. 31,250/- + Rs. 419.90
	MT in excess of 100 MT	per MT in excess of 100 MT

Note:

- 1. Non-scheduled flights A minimum fee of Rs. 5,000/- shall be charged per single landing for all types aircraft flights, helicopters flights including but not limited to domestic landing, international and general aviation landing.
- 2. Aircrafts which are less than 80 seater are exempt from paying Landing charges

b) PARKING & HOUSING CHARGES - Rates effective from 1st Jul 2014

Weight of Aircraft	Parking charges	Housing charges
Up to 100 MT	Rs. 8.40 per hour per MT	Rs. 16.70 per hour per MT
Above 100 MT	Rs. 840/- + Rs. 11.10 per MT per hour in excess of 100 MT	Rs. 1,670/- + Rs. 22.20 per MT per hour in excess of 100 MT

Note:

- 1. 2 hours of free parking period is allowed on all stands, next two hours parking charges will be applicable & thereafter housing charges will be applicable.
- 2. Parking & housing time will be calculated based on ON BLOCK and OFF BLOCK time as

recorded at Airport Operations Control Centre (AOCC).

- 3. For calculating chargeable parking & housing time, part of an hour shall be rounded off to the next hour.
- 4. At the in-contact stands, after the free parking period, for next two hours parking charges shall be levied. After this period, the housing charges at the in-contact stands shall be levied.

Exemption in Landing and Parking Charges-

- 1. Military aircraft (Government of India) including para-military forces such as BSF, Coast Guard etc. are also exempted from parking charges.
- 2. Operators of International flights from airports other than those declared as international airports to pay Landing, Parking & housing charges at the current rates applicable to international airports for such international flights.
- 3. Domestic legs of international routes of Indian operators to be treated as domestic flights as far as landing charges are concerned, irrespective of the flight numbers assigned to such flights.

USER DEVELOPMENT FEE (UDF)

Rates effective from 1st Jul 2014

Type of Passenger	Rate
International embarking passenger	Rs. 1368 per Pax
Domestic embarking passenger	Rs. 342 per Pax

General:-

- 1. User Development Fee is payable to Bangalore International Airport Ltd.
- 2. Collection charges on User Development Fee (UDF) -The domestic and international Scheduled Air Transport Service (Passenger) operator will be entitled for Collection Charges of Rs.5/- (Rupees five only) per embarking passenger, provided, BIAL receives the invoiced UDF amount within the due date mentioned in the invoice. The collection charges so payable to the operator will be adjusted by credit note during the subsequent billing cycle. However, no collection charges will be payable by BIAL to the operator, if the operator fails to make the UDF invoice payment within the aforesaid applicable time limit/credit period
- 3. Exemption in User Development Fee
 - a. Crew on duty, infants of less than 2 years, involuntary rerouting passengers and transit/transfer passengers upto 6 hours are exempted from paying UDF applicable to an International Departing/Embarking Passenger.
 - b. Crew on duty and infants of less than 2 years are exempted from paying UDF applicable to a Domestic Departing/ Embarking Passenger.

c. Airlines are exempted from paying UDF for Sky Marshals.

FUEL THROUGHPUT CHARGE (Airport Operator Fees)

Rates effective from 1st Jul 2014

Charges per Kilolitre of Fuel	Rs. 1,067.00

Note:

1. Concessioned to Fuel Farm Operator. The charges mentioned above will be collected as Airport Operator Fees from Fuel Farm Operator as part of total charges that are collected by Fuel Farm Operator from its customers.

CUSS/CUTE/BRS CHARGE*

Rates effective from 1st Jul 2014

Charges per depax	USD (\$) 1.25

^{*} Concessioned to Concessionaire on revenue share model. The charges mentioned above will be collected by Concessionaire from Airlines.

TAXES

All the above Airport Charges and Fee are subject to service tax (and cess thereon) as per applicable rate

Variable Tariff Plan (VTP):

Detailed VTP enclosed herewith as part of above ATP



Schedule of Airport Charges

RATE CARD FOR AERONAUTICAL SERVICES EFFECTIVE FROM 1ST APRIL 2015 UP TO 31ST MARCH 2016

SCHEDULE OF AIRPORT CHARGES

- 1. Airport charges as applicable from 1st Apr 2015 to 31st Mar 2016
- 2. RNFC and TNLC will be collected directly by AAI

LANDING, PARKING & HOUSING CHARGES

General:-

- 1. Landing and Parking Charges are payable to Bangalore International Airport Limited
- 2. Weight of an aircraft means MTOW in MT (1000kg.) as indicated in the certificate of airworthiness
- 3. Charges shall be calculated on the basis of nearest MT (i.e 1000 kg)

a) LANDING CHARGES - Rates effective from 1st Apr 2015

Weight of Aircraft	International Flight	Other than International Flight
Up to 100 MT	Rs. 650.40 per MT	Rs. 331.20 per MT
Above 100 MT	Rs. 65,040/- + Rs. 874.00 per	Rs. 33,120/- + Rs. 445.10
	MT in excess of 100 MT	per MT in excess of 100 MT

Note:

- 1. Non-scheduled flights A minimum fee of Rs. 5,000/- shall be charged per single landing for all types aircraft flights, helicopters flights including but not limited to domestic landing, international and general aviation landing.
- 2. Aircrafts which are less than 80 seater are exempt from paying Landing charges

b) PARKING & HOUSING CHARGES -Rates effective from 1st Apr 2015

Weight of Aircraft	Parking charges	Housing charges
Up to 100 MT	Rs. 8.90 per hour per MT	Rs. 17.70 per hour per MT
Above 100 MT	Rs. 890/- + Rs. 11.80 per MT per hour in excess of 100 MT	Rs. 1,770/- + Rs. 23.50 per MT per hour in excess of 100 MT

Note:

- 1. 2 hours of free parking period is allowed on all stands, next two hours parking charges will be applicable & thereafter housing charges will be applicable.
- 2. Parking & housing time will be calculated based on ON BLOCK and OFF BLOCK time as

recorded at Airport Operations Control Centre (AOCC).

- 3. For calculating chargeable parking & housing time, part of an hour shall be rounded off to the next hour.
- 4. At the in-contact stands, after the free parking period, for next two hours parking charges shall be levied. After this period, the housing charges at the in-contact stands shall be levied.

Exemption in Landing and Parking Charges-

- 1. Military aircraft (Government of India) including para-military forces such as BSF, Coast Guard etc. are also exempted from parking charges.
- 2. Operators of International flights from airports other than those declared as international airports to pay Landing, Parking & housing charges at the current rates applicable to international airports for such international flights.
- 3. Domestic legs of international routes of Indian operators to be treated as domestic flights as far as landing charges are concerned, irrespective of the flight numbers assigned to such flights.

USER DEVELOPMENT FEE (UDF)

Rates effective from 1st Apr 2015

Type of Passenger	Rate
International embarking passenger	Rs. 1226 per Pax
Domestic embarking passenger	Rs. 306 per Pax

General:-

- 1. User Development Fee is payable to Bangalore International Airport Ltd.
- 2. Collection charges on User Development Fee (UDF) -The domestic and international Scheduled Air Transport Service (Passenger) operator will be entitled for Collection Charges of Rs.5/- (Rupees five only) per embarking passenger, provided, BIAL receives the invoiced UDF amount within the due date mentioned in the invoice. The collection charges so payable to the operator will be adjusted by credit note during the subsequent billing cycle. However, no collection charges will be payable by BIAL to the operator, if the operator fails to make the UDF invoice payment within the aforesaid applicable time limit/credit period
- 3. Exemption in User Development Fee
 - a. Crew on duty, infants of less than 2 years, involuntary rerouting passengers and transit/transfer passengers upto 6 hours are exempted from paying UDF applicable to an International Departing/Embarking Passenger.

 b. Crew on duty and infants of less than 2 years are exempted from paying
 - UDF applicable to a Domestic Departing/ Embarking Passenger.
 - c. Airline's are exempted from paying UDF for Sky Marshals.

FUEL THROUGHPUT CHARGE

Rates effective from 1st Apr 2015

Charges per Kilolitre of Fuel	Rs. 1,067.00

Note:

1. Concessioned to Fuel Farm Operator. The charges mentioned above will be collected as Airport Operator Fees from Fuel Farm Operator as part of total charges that are collected by Fuel Farm Operator from its customers.

CUSS/CUTE/BRS CHARGE*

Rates effective from 1st Apr 2015

Charges per depax	USD (\$) 1.25

^{*} Concessioned to Concessionaire on revenue share model. The charges mentioned above will be collected by Concessionaire from Airlines.

TAXES

All the above Airport Charges and Fee are subject to service tax (and cess thereon) as per applicable rate

VARIABLE TARIFF PLAN (VTP)

Detailed VTP enclosed herewith as part of above ATP

Variable Tariff Plan

Scheduled Domestic & International Passenger and Cargo Airlines

BIAL's Proposal for improved passenger traffic and sustained operational excellence

June 2014

Variable Tariff Plan:

BIAL proposes a Variable Tariff Plan (VTP) to Airlines covering the next two years under the following five categories. This is applicable to Scheduled Domestic & International Passenger and Cargo Airlines only.

Categories applicable for variable tariff plan:

- 1. Existing Flights: Flights currently operating at Bangalore
- 2. <u>Additional Frequency:</u> An additional flight introduced on an existing route by any airline. E.g. Airline XY operates 4 frequencies between Bangalore – Mumbai and now introduces a 5th frequency
- 3. <u>New Flight:</u> A flight introduced to a new destination (unserved by the airline for the previous twelve months), that is already in service by another airline from Bangalore.

E.g. Airline XY (existing) or Airline AB (new) introduces a new flight Bangalore – Trivandrum, which is already served by other domestic carriers.

- 4. **New Route**: A flight to a new destination that is currently unserved from Bangalore by any airline (unserved by the qualifying airline for the previous twelve months).
 - E.g. Airline XY (existing) or Airline AB (new) introduces a new route Bangalore Pondicherry, which is currently unserved from Bangalore by any airline.

- 5. Home Carrier For an airline to qualify as a Home-carrier all the following criteria should be fulfilled:
 - A. Airline should declare Bangalore as their Home-base and accepted by Bangalore Airport as their Home-carrier.
 - B. Airline has to establish its Head Quarters at Bangalore.
 - C. Airline shall have the highest number of base aircraft (night parked aircraft) in Bangalore compared to any other airport in India at any point of time over the duration of the variable tariff plan, with the exception of operational exigencies.
 - D. Airline must achieve a throughput of at least 1 (one) million additional passengers (total of arrival & departure) annually, and the annual passenger volumes of the airline from Bangalore need to be the highest amongst all the other airports in India.

Note:

- a. For the above "Home Carrier" VTP is not exclusive to any one airline. At a given period of time there can be more than one airline qualifying for the above.
- b. There will be a quarterly evaluation for continued eligibility.

General Information:

<u>Note 1:</u> Airport Non-Peak Hours are declared as between 1100 to 1655 hours (IST) for the current financial year. Airport non-peak hours will be declared in December every year for the subsequent financial year (April to March)

Note 2: All existing domestic flights landing during the non-peak hour(s) will be eligible for the non-peak tariff defined in the tariff card.

Note 3: A flight will qualify for the non-peak tariff in the VTP, if in every billing cycle at least 80% of its arrivals (On-block time - AIBT) are in the airport declared non-peak hours (tolerance of +/- 5 minutes).

E.g. Flight 1234 with a Scheduled Time of Arrival (STA) 1100 hrs should have 80% or more of its On-block time (AIBT) between 1055 to 1700 hrs (airport declared non-peak hours = 1100 to 1655 hrs).

Note 4: Non-peak tariff is applicable until 31st March (from the date of commencement), with the exception of new routes.

Note 5: The tariff for new routes (both domestic and international) will be for a period of 12 months from the date of commencement. The tariff as per published VTP shall apply until 31st March and thereafter from 1st April the tariff applicable shall be correspondingly adjusted at the same rate.

Eg 1: Domestic flight AB 1234, operating in the non-peak hour with a narrow body aircraft, commencing operations on 1st Oct 2014 will be eligible for the following rates:

010CT2014 to 31MAR2015 Rs. 78.13 per MT

01APR2015 to 30SEP2015 Rs. 82.80 per MT

Eg 2: International flight XY 567 with a wide body aircraft, commencing operations on 1st Dec 2014 will be eligible for the following rates:

01DEC2014 to 31MAR2015 Rs. 41.23 per MT

01APR2015 to 30NOV2015 Rs. 43.70 per MT

Note 6: The tariff plan for international flights, as applicable, are valid for 12 months from the date of commencement of operation.

Note 7: No discount over and above the Variable Tariff Plan is applicable.

Tariff Card:

Туре	Rack Rate (*RR) per *MT in INR		Existing Flights			New Route	Home Carrier	
	FY 2014_15	FY 2015_16					Year 1	Year 2
Landing								
Domestic Passenger Flights								
(Other than Non-Peak Operations)								
Rate per MTOW (for MTOW <= 100)	312.50	331.20	RR	RR	RR	156.25	187.50	198.72
Rate per MTOW (for MTOW > 100)	419.90	445.10	RR	RR	RR	209.95	251.94	267.06
Domestic Passenger Flights								
(Non-Peak Operations)								
Rate per MTOW (for MTOW <= 100)	312.50	331.20	234.38	234.38	156.25	78.13	125.00	132.48
Rate per MTOW (for MTOW > 100)	419.90	445.10	314.93	314.93	209.95	104.98	167.96	178.04
International Passenger Flights								
(National or International Carriers)								
Rate per MTOW (for MTOW <= 100)	613.60	650.40	RR	306.80	306.80	30.68	30.68	162.60
Rate per MTOW (for MTOW > 100)	824.50	874.00	RR	412.25	412.25	41.23	41.23	218.50
Domestic Cargo Airlines								
Rate per MTOW (for MTOW <= 100)	312.50	331.20	RR	RR	RR	RR	NA*	NA
Rate per MTOW (for MTOW > 100)	419.90	445.10	RR	RR	RR	RR	NA	NA
International Cargo Airlines								
Rate per MTOW (for MTOW <= 100)	613.60	650.40	RR	RR	RR	306.80	NA	NA
Rate per MTOW (for MTOW > 100)	824.50	874.00	RR	RR	RR	412.25	NA	NA
Aircraft less than 80 Seats								
(ATRs / Q400s / E70s)								
Rate per Landing	0	0	RR	RR	RR	RR	RR	RR
Parking								
Passenger & Cargo Airlines								
Rate per MTOW (for MTOW <= 100)	8.40	8.90	RR	RR	RR	RR	0.00	0.00
Rate per MTOW (for MTOW > 100)	11.10	11.80	RR	RR	RR	RR	0.00	0.00
Housing								
Passenger & Cargo Airlines								
Rate per MTOW (for MTOW <= 100)	16.70	17.70	RR	RR	RR	RR	8.35	8.85
Rate per MTOW (for MTOW > 100)	22.20	23.50	RR	RR	RR	RR	11.10	11.75

*NA = Not Applicable

*RR = Rack Rate

*MTOW = Maximum take-off weight

*MT = Metric Ton